



# Questions and Answers

## USCIS Field Operations Directorate Meeting with the American Immigration Lawyers Association (AILA) April 10, 2014

### Overview

On April 10, 2014 USCIS Field Operations Directorate hosted an engagement with AILA representatives. USCIS addressed questions related to same sex marriage adjudications, customer identity verification, and interview rescheduling and delays among several other topics. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

### Questions and Answers

#### Same-Sex Marriage Adjudications

1. AILA applauds USCIS's efforts in the implementation of post-*Windsor* same-sex marriage adjudications. Early on, AILA received a few reports of isolated incidents of inappropriate questioning and comments, but the overall tone from across the country is that these couples are being treated with dignity and respect. We encourage USCIS to continue to emphasize professional treatment of these families, as perhaps not every field office has yet had the opportunity to adjudicate a same-sex marriage case.

- a. We have been told by various local offices that training regarding same-sex marriage adjudications has been provided by USCIS Field Operations. Please confirm that all USCIS Field Offices have now been trained on same-sex marriage adjudications and whether the training has been incorporated into the regular USCIS officer training module. Will the training materials be made public? If so, when?

**USCIS Response:** All USCIS field offices have received same-sex marriage training. This training is also provided to new officers at Basic Training. USCIS does not have any plans at this time to release this training publicly.

- b. The deadline to request reopening of a same-sex marriage application that was denied prior to the Supreme Court decision in *Windsor* was March 31, 2014. Please provide an update on

how many cases have been reopened based on applicants proactively coming forward through [USCIS-626@uscis.dhs.gov](mailto:USCIS-626@uscis.dhs.gov).

**USCIS Response:** USCIS received inquiries regarding 63 unique cases in the [USCIS-626@uscis.dhs.gov](mailto:USCIS-626@uscis.dhs.gov) email box. The majority of those cases had already been identified by USCIS as needing to be reopened. In fact, there were only 25 cases that USCIS became aware of through the USCIS-626 email box. USCIS has reopened a total of 154 cases that were previously denied under Section 3 of the Defense of Marriage Act (DOMA).

- c. Following the *Windsor* decision, USCIS announced that cases denied after February 23, 2011, but prior to *Windsor*, had been flagged for review. Please provide an update on the status of these cases and whether any of these cases remain pending.

**USCIS Response:** USCIS had flagged 129 cases for review. This, in combination with the 25 cases cited above, resulted in 154 cases being reopened. All but 8 of these cases have been adjudicated.

### Customer Identity Verification (CIV)

2. On September 9, 2013, USCIS began implementing a new Customer Identity Verification (CIV) process at its field offices. Customers appearing for interviews or receiving evidence of an immigration benefit (such as an I-551 stamp, emergency advance parole document, etc.) are now asked to submit biometric data (fingerprints and photographs), so that USCIS can verify the customer's identity.<sup>1</sup> The vast majority of AILA chapters report that CIV is going smoothly and that there no longer appear to be technical glitches interfering with the process.

- a. Please provide an update on the CIV process. Who is currently subject to CIV when appearing at a local USCIS Field Office for an interview or to obtain a benefit?

**USCIS Response:** Currently, applicants for naturalization appearing for their interview are subject to the CIV process at the field office.

- b. USCIS has indicated that it will eventually expand the CIV process to include adjustment of status applicants.<sup>2</sup> When will USCIS expand the scope of CIV to include applicants appearing for adjustment of status interviews? Will any other individuals appearing at USCIS Field Offices be subject to CIV in the future?

**USCIS Response:** USCIS has not set a date for expanding the use of the CIV process to applicants for immigration benefits other than naturalization.

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<sup>1</sup> "USCIS Implements Customer Identity Verification at Field Offices," (Sept. 16, 2013), *published on AILA InfoNet at Doc. No. 13090651 (posted 9/6/13)*; *see also* "AILA/USCIS Field Operations Liaison Minutes" (October 23, 2013), *published on AILA InfoNet at Doc. No. 13110743 (posted on 11/7/13)*.

<sup>2</sup> *Id.*

## Corrections in SAVE

3. The Systematic Alien Verification for Entitlements (SAVE) system is designed to help federal, state and local benefit-issuing agencies confirm the immigration status of benefits applicants so that only those entitled to benefits receive them. On occasion, the immigration classification of a foreign national is not entered properly into the appropriate immigration systems upon admission into the U.S. or upon the approval of a change of status. Though such an erroneous entry may impact a person who is eligible for a driver's license or other benefit, the issue is more pronounced where the individual is employment-authorized and the Social Security Administration is unable to verify his or her status in SAVE and issue a social security number. The USCIS website provides the following information on correcting SAVE records:

"If you believe that the SAVE Program's response to the benefit-granting agency did not provide correct information about your immigration status or you need to make corrections to your immigration record, you can do one of the following:

Contact USCIS: Schedule an appointment for an in-person interview at a local USCIS office at the InfoPass Website, <http://infopass.uscis.gov>, or by calling the National Customer Service Center, 1-800-375-5283.

Scheduling an appointment is the fastest way to correct your records. You should bring your immigration documents and any information provided to you by the benefit-granting agency about why your immigration status makes you ineligible to receive the benefit."<sup>3</sup>

- a. We have received reports that some USCIS field offices are informing AILA members that SAVE errors cannot be corrected at the field office level. Please confirm that an individual can in fact put in a request to fix an error in SAVE by scheduling an appointment at the field office via InfoPass.

**USCIS Response:** An individual can request to fix an error in records maintained by USCIS by scheduling an InfoPass appointment; however, USCIS may not have authority to make changes to records owned or maintained by ICE or CBP, such as SEVIS records or I-94 information, respectively.

- b. If errors can be fixed at the field office, please describe the internal procedures for correcting SAVE errors, including whether and how the affected individual is notified when the error is corrected.

**USCIS Response:** USCIS does not correct SAVE errors. Rather, USCIS corrects information in an individual's immigration record that may be accessed by SAVE. If USCIS is made aware of an error, it will work to correct the error and will provide the customer with information about correction. SAVE also provides a designated phone number for field offices to call to coordinate the appropriate resolution to an issue.

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<sup>3</sup> <http://www.uscis.gov/save/benefit-applicants/how-correct-your-records>

## Interview Rescheduling and Delays

4. Unfortunately, this winter has been particularly harsh and has forced numerous business and governmental closures across the nation.

a. What guidelines are given to USCIS field offices regarding weather-related closures and cancellation of interviews?

**USCIS Response:** USCIS does not have national guidance for field offices regarding weather-related closures and cancellation of interviews other than offices being required to notify headquarters of the closure. Offices have different guidelines because there are different procedures for closure depending on the location of the office. For example, in some locations closures are decided by the Federal Executive Board and the decision is not exclusive to USCIS. Information about weather-related closures can be found on the individual field office's webpage<sup>4</sup> as well as the USCIS office closings page.<sup>5</sup>

b. What, if any, impact has the weather had on processing times, given all the closures and cancelled interviews?

**USCIS Response:** USCIS is not aware of any delays in processing times because of weather-related cancellations. USCIS strives to reschedule affected interviews and naturalization ceremonies as promptly as possible if they were cancelled due to inclement weather.

5. AILA members have also reported that wait times for interviews at local USCIS field offices can vary anywhere from 15 minutes to two hours or longer. In some offices, attorneys are encouraged to ask for a supervisor if their clients are not seen by an interviewing officer within 20 to 30 minutes. In others, they are told not to inquire before an hour has passed from the interview time. As a result, it is often difficult to predict how much time one will spend waiting at the field office for an interview. While we understand that delays can be caused by a number of factors, such as staff absences, the type of case, the need for interpreters, etc., it would seem that a reasonable wait time would be 15 to 30 minutes on average.

Based on our survey, it appears that interview delays might be exacerbated depending on the workload distribution approach utilized by the field office. We understand that some offices employ a "bundle" approach, whereby a particular number of cases are assigned to a particular officer each day, while other offices employ a "top-of-the-pile" approach which directs the next available officer to take the next case in the queue for that day. AILA members indicate that the "bundle" approach appears to work better and is more efficient than the "top-of-the-pile" approach. We have also learned that where the "bundle" approach is used, the interviewing officers appear to better understand the facts of a case because they have had more time to review the case prior to the interview.

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<sup>4</sup> <http://www.uscis.gov/fieldoffices>

<sup>5</sup> <http://www.uscis.gov/about-us/uscis-office-closings?vnextoid=&vnextchannel>

- a. Does USCIS Field Operations recommend that individual field offices take a particular approach to workload distribution or does it allow each field office to determine their own approach?

**USCIS Response:** Offices determine their own approach to workload distribution.

- b. Does USCIS Field Operations have a mechanism by which it measures average waiting times for interviews?

**USCIS Response:** While local offices may have a mechanism to measure average wait times for an interview, there is no national system. If there are offices that seem to have consistently significant wait times, please bring them to our attention.

- c. Does USCIS Field Operations receive reports of customer/client complaints about interview delays, and if so, how are they handled?

**USCIS Response:** USCIS has not received regular complaints about interview delays; however, when we do, as with all complaints received, they are reviewed and addressed promptly.

- d. If it appears that, based on relevant statistics and frequency of customer service complaints at individual field offices, the “bundle” approach is the most effective approach, would USCIS Field Operations consider making it mandatory nationwide?

**USCIS Response:** Thank you for this suggestion. USCIS has no immediate plans to mandate how field offices schedule interviews or assign cases to officers.

### **Parole-in-Place Adjudications**

- 6. INA §212(d)(5)(A) gives the Secretary of Homeland Security the discretion to parole for “urgent humanitarian reasons or significant public benefit” and alien applying for admission to the United States. On November 15, 2013, USCIS issued guidance to ensure the consistent adjudication of parole requests made on behalf of non-citizens who are present without admission or parole and who are spouses, children, and parents of those who are serving or have served in the U.S. military.<sup>6</sup>

- a. The November 15 memo indicates that applicants for PIP should apply with the District Director and provides a list of documents to submit with the request. However, the memo includes no additional details regarding filing procedures. Has additional guidance been provided to field offices regarding PIP filing procedures and if so, will the guidance be made public? If biometrics are required, will the field office schedule the biometrics appointment directly?

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<sup>6</sup> See “USCIS Policy Memorandum on Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i),” published on AILA InfoNet at Doc. No. 13111545 (posted on 11/15/13).

**USCIS Response:** Yes, USCIS has issued internal guidance regarding the procedures for reviewing parole-in-place requests. At this time, USCIS does not have plans to release this guidance publically.

Biometrics collection is required for parole-in-place requests. The field office will schedule the biometrics appointment upon receipt of the Form I-131.

- b. Are interviews required to process every PIP case or are field offices able to approve PIP cases based on documentation alone?

**USCIS Response:** In accordance with 8 CFR 103.2(b)(9), USCIS has the authority to require an applicant to appear for an interview. USCIS has not issued a mandate to interview all individuals requesting parole-in-place.

- c. Notwithstanding the four corners of the November 15 memo, please confirm that District Directors continue to have the authority to grant non-military Parole-in-Place for either “urgent humanitarian reasons” or “for significant public benefit.”

**USCIS Response:** Parole-in-place is used sparingly due to compelling humanitarian or national interest reasons. USCIS may grant parole-in-place for urgent humanitarian reasons, but primarily exercises this discretion in issuing parole-in-place to current and former members of the U.S. Armed Forces and those in the Selected Reserve of the Ready Reserve and certain military family members.

- d. The Secretary of Homeland Security on August 30, 2012, indicated that PIP may be used as a tool “to minimize periods of family separation, and to facilitate adjustment of status within the United States by immigrants who are the spouses, parents and children of military members.” This clearly suggests that PIP may be granted even when there is no immediate path to adjustment of status. Please confirm that PIP may be issued by District Directors in cases where applicants are not currently eligible for adjustment either because the relationship is not that of an immediate relative or the applicant may be subject to other bars to adjustment.

**USCIS Response:** The filing of a Form I-130, Petition for Alien Relative, and/or a Form I-485, Application to Register Permanent Residence or Adjust Status, is not required to request parole-in-place.

- e. Please confirm that PIP beneficiaries are eligible for advance parole so they can travel and reenter the United States to resume parole status. Are there any limitations as to when USCIS will grant advance parole to PIP beneficiaries?

**USCIS Response:** Parole-in-place recipients are eligible to apply for advance parole.

#### **Guidance on Habitual Residence for Hague Adoption Cases**

7. On December 23, 2013, USCIS issued interim policy guidance clarifying the criteria to follow in determining whether or not the Hague Convention applies to adoption in the United States of a

child from a Hague Adoption Convention country other than the United States.<sup>7</sup> The new interim guidance provides that in cases where the Country of Origin (COO) has a policy of not issuing statements of habitual residence, or where the petitioners show that they have attempted to obtain the statement of habitual residence from the COO for at least 6 months with no response, and the child was not paroled into the United States, USCIS will determine that 8 CFR 204.2(d)(2)(vii)(F) does not preclude approval of a Form I-130 if: (1) At the time the child entered the United States, the purpose of the entry was for reasons other than adoption (*intent criteria*); (2) Prior to the U.S. domestic adoption, the child actually resided in the United States for a substantial period of time, establishing compelling ties in the United States, (*actual residence criteria*); and (3) Any adoption decree issued after February 3, 2014, confirms that the COO Central Authority was notified of the adoption proceeding in a manner satisfactory to the court and that the COO did not object to the proceeding with the court within 120 days after receiving notice or within a longer period of time determined by the court (*notice criteria*).<sup>8</sup> The new guidance goes on to describe the documentation required to satisfy these requirements.

AILA applauds the new guidance as it does an excellent job of addressing the difficult issue of how to approach a situation where a child from a Hague country is living in the United States with a U.S. citizen family that wants to adopt the child.

- a. Please provide an update on how the recent USCIS Policy Memo on Determining Habitual Residence in the U.S. for Children from Hague Convention Countries is being implemented at the local USCIS field offices.

**USCIS Response:** The new interim policy was distributed to all USCIS offices in early January. The field was also advised of the new policy during our regularly scheduled telecons with field leadership, including the National Benefits Center. To date, USCIS has not received any requests for supplemental guidance from the field offices on the new policy.

- b. Please confirm that the habitual residence guidance applies to all adoption cases even those in which the child entered without inspection or was paroled into the United States.

**USCIS Response:** The policy guidance notes the categories of prospective adoptive children that may benefit from the guidance's provisions. USCIS notes that AILA raised this point in their comments submitted in response to the publication of the interim guidance and solicitation of public comments. USCIS will weigh all the comments submitted on the interim guidance and consider them prior to finalizing the document.

### Special Immigrant Juvenile (SIJ) Adjudications

8. We have received reports from immigration lawyers and non-profit organizations representing children in special immigrant juvenile cases that officers at some local USCIS field offices are routinely asking for information and documentation to support the findings of the state family

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<sup>7</sup> See "USCIS Policy Memorandum on Determining Habitual Residence in the U.S. for Children from Hague Convention Countries," published on AILA InfoNet at Doc. No. 14010341 (posted on 1/3/14).

<sup>8</sup> *Id.*

court. Both legacy Immigration and Naturalization Service (INS) and USCIS have emphasized over the years that state courts, not federal immigration agencies, have the required expertise when it comes to issues of child welfare and that court findings related to these issues must not be second-guessed or re-adjudicated by USCIS.<sup>9</sup>

Although attorneys are providing the documentation when requested, we understand that the family court findings are separate from the USCIS adjudication of the I-360 petition and I-485 application. Due to the sensitive nature of special immigrant juvenile cases, discussing details about events supporting the finding that abuse, abandonment, or neglect occurred; that the child cannot be reunited with one or both parents; and that it is not in the best interest of the child to be returned to his or her home country; may be particularly stressful to the child or young adult beneficiary/applicant.

- a. Please confirm that it is USCIS's policy to defer to state court orders on issues related to child welfare in SIJ adjudications. If there are limited circumstances under which USCIS will request additional documentation to support a state court order, please clarify.

**USCIS Response:** USCIS will generally not second-guess a juvenile court's rulings or question whether the court's order was properly issued. However, USCIS must consent to the grant of SIJ status. USCIS consent is an acknowledgement that the request for SIJ classification is bona fide. This means that the petitioner sought the juvenile court order primarily to obtain relief from abuse, neglect, or abandonment rather than primarily for obtaining an immigration benefit.

USCIS consent should generally be given if the officer is either aware of the facts that formed the basis for the juvenile court's rulings or the officer determines that a reasonable basis in fact exists for these rulings. Orders that include or are supplemented by specific findings of fact will usually be sufficient to establish USCIS consent is warranted. Such findings need not be overly detailed, but must reflect that the juvenile court made an informed decision.

If an order is not sufficient to establish a reasonable basis for consent, the officer can review additional evidence to determine whether a reasonable factual basis exists for the court's rulings. To do so, the adjudicator may request that the petitioner provide separate findings of fact or actual records from the judicial proceeding; however, adjudicators must be mindful that confidentiality rules often restrict disclosure of records from juvenile-related court proceedings. In the alternative, the petitioner may provide an affidavit from the court, state agency, or individuals who have personal knowledge of the evidence that was considered by the Court.

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<sup>9</sup> See "Special Immigrant Status; Adjustment of Status," 58 Fed. Reg. 42842, 42847 (Aug. 12, 1993) ("it would be both impractical and inappropriate for the [INS] to routinely readjudicate judicial ... administrative determinations as to the juvenile's best interest."); USCIS Memorandum, W. Yates, "Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions," (May 27, 2004), published on AILA InfoNet at Doc. No. 04062168 (posted on June 21, 2004) (adjudicators "generally should not second-guess the [State] court's ruling or question whether the court's order was properly issued").

### **Matter of Arrabally/Yerrabelly Cases**

9. AILA has received reports that some USCIS Field Offices are holding adjudication of cases impacted by *Matter of Arrabally/Yerrabelly*, 25 I&N Dec. 771 (BIA 2011) until guidance is provided. Please confirm that USCIS Field Offices should be adjudicating *Matter of Arrabally/Yerrabelly* cases and not withholding adjudication pending guidance from USCIS HQ.

**USCIS Response:** Generally, USCIS is not holding cases in abeyance pending guidance related to *Matter of Arrabally/Yerrabelly*, with the narrow exception of cases where the applicant is inadmissible under section 212(a)(9)(A) of the Act.

### **USCIS Field Office Updates**

10. Please provide an updated list of contact information for the USCIS District and Field Offices.

**USCIS Response:** Please see attached.