



Questions and Answers

AILA - USCIS Headquarters Liaison Meeting November 1, 2016

Overview

On November 1, 2016, the American Immigration Lawyers Association (AILA) Executive Liaison Committee met with various USCIS program offices and directorates to respond to questions, provide updates and address follow up items.

Processing Times

1. On March 11, 2016, AILA submitted a letter to USCIS Director Rodriguez outlining the growing processing times across service centers, and explaining how such backlogs have severe, far-reaching repercussions on the lives of individuals and for U.S. businesses. Ballooning processing times persist across the product lines, and AILA has continued to raise especially problematic backlogs in particular product lines to USCIS in the interim.¹ The CIS Ombudsman highlighted this issue in its 2016 Annual Report, urging USCIS “to address lengthening processing times as a serious and pervasive issue.”²

Despite AILA, the CIS Ombudsman, and other stakeholders raising these concerns on a number of occasions, it remains unclear why these problems developed, how USCIS plans to resolve the backlogs, and when the public can expect to see processing times stabilize.

- a. Please describe what caused processing times to increase so substantially over the course of the past year.

USCIS Response: In FY 2016, USCIS experienced a growth in receipts, especially in product lines assigned to Service Center Operations. During FY 2016 Service Center Operations did not receive adequate additional staffing to address this growth. In addition, overtime funding was delayed.

¹ For example, AILA has signed on to letters expressing concern over the significant delay in adjudicating both [U visa petitions](#) and DACA renewal applications. We have also raised delayed processing of Forms I-765, Forms I-140, and/or Forms I-129 (H-1Bs, R-1s, L-1s), among other application types, on our calls with Service Center Operations in [December 2015](#), [February 2016](#), [March 2016](#), [May 2016](#), and [July 2016](#). We have also raised concerns about processing times generally with [USCIS Customer Service and Public Engagement](#).

² *CIS Ombudsman 2016 Annual Report*, AILA Doc. No. 16070104, available at <http://www.aila.org/infonet/cis-ombudsman-2016-annual-report>.

- b. What are the major resource constraints that prevent USCIS from meeting processing times, and how does it plan to address these constraints?

USCIS Response: The major constraint is staffing to work both receipts and backlog. Please see below for information on how USCIS plans to address this.

- c. Please provide a specific update on how USCIS plans to address the current backlogs in both the short and long term, including any planned workload transfers.

USCIS Response: USCIS has authorized SCOPS additional staffing for FY 2017 and authorized overtime funding expected to be available immediately without delay. This authorized staffing is hundreds above current levels.

Bringing on board so many people will be dependent on many factors, such as available physical space at the Service Centers, Union agreements on telework that may need adjusting, Human Capital actions and timelines, Background Investigation clearances and timelines, USCIS BASIC Training availability, and Service Center form-specific training availability. In addition, it takes time for new adjudicators to become productive to the level of more advanced officers.

In addition to the newly authorized staffing, Service Center Operations is working to ensure it fills vacant positions from FY 2016 and accounts properly for attrition in its hiring strategy.

Due to physical availability and constraints, not all Service Centers are able to grow staff at the same rate of growth. In addition, it is necessary to balance the focus on highest priority work given resource and staffing constraints. Accordingly, Service Center Operations plans to enact workload transfers. At this time Service Center Operations is planning out the possible workload shifts that could occur during the course of FY 2017 and does not have information available to share. Once information is available it will be posted to the Service Center webpage on workload shifts, <https://www.uscis.gov/workload-transfers>.

2. On April 21, 2016, USCIS began allowing petitioners who filed Form I-129, Petition for a Nonimmigrant Worker, requesting an extension of status or change of employer to submit an inquiry either online or to the NCSC after their petitions have been pending for 210 days or more.³ However, members report receiving the following response to their inquiries:

The processing of your Form I-129, Petition for Nonimmigrant Worker is outside our current processing time. Your case is currently pending review. Our office processes these cases as our resources and priorities allow.

This response is not adequate and provides no assurances to the individual that their petition will be adjudicated prior to the expiration of the 240-day period to avoid a lapse in employment authorization. Processing times for Form I-129 remain very long. For example, the Vermont Service Center is taking 10 months to adjudicate these cases. Individuals receive similar responses when they call to inquire about a Form I-765 that is pending for more than 75 days, and DACA renewal applications

³ *Employers May Submit Inquiries If Extension of Status/Change of Employer Petition Has Been Pending for 210 Days or More*, AILA Doc. No. 16051002, available at <http://www.aila.org/infonet/inquiry-for-i-129-petition-if-pending-210-days>.

that are pending past the posted processing times. These applicants run the risk of losing their jobs, having their driver's licenses expire, and accruing unlawful presence. They need better information from the NCSC when they are calling on cases that are nearing critical deadlines.

Will USCIS commit to providing more thorough responses to individual inquiries that address these substantive concerns?

USCIS Response: USCIS continues to make every effort to reduce the processing times for the I-129s, I-765s, DACA renewals, and all other petitions/applications that are experiencing backlogs. USCIS is closely monitoring these workloads through reporting mechanisms and is reallocating resources and utilizing overtime, as needed. USCIS is also tracking the I-129s to ensure that any petition pending close to 240 days is adjudicated, when possible, prior to the expiration of the 240-day extension of work authorization. Please note that while a standardized response is provided, USCIS is cognizant of the issues that arise from these processing delays and is working diligently to reduce all backlogs.

Adjustment of Status for Permanent Residents

3. During our April 7, 2016 meeting, we raised the issue of adjustment of status following termination of conditional permanent residence and urged USCIS to consider exercising its discretion to allow an alien whose conditional permanent residence is terminated by operation of law under INA §216, to apply for readjustment before USCIS under INA§245(a) without first being required to obtain a termination of their conditional status by an immigration judge.⁴ USCIS responded that it would look into the question. Please provide an update on USCIS's deliberations on this issue.

USCIS Response: USCIS is continuing to look into this issue, but does not have any other update at this time.

4. Beyond the issues raised in our prior meeting, there are many reasons why an LPR or CPR would apply for adjustment of status. Perhaps the most common is when an individual immigrates in a category that provides for derivative status, and marries soon thereafter. With the multi-year backlogs in the family-sponsored categories, the individual may wish to abandon his or her permanent residence and readjust with a new petition under the same or a different preference category.

Another scenario is when individuals have held permanent resident status, but departed the US for significant periods of time. Presuming their permanent residence has been abandoned, they return to the US in a nonimmigrant status and later file for adjustment either in a family or employment-sponsored situation. In the past, where there has been a question regarding the continuing permanent resident status, local offices would accept a Form I-407 to include in the file and proceed with the adjustment. Recently, USCIS officers have advised members that the petitions must be held pending instructions from headquarters.

AILA recognizes there has been longstanding guidance requiring a permanent resident to depart from the US, file a formal abandonment of permanent resident status on Form I-407 at a consulate, and seek an immigrant visa. Legal Opinion, "Eligibility of lawful permanent residents for adjustment of

⁴ See Question 17, *AILA/USCIS Meeting Questions and Answers (4/7/16)*, AILA Doc. No. 16041141, available at <http://www.aila.org/infonet/aila-uscis-meeting-questions-answers-04-07-16>.

status” CO 245-P, INS Office of the General Counsel (December 21, 1989). The memorandum concludes that Permanent Residents may re-immigrate based on approved petitions, but must depart the US to do so. That guidance, however, has been abandoned by USCIS in a December 11, 2009, Memorandum updating Chapter 22.4(c)(4)(G) of the Adjudicators Field Manual. The AFM now specifically allows filing of Form I-407 and re-adjustment of EB-5 conditional permanent residents when there has been a change in the business plan from that approved in the underlying Form I-526 petition.

AILA requests that USCIS update the AFM or Policy Manual to provide similar guidance for all CPR and LPRs who wish to “re-adjust” to permanent resident status, and further requests that USCIS advise Field and District Offices that they may immediately process the applications on hold.

USCIS Response: First, USCIS asks AILA to clarify the situation which it describes in the first paragraph. If someone is already a permanent resident, it is not clear why someone would wish to readjust with a new petition due to backlogs in the immigrant visa queue.

Next, USCIS would like to note that further explanation of the above-referenced December 11, 2009 memorandum was provided in the supporting statement for the I-407 when, in 2014, USCIS sought approval of Form I-407 for public use under the Paperwork Reduction Act.

USCIS acknowledges that the unapproved Form I-407 has been accepted in the case of alien entrepreneurs. This hybrid practice is an outgrowth of the provisions of sections 11031-11037 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273. Congress expressly permitted certain alien entrepreneurs to cure problems with their investment plans. Congress also limited the ability of DHS to take adverse action against these aliens. Thus, the affected alien cannot naturalize (since the acquisition of LPR status was not correct), but also cannot be placed in removal proceedings (where the LPR might be able to successfully contest termination). In this context, the Form I-407 is not used as an “abandonment” of LPR status, but as written evidence that the alien does not contest termination of his or her prior status. However, USCIS sees no reason to expand this hybrid use of the Form I-407 beyond this unique situation.

As such, the Form I-407 will not be used for permanent residents who wish to readjust. Furthermore, since Form I-407 has not been approved for this “hybrid use”, the AFM guidance is no longer valid and is not being followed anymore. Under controlling precedents, “abandonment” of lawful permanent resident (LPR) status consists of leaving the United States with the intent of giving up LPR status. *Matter of Huang*, 19 I&N Dec. 749 (BIA 1988); *Matter of Kane*, 15 I&N Dec. 258 (BIA 1975). That said, if a foreign national did abandon permanent resident status abroad, the purpose of the Form I-407 is to create a record of that intent. Therefore USCIS would accept it as a method for an LPR to notify USCIS of the LPR’s abandonment of status. To complete the processing the Form I-407 USCIS updates the foreign national’s record to reflect that the foreign national has properly submitted the Form I-407, and that the foreign national is no longer an LPR.

Deferred Action

5. In 2011, the CIS Ombudsman recommended, among other things, that USCIS “issue public information describing deferred action and the procedures for making a request for this temporary form of relief with USCIS” and “establish internal procedures for accepting and processing deferred

action requests”⁵ In its response dated October 27, 2011, USCIS stated that it “would shortly issue internal standard operating procedures to ensure consistency in the processing and determination of deferred action requests.”

- a. Please confirm that the standard operating procedures referenced in the October 27, 2011 response were finalized and released to USCIS personnel.

USCIS Response: Yes, USCIS issued internal standard operating procedures for non-DACA deferred action in March 2012 and this guidance was updated in November 2015.

- b. What are USCIS’s plans to provide guidance to the public regarding adjudication standards and filing procedures for deferred action?

USCIS Response: Deferred action is a discretionary action initiated at the discretion of the USCIS or at the request of an individual, rather than an application process. Since deferred action is not an immigration benefit, but rather a case specific exercise of prosecutorial discretion, USCIS does not believe that publishing general information about the deferred action process, including adjudicative standards and filing procedures, would be meaningful to the public.

EAD Applications for Individuals on Orders of Supervision

6. Over the past two years, AILA has repeatedly raised the issue of RFEs and denials of EADs for applicants who are under an Order of Supervision (OSUP). In the typical case, the National Benefits Center (NBC) issues an RFE requesting a letter from ICE stating the individual is in compliance with the OSUP reporting requirements. However, due to workload and capacity issues, many local ICE offices refuse to issue OSUP compliance letters. Further, during an AILA meeting with ICE on June 19, 2015, ICE stated that it documents OSUP compliance by writing instructions and/or reporting dates on the Form I-220B. The NBC has since stated that it will accept a copy of the applicant’s Form I-220B with ICE’s instructions and reporting dates as proof of OSUP compliance, which is helpful in many situations. There are times, however, when this is not available. For example, some individuals on an OSUP no longer have to report to ICE, and would not have recent reporting dates or future reporting dates listed on the I-220B. It is also possible that individuals may have alternate proof of compliance, for example, if they are in an ISAP program.

ICE has also advised AILA that “USCIS personnel generally have access to ICE data systems which document compliance information.” By contrast, at our May 6, 2016, liaison meeting, the NBC advised AILA that it does not have access to the ICE data system and cannot verify an individual’s OSUP compliance in this manner. Would USCIS work with ICE to ensure that it either consistently provides OSUP individuals with a Form I-220B with instructions and reporting dates, or other documentation verifying OSUP compliance, or provide the NBC with sufficient access to its data systems so that compliance can be verified?

USCIS Response: USCIS adjudicators have access to ICE systems and in most cases, USCIS is able to verify compliance with Orders of Supervision by searching these systems. The populations discussed with AILA at the May 2016 National Benefits Center/AILA meeting are those where USCIS is not able to determine valid status via review of ICE’s system. In working with ICE,

⁵ <https://www.dhs.gov/sites/default/files/publications/cisomb-combined-dar.pdf>

USCIS has been informed that not all ICE offices issue updated I-220Bs at the time of the compliance visit and, therefore, it is not always available to the applicant for submission. An expired/outdated I-220B is not sufficient evidence to support an application for employment authorization. In situations where USCIS is not able to verify compliance with an Order of Supervision by checking ICE's systems, USCIS will issue a Request for Evidence.

Date of Degree Related to I-140 Adjudications

7. AILA raised the following question with the Nebraska Service Center, regarding a recent trend in decisions to deny employment based visa petitions when the Beneficiary presents evidence of a university degree with a provisional certificate. The provisional certificate is issued, typically by Indian, Pakistani or Bangladeshi universities, upon completion of all degree requirements. Students often do not attend the graduation ceremony, and do not receive the final diploma until much later, sometimes years later and sometimes not at all. Recent decisions have determined that the provisional certificate is not evidence of the degree and have therefore denied the I-140. This also affects the calculation of post degree experience. The question raised by the Nebraska Service Center is whether the post-degree experience begins from the date the education is successfully completed, including all courses and examinations and the baccalaureate degree is earned as documented on the provisional certificate or must the student secure a final diploma to ever engage in post-degree experience.

We note that the AACRAO EDGE (Electronic Database for Global Education), a source generally recognized by USCIS as authoritative, has recently posted a notice explaining that a Provisional Degree Certificate is issued to students who have completed all degree requirements and is widely recognized and accepted for both employment and continuing education. Recognizing that the only difference between a Provisional Degree Certificate and a Degree Certificate is that the graduate has attended a university convocation ceremony, AACRAO recommends that the Provisional Degree Certificate be accepted as evidence of completing all requirements for the degree in question, the name of the degree, and the date upon which it was approved by the responsible university governing body. This approach has been adopted by at least one AAO non-precedent decision.⁶ However, there are also AAO decisions that have adopted the opposite view.⁷ During a recent stakeholder engagement with the Nebraska Service Center, AILA was told that this issue has been forwarded to Headquarters for review.

Will USCIS recognize the provisional certificate as evidence of the degree from an institution that regularly issues provisional certificates?

USCIS Response: SCOPS is aware of the updated guidance in EDGE, and can confirm that, as indicated in your question, this issue is currently being reviewed at headquarters.

⁶ *Matter of Redacted*, [https://www.uscis.gov/sites/default/files/err/B5%20-%20Members%20of%20the%20Professions%20holding%20Advanced%20Degrees%20or%20Aliens%20of%20Exceptional%20Ability/Decisions Issued in 2015/JUN182015_03B5203.pdf](https://www.uscis.gov/sites/default/files/err/B5%20-%20Members%20of%20the%20Professions%20holding%20Advanced%20Degrees%20or%20Aliens%20of%20Exceptional%20Ability/Decisions%20Issued%20in%202015/JUN182015_03B5203.pdf).

⁷ *See e.g. Matter of Redacted*, [https://www.uscis.gov/sites/default/files/err/B5%20-%20Members%20of%20the%20Professions%20holding%20Advanced%20Degrees%20or%20Aliens%20of%20Exceptional%20Ability/Decisions Issued in 2015/APR142015_01B5203.pdf](https://www.uscis.gov/sites/default/files/err/B5%20-%20Members%20of%20the%20Professions%20holding%20Advanced%20Degrees%20or%20Aliens%20of%20Exceptional%20Ability/Decisions%20Issued%20in%202015/APR142015_01B5203.pdf).

Signature Requirements

8. On June 7, 2016, USCIS posted an interim policy memorandum, “Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services.”⁸ This memo states in part:

*A signature is valid even if the original signature is later photocopied, scanned, faxed, or similarly reproduced. Regardless of how it is transmitted to USCIS, such copy must be of an original document containing a handwritten, ink signature, unless otherwise provided by regulation or form instructions.*⁹

Additionally, footnote 3 states:

The regulations do not require that a requestor submit an “original” or “wet ink” signature on a petition, application, or other request to USCIS. See 8 CFR §103.2(b)(4). If USCIS has reason to question the signature it may request the original document or more evidence from the requestor in accordance with 8 CFR §103.2(b)(8).

Following issuance of the guidance, AILA members report having petitions and applications rejected for lack of an original signature, despite the above language indicating that submitted applications need not contain an original signature and may instead consist of a photocopy or reproduction of the form or application that contains an original signature. USCIS Service Center Operations confirmed during our August 2016 teleconference that valid original or photocopied original signatures are acceptable.

Unfortunately, at least one service center has taken the position that only original signatures are acceptable if the form instructions indicate an original signature is required. For example, the instructions for Form I-129 state: “Each petition must be properly signed and filed. A photocopy of a signed petition or a typewritten name in place of a signature is not acceptable.” If this interpretation is correct, then the June 2016 policy memo on this point is meaningless.

Please confirm that the interim policy memo, including the above language, dictates that photocopies of documents with original signatures can be submitted to USCIS for all form types. If not, please explain the meaning of the policy memo and what form types it applies to.

USCIS Response: As noted in the Interim Policy Memorandum and as cited above, a photocopied or electronically reproduced version of an original “wet ink” signature is generally acceptable for filing with USCIS, “unless otherwise provided by regulation or form instructions.” Thus, the signature requirements in a specific form instruction may require otherwise and that instruction governs. This provision remains in the final version of this Policy Memorandum, which will be issued soon. We will continue to monitor this issue and instruct field offices in accordance with the PM as the issue arises. We will also continue to analyze the signature requirements of all forms as they are revised and clarify in their instructions when an original signature is or is not necessary.

⁸ USCIS Draft Policy Memo on Signature Requirement, AILA Doc. No. 16060860, available at <http://www.aila.org/infonet/uscis-draft-memo-signature-requirements>.

⁹ *Id* at 3.

G-28 Recognition

9. At our meeting with USCIS on April 7, 2016, USCIS indicated that it would provide more information on a number of issues related to Form G-28 and Form G-28I:

- a) USCIS said that it was in the process of implementing a notice advising applicants if the G-28 accompanying their filing is not accepted. Please provide an update on these efforts.

USCIS Response: In early 2017, OIDP is planning to begin including the following language on applicant receipt notices when a transaction contains an invalid G-28. A G-28 may be invalid due to old form version, missing required fields, lack of signature(s), or unmatched to an application.

A valid G-28 was NOT received with your case. If you wish to be represented, please contact your attorney or accredited representative to submit a follow-up G-28 to the USCIS location where your case is pending. For more information on filing G-28, please visit <http://www.uscis.gov/forms/filing-your-form-g-28>.

- b) USCIS also indicated that it would be providing updated information on the USCIS website at <https://www.uscis.gov/forms/filing-your-form-g-28>. It appears this website was last updated in February 2016.¹⁰ Has USCIS added any information, and if so, what changes did it make?

USCIS Response: At this time, we do not have any additional information to provide on these pages. When the new notification process is implemented, we will update the USCIS website accordingly.

- c) In response to a request under the Freedom of Information Act (FOIA), AILA received statistics regarding the number of G-28I forms filed from 2011 through 2014. According to the statistics, over the course of a four year period, approximately 38,500 G-28I forms were filed for matters pending at the four service centers and the National Benefits Center.

Last spring, AILA asked what circumstances, if any that would warrant the acceptance of a Form G-28I filed by a non-U.S. licensed lawyer in matters handled by the USCIS Service Centers and National Benefits Center. USCIS responded that Form G-28I should never be accepted for matters pending in the geographical confines of the United States, and that it was currently reviewing the FOIA. Does USCIS have an update on the information provided in the FOIA?

USCIS Response: Upon review, USCIS believes the data provided referred to the number of Forms G-28 filed with a foreign address and not a count of Forms G-28I filed, as there is no data in our systems for the G-28I.

STEM OPT Extensions

10. The new STEM OPT regulations came into effect on May 10, 2016. These regulations require all STEM OPT requests received by USCIS on or after May 10, 2016 to be accompanied by an I-20

¹⁰ Last visited on 9/19/16.

recommending 24 month extension. Unfortunately, SEVP was not able to add this functionality to SEVIS until May 13, 2016, and as a result, many students filed with an I-20 recommending a 17 month extension as a placeholder. The regulations stipulate that requests for STEM extensions received prior to May 10, 2016 would be issued an RFE, and many assumed this would apply to those cases awaiting SEVIS functionality. In fact, during the transition, students who submitted an I-765 with no I-20 received an RFE for the I-20. However, those who applied with a "placeholder" I-20 were denied without an RFE. AILA requests that USCIS reconsider these denials given that compliance was impossible between May 10 and May 13.

USCIS Response: USCIS will exercise discretion for this small population of STEM OPT Extension applications. We are identifying applications received on or after May 10, 2016 through July 23, 2016 that were filed with a Form I-20 bearing the 17-month STEM OPT Extension recommendation. Those applications that were denied, on or after May 10, 2016, based solely on the 17-month recommendation on the Form I-20 will be reopened on Service Motion and a Request for Evidence will be issued for a Form I-20 recommending the 24-month STEM OPT Extension. For any applications filed on or after May 10, 2016 through July 23, 2016 that are still pending, a Request for Evidence will be issued for a Form I-20 recommending the 24-month STEM OPT Extension if such applications were filed with a Form I-20 bearing the 17-month STEM OPT Extension recommendation .

Refugee Travel Documents

11. Refugees and asylees cannot travel on passports from their home countries, as doing so could be viewed as availing themselves of the country of feared persecution's protection. Even after a refugee or asylee has been granted lawful permanent resident status (LPR), he or she still cannot rely on his or her previous passport for international travel. Instead, refugees, asylees, and LPRs granted permanent residence under INA §209 must apply for Refugee Travel Documents (RTD), which facilitate their entry into foreign nations and authorize their re-entry to the United States after temporary travel abroad. Most refugees, asylees, and LPRs granted under INA §209 must rely upon RTDs to travel abroad if and until they are granted U.S. citizenship – a period of at least five years for most, and indefinitely for others.¹¹

Currently, USCIS issues RTDs for asylees and refugees with validity dates of only one year. This short validity period presents an undue burden on asylees and refugees, interfering with their right to travel abroad for business and personal reasons and generally disrupting their freedom of movement. While current processing times for these documents are reported at three months, processing times have been much longer in the past, forcing asylees and refugees to plan international travel far in advance to ensure that their RTD has the required validity period for entry into certain countries and re-entry to the United States. Additionally, according to Form I-131 instructions, a new RTD may not be issued if the current document is still valid, and many countries require visitors to have at least three months of validity on their travel document before admission will be granted, sometimes more. A U.S. refugee or asylee applying for admission to one of these countries may be barred from entry until he or she can obtain a new travel document with a longer validity period. However, he or she cannot obtain the new document until his or her current document has expired.

¹¹ For example, some U.S. asylees remain in asylum status indefinitely, as unlike for refugees, there is no requirement that asylees apply for LPR status. These asylees require RTDs for the entirety of their time in the United States.

AILA requests that USCIS consider publishing regulations that will permit a longer, multi-year validity period for RTDs, akin to those of numerous other countries.¹² Longer validity periods would bring the United States into conformity with its obligations under the U.N. Refugee Convention and Protocol, would be consistent with UNHCR's guidance with regard to travel documents for refugees, and would increase USCIS staffing and processing efficiency, among other benefits.

USCIS Response: Thank you for raising this issue. USCIS is not currently considering any regulations that will permit a longer validity period for refugee travel documents. We appreciate you taking the time to share this feedback and will take it into consideration.

Affirmative Asylum Backlog

12. The increase in CFI and RFI interviews has required asylum officers to be detailed to the border and detention centers to conduct these interviews, pulling them away from conducting affirmative asylum interviews, and resulting in significant backlogs in the affirmative asylum process. Although the USCIS Asylum Division has made efforts to reduce the backlog, it persists. While the statute requires interviews within 45 days of receipt absent exceptional circumstances, interviews now regularly take place 3-4 years after receipt.

These backlogs cause a number of problems for asylum-seekers and their families. For example, the delays can cause prolonged trauma and a sense of statelessness, can lead to long periods of time before asylum-seekers can bring their family members out of danger, and can trigger mental health problems, which may create barriers to sustainable employment, education, and integration into U.S. society. The backlogs can also mean that there is stale corroborating evidence for supporting applicants' asylum claims, loss of witnesses to support their claims, and fading memories, leading to unnecessary questions of credibility.

- a) What further efforts can be made by USCIS to reduce this backlog in a meaningful way and how might AILA be of assistance in those efforts?

USCIS Response: The Asylum Division is currently evaluating the field's resource needs in FY 17 in light of Agency resources. As AILA is aware, the Asylum Division hired and trained a record number of Asylum Officers during the last two fiscal years, doubling our on-board asylum officer staff since FY 2013. They have also established three new sub-offices to further expand its adjudicative capacity. Despite this considerable investment of resources, the number of credible fear referrals received in FY 2016 was almost double the very high number received in FY 2015, and affirmative asylum filings increased by 35% over the previous year, going over 100,000 new receipts for the first time in 20 years. The net result of staffing the credible fear workload and overseas refugee details in support of the Refugee Affairs Division, two major Departmental priorities, was that there were insufficient resources available to dedicate to the affirmative asylum workload. In FY 17, the Asylum Division will gradually increase its adjudicative capacity through staffing enhancements and the decreased reliance on Asylum Division personnel to staff overseas refugee details as the Refugee Affairs Division onboards and trains new officers during the course of the fiscal year. We are also examining ways to make our internal case processing more efficient, while continuing to prioritize the quality of each decision.

¹² For example, the United Kingdom (10 years), Ireland (10 years), South Africa (5 years), Italy (2 years), Chile (2 years), and Australia (2 years).

- b) The USCIS Asylum Division has previously attempted to address the issue of family members who remain in danger by proposing the option of “interview expedite requests” or “short notice lists.” However, these remedies have not been applied consistently across the Asylum Offices and have not solved the problem. Would USCIS consider expediting cases where family members remain in danger, and establishing uniform procedures for the submission and consideration of such requests?

USCIS Response: All of our offices accept requests for expediting the scheduling of asylum interviews, and they all consider danger to family members in the country of feared persecution and extenuating medical conditions of the applicant as primary factors in deciding whether to grant the request. Any differences in the approval of such requests and the timeliness of interviews reflects the different caseloads of each office and the varying availability of resources to apply to expedited case processing.

One-Year Filing Deadline for Asylum-Seekers

13. The federal regulations and the asylum officers’ training materials provide numerous examples of changed and extraordinary circumstances exceptions to the rule that asylum-seekers must file their applications within one year of their entry. The training materials contemplate that a reasonable period for filing an application following the changed or extraordinary circumstances can be, depending on the factual circumstances, more than the presumptive six-month period.

AILA members report that, in at least one asylum office, the asylum officers are carefully and thoroughly considering evidence establishing an exception to the one-year rule. However, in most other asylum office jurisdictions, practitioners report that officers do not meaningfully consider evidence of changed and extraordinary circumstances, but instead routinely refer applications filed outside the one-year period. This also seems to be true when the applicant is unrepresented. Practitioners report that in many of these cases, immigration judges ultimately find that changed or extraordinary circumstances have been demonstrated and grant asylum.

AILA believes that more thorough review of potential exceptions to the one-year rule and, in some cases, requests by asylum officers for additional evidence relating to these exceptions, would ultimately preserve administrative resources by decreasing the immigration courts’ caseload. Will USCIS commit to distributing additional training and guidance on exceptions to the one-year deadline to 1) ensure that asylum officers appropriately exercise authority to grant cases that meet the exceptions to the one-year rule, and 2) ensure that the law and training is applied uniformly throughout the country?

USCIS Response: The Asylum Division continues to provide comprehensive training on the application of the one-year filing deadline and its exceptions, including during asylum officer basic training. Asylum officers are instructed to be flexible and inclusive in examining changed or extraordinary circumstances, if credible testimony or documentary evidence relating to an exception exists. They are also instructed that what constitutes a reasonable period of time to file following a changed or extraordinary circumstance depends upon the facts of the case. An applicant’s education and level of sophistication, the amount of time it takes to obtain legal assistance, any effects of persecution and/or illness, when the applicant became aware of the changed circumstance, and any other relevant factors should be considered. We will forward to our offices AILA’s concerns about inconsistency of application. It would be helpful to see some specific case examples where AILA practitioners see a trend in our erroneous application of the one-year filing rule.

Advice for Asylum-seekers in Expedited and Reinstatement of Removal

14. Following passage of a credible or reasonable fear interview, many unrepresented asylum-seekers believe that they have already applied for asylum and do not understand that there are still additional steps required to complete the application, including submission of Form I-589 within one year of entry, and an appearance before the Immigration Judge. The AILA Asylum and Refugee Committee has requested that the Asylum Division provide written advisals to asylum-seekers to clarify these requirements and that the advisals be distributed as the first page in the packet of forms provided to asylum-seekers following passage of a credible or reasonable fear interview in the language that the applicant indicates they speak fluently. At the Asylum Division's suggestion, AILA provided sample language for these advisals, a copy of which is attached to this agenda for your reference. Will USCIS agree to prepare and distribute written advisals to provide this information to asylum seekers following a positive RFI or CFI finding?

USCIS Response: Thank you for providing sample language. Due to ongoing litigation, we are unable to provide additional comments at this time. [Mendez-Rojas v. Johnson, case filed in the District Court in the Western District of Washington State.]

Requests for Reconsideration of Negative CFI/RFI Determinations

15. AILA members report that asylum offices routinely refuse to reconsider negative CFI/RFI determinations prior to review by EOIR. Often the request for reconsideration with the assistance of counsel identifies potential officer errors or due process violations. Because the backlog for substantive review before an Immigration Judge is significant, establishing policy guidance that notes the benefits of reconsideration and encourages substantive determinations will conserve resources both for USCIS and EOIR, and provide more timely relief to vulnerable asylum applicants deserving of relief. Will USCIS prepare and distribute policy guidance discouraging summary denials of motions to reconsider and encourage substantive review in appropriate cases?

USCIS Response: USCIS has no plans to prepare and distribute policy guidance discouraging summary denials of motions to reconsider and encourage substantive review in appropriate cases. USCIS credible fear and reasonable fear determinations are not subject to motions to reopen or reconsider. Governing regulations provide that the avenue for an applicant to challenge a USCIS credible fear or reasonable fear screening is to seek review of that screening determination from an immigration judge. The limited review must be conducted no later than 7 days after the date the negative determination was issued.

Office Case Processing Times Online Tool

16. AILA members are concerned that Field Office processing times posted to USCIS's web page are not current. For example, on October 6, 2016, the Field Office posted processing times reflect processing dates as of July 31, 2016. Please describe the process for updating this information and indicate how often these processing times are updated.

USCIS Response: Processing times are available on the USCIS website for customers' review and to serve as a guide for when to make an inquiry (service request) about their case. As of Jan. 4, 2017, we post processing times using a specific date format rather than weeks or months.

This is the first step in providing processing times that are timelier and easier to understand.

We are currently working to design a methodology that will allow for more timely postings and a format that will be easier to understand. Internally, we rely on the same data so making it more current and easier to interpret will help USCIS employees as well as customers.

It takes time to collect and validate processing time data and, as a result, the information is about 45 days old when we post it to our website. This data stays posted for at least 30 days, until the next month's data is available. Occasionally, we cannot post the updated information on the 15th of the month, which means the data becomes more than 10 weeks old.

We post case processing times on our website as a guide for when to inquire (service request) about a pending case. Always refer to your I-797C, Notice of Action, and look for "receipt date" to determine when we accepted your case. If the receipt date on the USCIS [Processing Times](#) web page is after the date we have listed on your notice, you should expect to hear from us within 30 days. If after those 30 days, you have not heard from us, you may make an inquiry on your case.

Lockbox Issues

17. USCIS has three separate Lockbox facilities located in Chicago, Illinois; Phoenix, Arizona; and Lewisville, Texas which are operated by a Department of Treasury designated financial agent. Members have reported recent, erroneous rejections of applications by the Lockboxes, which often required the individuals to resubmit the applications and petitions multiple times. In many of the cases, the Lockbox rejected applications on the basis that a filing fee was not included, or that an incorrect filing fee was included. However, in all reported cases, attorneys had submitted the correct filing fees.
 - a. What training is provided to Lockbox contractors regarding the acceptance of applications? Is supervisor review required before an employee rejects an application for filing? If not, what is the procedure for rejecting an application?

USCIS Response: The lockbox receipting system has USCIS business requirements built in to identify deficiencies in a filing. Data is captured from the package that is submitted and that data (including the check or money order amount) is run against the rules engine. If the rules engine is unable to confirm acceptance, the cases are routed to USCIS for review. All fee issues are reviewed by USCIS employees prior to rejection.

- b. Does USCIS track the number of rejected applications and the bases for those rejections? If a particular employee or Lockbox has a high number of rejections relative to the number of applications filed, does USCIS conduct further investigation to determine the cause of the high number of rejections and whether additional training is warranted?

USCIS Response: Reject rates are monitored, but as noted in the previous response, form-specific requirements (including form specific fee requirements) are built into the lockbox receipting system, and deficiencies are identified by the rules engine based on the information that is keyed from the forms and fees submitted.

- c. We understand that the lockboxes keep records of all acceptances and rejections. Are there particular performance metrics that Lockbox contractors must meet? If so, what are they? If a contractor is not meeting expectations, does USCIS have in place a procedure for remediation, or potential termination of the contract?

USCIS Response: There are Service Level Agreements that the lockbox provider is responsible for meeting. We also have a quality assurance program in place to measure the consistency of the work performed by USCIS employees who handle the exception cases (including all fee issues). When issues are identified through these programs, steps are taken to correct those issues.

d. USCIS has previously noted that when faced with an improper rejection, attorneys should send an e-mail to lockboxsupport@uscis.dhs.gov to give Intake Operations the opportunity to review the issue. Is USCIS receiving regular reports of improper rejections or types of inquiries received at this email address and their resolution? If USCIS has not responded within a reasonable timeframe to an email, please confirm that attorneys or representatives should continue to file an AILA liaison inquiry.

USCIS Response: Lockbox Support provides feedback to the lockbox provider and Intake Operations on issues and trends that are identified based on review of inquiries received. Lockbox Support sends an autoreply to all messages received at their email address, and the autoreply provides the expected response time based on current volumes. We have not received regular reports of improper rejections related to incorrect fees.