U.S. Citizenship and Immigration Services

California Service Center Open House

August 30, 2017

California Service Center Open House 2017

Form I-130 Petition for Alien Relative

CSC Visa Petition Processing (Current)

F1	United States citizen (USC) filing for unmarried son or daughter
F2A	Lawful permanent resident (LPR) filing for spouse or child
F2B	LPR filing for unmarried son or daughter
F3	USC filing for married son or daughter
F4	USC filing for brother or sister

Overseas I-130 (CSC sole jurisdiction)

Note: The Immediate Relative workload has shifted to the Potomac Service Center.

Processing Times As of August 2017

CSC Processing Date	
F1	Feb 2016
F2A	Aug 2016
F2B	May 2015
F3	Mar 2012
F4	May 2011

September 2017 Visa Bulletin	
F1	May 2010
F2A	Oct 2015
F2B	Nov 2010
F3	Jul 2005
F4	Jan 2002

Visa Bulletin for September 2017

Family-Sponsored Visa Applications

Pref Category	Family Relationship	All Countries	China	India	Mexico	Philippines
1st	Unmarried son or daughter (over 21) of U.S. citizen	5-01-2010	5-01-2010	5-01-2010	2-01-1996	1-1-2007
2A	Spouse/child (under 21) of permanent resident	10-01-2015	10-01-2015	10-01-2015	9-22-2015	10-01-2015
2B	Unmarried son/daughter (over 21) of permanent resident	11-01-2010	11-01-2010	11-01-2010	7-01-1996	1-01-2007
3rd	Married son or daughter of U.S. citizen	7-08-2005	7-08-2005	7-08-2005	4-08-1995	2-15-1995
4th	Brother or sister of U.S. citizen	1-01-2002	1-01-2002	1-01-2002	9-15-1997	6-1-1994

Data current as of September 2017

How to read the Visa Bulletin

Scenario: Lawful Permanent Resident files I-130 petition on April 1, 2015 for an unmarried son over 21 from Mexico.

Pref Category	Family Relationship	All Countries	China	India	Mexico	Philippines
1st	Unmarried son or daughter (over 21) of U.S. citizen	5-01-2010	5-01-2010	5-01-2010	2-01-1996	1-1-2007
2A	Spouse/child (under 21) of permanent resident	10-01-2015	10-01-2015	10-01-2015	9-22-2015	10-01-2015
2B	Unmarried son/daughter (over 21) of permanent resident	11-01-2010	11-01-2010	11-01-2010	7-01-1996	1-01-2007
3rd	Married son or daughter (over 21) of U.S. citizen	7-08-2005	7-08-2005	7-08-2005	4-08-1995	2-15-1995
4th	Brother or sister of U.S. citizen	1-01-2002	1-01-2002	1-01-2002	9-15-1997	6-1-1994

Data current as of September 2017

Petition electronic Routing Tool (PeRT)

- DOS electronic system for consular returns
- Deployment will occur in phases and at the Nebraska Service Center initially, with the CSC on deck to absorb any additional overflow cases
- Initial roll out is only for the Form I-130, and each phase will cover a limited number of consular posts

PeRT

Phase 1: Buenos Aires, Frankfurt, Hong Kong, Montreal, Rio de Janeiro, Sydney

Phase 2: Addis Ababa, Baghdad, Guatemala City, Kyiv, Monrovia, Phnom Penh, Tashkent, Tegucigalpa

Phase 3 and onward: TBD. We will continue to process consular returns from the remaining posts outside of PeRT until we fully deploy PeRT worldwide.

Question

If I am the beneficiary of a Form I-130 and am inadmissible, should I file a waiver of inadmissibility in the U.S. or at a U.S. Consulate in my home country?

Answer

You generally must file for a waiver of a ground of inadmissibility from outside of the United States. Mail Form I-601 to the appropriate USCIS domestic lockbox facility. The lockbox facility will send all Form I-601 applications submitted by international applicants to the Nebraska Service Center for adjudication.

The following exceptions apply:

- If you are in Cuba, you can file your Form I-601 applications at the USCIS Havana Field Office or can choose to file with the Lockbox facility.
- USCIS international offices may allow you to file directly with a USCIS office outside the U.S. in certain cases for exceptional and compelling circumstances.

Answer (cont.)

Visit Direct Filing Addresses for Form I-601, Application for Waiver of Grounds of Inadmissibility page for information on where to file, filing Form I-601 together with Form I-485, and filing Form I-601 while Form I-485 is pending.

Complete information on the filing of Form I-601 can be found at https://www.uscis.gov/forms/centralized-filing-and-adjudication-form-i-601-application-waiver-grounds-inadmissibility

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Temporary Protected Status (TPS)

What is TPS?

Before 1990, there was no statutory authority that allowed people to remain in the United States as a result of events in their home country that would cause them to be in danger if they were forced to return or when the home country could not adequately absorb the return of its citizens or nationals.

TPS was created by The Immigration Act of 1990 to be a humanitarian relief program that allows nationals of certain countries designated by the Attorney General (now the Secretary of the Department of Homeland Security) who are already in the United States as of the designated periods to request certain benefits.

Designation of Countries for TPS

There are three reasons the Secretary of DHS may decide to designate a foreign state or part of a state as eligible for TPS:

- Ongoing war or armed conflict
- Natural disaster such as a flood, earthquake, drought, epidemic or other relevant environmental disaster resulting in a substantial but temporary disruption of living conditions, the foreign state is unable, temporarily, to handle adequately the return of its nationals of the state, and the foreign state officially has requested a TPS designation
- The Secretary finds there are extraordinary and temporary conditions in the foreign state that prevent nationals of that state from returning in safety

Expiring Designations

- When a TPS designation is about to expire, the Secretary must review the country conditions and decide within 60 days of the expiration date whether the conditions that warranted TPS continue to be met.
- If the Secretary does not make a decision within 60 days, the designation is automatically extended for 6 months.
- The Secretary can decide to extend the designation, re-designate the **country and extend the designation, or terminate the country's** designation.
- If the Secretary decides to extend a designation, the extension may be for 6, 12, or 18 months.

Termination of TPS

When the Secretary terminates a TPS designation, beneficiaries:

- Revert to the same immigration status (or lack of status) they had before TPS (unless that status has since expired or been terminated);

  or

- To any other status they may have acquired while registered for TPS.

The Federal Register

- The designation, re-designation, extension and termination of TPS are all announced in the Federal Register along with the procedures and dates for filing of TPS applications.
- When a country is designated for TPS, the Federal Register will announce the dates from which TPS applicants must show that they were continuously, physically present and continuously residing in the U.S.

Note: You are not eligible for TPS if you entered the United States for the first time after the dates for continuous physical presence and continuous residence for your country.

Application Forms and Fees

To apply for TPS, applicants must submit:

- Form I-821, Application for Temporary Protected Status, with $50 initial fee
- Form I-765, Application for Employment Authorization, regardless of whether or not they are seeking Employment Authorization Document (EAD)
    - Must pay $410 fee if they want an EAD and are age 14-65
- Biometrics fee of $85 (if age 14 and over)

Re-registration Forms and Fees

To re-register for TPS, applicants must submit:

- Form I-821, Application for Temporary Protected Status
  - Re-registration applicants do not need to pay the $50 filing fee
- Form I-765, Application for Employment Authorization, regardless of whether or not they are seeking Employment Authorization Document (EAD)
  - Must pay $410 fee if they want an EAD and are age 14-65
- Biometrics fee of $85 (if age 14 and over)

Other Forms

Applicants may also submit:

- A Form I-601, Application for Waiver of Ground of Inadmissibility, either at the time of filing or later if issued a Notice of Intent to Deny on the basis of a waivable ground. The applicant must pay the $930 fee or request a fee waiver.
- A request for travel authorization (i.e., an advance parole document), which is one of the discretionary benefits of TPS, on Form I-131, Application for Travel Document, with the $575 fee.

Note: Forms and fees are listed in the most recent Federal Register Notice pertaining to the specific TPS designation. Fee waivers are available for certain forms.

Jurisdiction

- USCIS and EOIR have shared jurisdiction to adjudicate initial applications for TPS.
- Form I-821, Application for Temporary Protected Status, is used to apply for TPS with USCIS.
- USCIS has sole jurisdiction over TPS re-registration.
- USCIS processes all requests for TPS-related EADs and advance parole requests.
- Currently, SCOPS processes all TPS-related adjudications for USCIS.

Note: In certain limited situations, a local field office might assist with a TPS-related advance parole request.

Countries Designated for TPS

	CSC	VSC	NSC	TSC
Conflict		Somalia Sudan South Sudan Syria Yemen		
Natural Disaster		El Salvador Honduras Nicaragua	Nepal	Guinea* Liberia* Sierra Leone* *Guinea, Liberia and Sierra Leone no longer have TPS as of May 21, 2017
Extraordinary	Haiti	Somalia Syria Yemen		

Benefits

Applicants granted and maintaining TPS:

- Cannot be removed from the United States or detained by DHS solely due to immigration status
- Can apply for work authorization
- Can apply for permission to travel

TPS, in itself, does not lead to any permanent status.

TPS Beneficiaries and Applicants

U.S. Citizenship and Immigration Services

Beneficiary – has been granted TPS

- Re-registration requirements
- Responsible for maintaining continued TPS eligibility
- **Holds TPS for duration of country's designation unless the individual's** TPS is withdrawn
- Work authorization category is (a)(12)

Applicant – has a pending TPS application

- Provided certain protections and temporary benefits while application is pending
- Work authorization category is (c)(19)

Basic Eligibility

To be eligible for TPS, the applicant must:

- Be a national of a designated country (or be a person with no nationality who last habitually resided in the designated country)
- Have continuous residence in the U.S.
- Have continuous physical presence in the U.S.
- Be admissible as an immigrant in the U.S.

There is no TPS derivative status. Each applicant must independently meet all TPS eligibility requirements.

Nationality

- Section 101(a)(21) of the INA defines a "national" as "a person owing permanent allegiance to a state"
- Person without nationality who last habitually resided in TPS country
- A dual citizen might be eligible for TPS

Continuous Residence

The qualifying continuous residence date can be any date selected by the Secretary and stated in the Federal Register notice designating the country for TPS.

Example: All applicants from Haiti must show that they were continuously residing in the United States since January 12, 2011.

Continuous Physical Presence

The continuous physical presence (CPP) date is usually the date the Federal Register notice is published, but it can be a later date if the Secretary chooses.

> Example: All applicants from Haiti must show that they were continuously physically present in the United States since July 23, 2011.

Travel Outside of the United States

- Travel back to the TPS country is generally not specifically prohibited
- Any travel outside the United States is considered when reviewing whether **the absence was "brief, casual, and innocent" (BCI)**
  - Even travel with advance parole might be found to break continuous residence or continuous physical presence.
  - Travel without advance parole does not automatically break continuous residence or continuous physical presence for TPS, but it can be a factor when making a determination if the absence was brief, casual, and innocent.

Admissibility

Inadmissibility grounds that cannot be waived:

- Conviction of crimes involving moral turpitude (CIMT)
- Multiple criminal convictions
- Controlled substance traffickers, except for a single offense of simple possession of 30 grams or less of marijuana
- General security and related grounds
- Terrorist activities
- Foreign policy
- Immigrant membership in totalitarian party
- Participation in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing

Admissibility

Inadmissibility grounds that do not apply to TPS and do not need waiver:

- Public charge
- Labor certification & qualification for certain immigrants
- Documentation requirements for immigrants
- Stowaways
- Student visa abusers
- Documentation requirements-nonimmigrants
- People who have previously been removed

EWI Is Not a Bar

While INA 244(c)(2)(A)(ii) indicates that the Secretary of DHS may waive certain grounds of inadmissibility, INA 244(a)(5) indicates that an applicant cannot be denied TPS on account of his/her immigration status. Therefore, USCIS deems that INA 212(a)(6)(A) (entry without inspection (EWI)) does not apply to TPS.

Inadmissibility Grounds That Can be Waived

- Other inadmissibility grounds, such as health-related grounds or misrepresentation, may be waived.
- If an applicant is inadmissible based on a waivable inadmissibility ground and no other mandatory grounds of ineligibility for TPS apply, the applicant may request a waiver on Form I-601.
- When reviewing the waiver request, USCIS takes into consideration humanitarian concerns, family unity, or public interest.

TPS Eligibility Bars

Applicants are ineligible for TPS if they:

- Have 2 misdemeanor convictions;
- Have 1 felony conviction;
- Are disqualified under any of the asylum bars under INA 208 (b)(2);
- Have a removal order reinstated; or
- Have been found to have filed a frivolous asylum application.

Maintaining TPS

People with TPS must:

- Re-register during each extension of TPS. If they re-register late, they must meet a **"good cause" exception.**
- Demonstrate continued eligibility, including:
  - Complying/responding to any notice from USCIS (such as an ASC appointment notice, interview request, Request for Evidence)
  - Background checks
  - Showing that any departures abroad and related absence(s) from the United States during the continuous residence or continuous physical presence period were brief, casual and innocent

USCIS will review a person's continued eligibility for TPS when adjudicating the re-registration application and/or anytime USCIS receives information about a potential TPS ineligibility.

U.S. Citizenship and Immigration Services

For more information, please visit:

https://www.uscis.gov/TPS

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Welcome to California Service Center

Form I-751, Petition to Remove Conditions on Residence

August 30, 2017

Form I-751, Petition to Remove Conditions on Residence

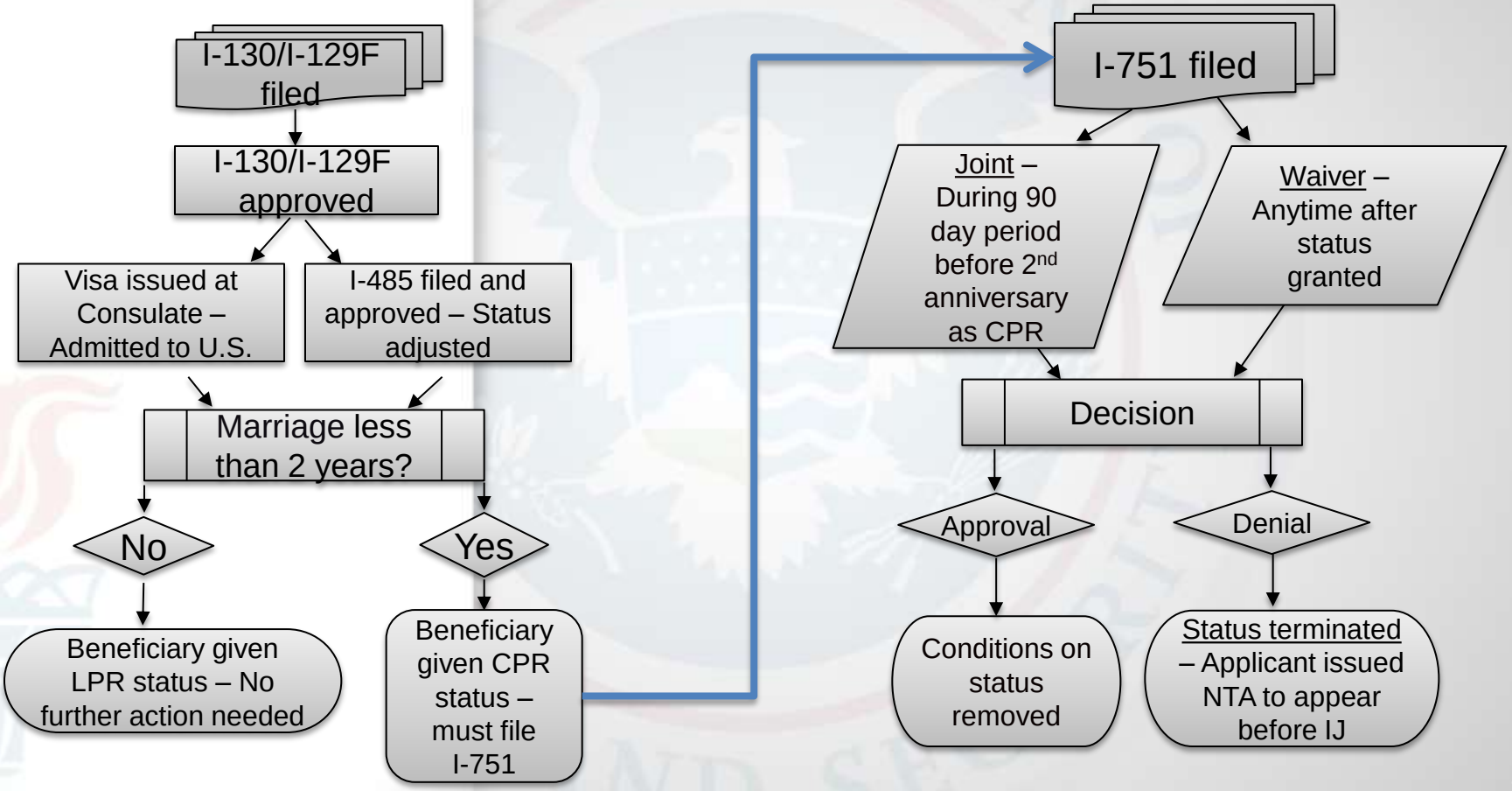
- Purpose of the Petition to Remove Conditions on Residence (Form I-751)
- Form I-751 process
- Filing requirements for Form I-751
- How USCIS processes and adjudicates a Form I-751
- Filing tips

What is a Form I-751?

- When a person obtains lawful permanent resident status based on a marriage that is less than two years old when the status is obtained, that person's lawful permanent resident status is subject to the conditions in INA section 216.

- These conditional permanent residents (CPR) use the Form I-751 to request that USCIS remove the conditions on their status.

Form I-751 Process



Who Can File a Form I-751?

Filing jointly - The CPR and petitioning spouse both file Form I-751 together

- Filing a waiver of joint filing requirement – The CPR files Form I-751

Children Filing Separately

- A child with CPR status may be included on the parent's petition unless the child:
  - Immigrated or adjusted more than 90 days after the CPR parent
  - Immigrated or adjusted his/her status before the CPR parent.

Overseas Cases

CPRs who are currently overseas under military or government orders and who have valid APO/FPO addresses can file their Form I-751 with service centers. They must submit:

- A biometrics fee
- Two passport-style photos
- Two completed fingerprint cards (Form FD-258)
- A copy of their current military or government orders

• Petitioners must write “ACTIVE MILITARY” or “GOVERNMENT ORDERS” at the top of their Form I-751.

• If the CPR is overseas but not on military or government orders, he/she has one year to return to the U.S. and finish processing the Form I-751 or the case will be administratively closed.

Waiver Types

There are four circumstances when a CPR can file a waiver of the joint filing requirement:

1. The petitioning spouse and CPR were married in good faith, but the marriage has been terminated through divorce or annulment.

2. The petitioning spouse and CPR were married in good faith, but the CPR was subjected to battery/extreme cruelty by the petitioning spouse (battered spouse/child waiver).

    • The CPR and petitioning spouse need not be divorced for the CPR to qualify.

Waiver Types

3. Intended Spouse--the U.S. citizen spouse did not legally terminate a prior marriage before entering into a marriage with the self-petitioner.

    - Self-petitioner must established that he/she was battered or subjected to extreme cruelty by the petitioner.
    - A marriage ceremony was actually performed.
    - Bigamy must be on the part of the alleged abuser only.

4. The CPR's loss of status would result in extreme hardship if he or she is removed (extreme hardship waiver).

    • The extreme hardship waiver category does not require the CPR to demonstrate a good faith marriage.

If the CPR believes that he/she qualifies for more than one waiver category, he/she can apply for all applicable waivers at the time of filing the Form I-751.

Individual Filing Request

- The petitioning spouse is deceased.

  Note: If the petitioning spouse dies during the two year period, the CPR does not need to jointly file the Form I-751. The CPR also does not need to file a separate request if the USC spouse dies after they jointly file a Form I-751. The CPR must still provide evidence to support that the marriage was bona fide.

- Evidence
  - If filing the petitioning spouse is deceased: Death certificate
  - If the marriage terminated: Divorce decree or other document showing final termination of marriage

When is a Form I-751 Filed?

- If filing jointly, the CPR and the petitioning spouse must file the Form I-751 within the 90 day period immediately before the second anniversary of the grant of CPR status.

- CPRs who cannot file with their petitioning spouse can seek a waiver of the joint filing requirement. They may apply for a waiver at any time after status is granted.

- CPRs may file late if they provide a written explanation and request that USCIS excuse the late filing. USCIS may excuse the failure to file before the expiration date if the CPR demonstrates that the delay was due to extraordinary circumstances beyond his or her control and that the length of the delay was reasonable.

What Happens if the CPR Fails to File?

- CPR status terminates automatically if the CPR fails to file the Form I-751 on time before the 2-year anniversary of receiving CPR status.
- Additionally, USCIS is required to issue a Notice to Appear (Form I- 862) to initiate removal proceedings.

Pre-Adjudication Processing

- Once USCIS accepts Form I-751, USCIS will send the CPR a receipt notice that will include an appointment at an Application Support Center (ASC).

- At the ASC, the CPR and any linked CPR children will have their biometrics (photo, signature and fingerprint) captured.
    - 10-print fingerprints will be taken for those who are 14-79 years old. This information is used for security checks.

- USCIS uses this information to produce a Permanent Resident Card if USCIS approves the petition.

Evidence of a Bona Fide Relationship

- Evidence that the marriage was entered in good faith and not to circumvent immigration law.
- Must be submitted for jointly filed petitions and all waiver types EXCEPT extreme hardship:
    - Joint ownership of property
    - Joint tenancy in a common property
    - Birth certificates of children born of the marriage
    - Evidence of commingling of financial resources
    - Affidavits
    - Any other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States

Evidence for a Waiver

Divorce Waiver

- Copy of Final Divorce Decree

Examples of evidence to establish the CPR was subjected to battery/extreme cruelty by the petitioning spouse:

- Written statement by the CPR
- Police/arrest reports
- Court records
- Restraining orders
- Domestic violence shelter letters
- Licensed clinical psychologist evaluation
- Affidavits from judges and other court officials, medical personnel, school officials, clergy, or social workers

Evidence for a Waiver

Extreme Hardship

- Evidence to establish that the removal of the CPR would result in extreme hardship

- The burden of proof rests solely on the CPR to establish extreme hardship. The determination of the credibility and weight assigned to each piece of evidence is at the sole discretion of the Secretary of DHS.

- USCIS will consider only the factors that arose during the two years for which the individual was admitted as a CPR.

- The CPR must establish that his or her situation results in extreme hardship the hardship must exceed that which is usual or expected.

Jurisdiction – Removal Proceedings

- Even if the CPR is currently in removal proceedings, USCIS must adjudicate the Form I-751 first, before an immigration judge can review it.
- If the CPR has a final order of removal, USCIS will deny the Form I-751 whether jointly filed or a waiver request.

No Appeal Rights

- The applicant cannot appeal a Form I-751 denial. However, he or she can file a motion to reopen/reconsider. The applicant also has the right to have an immigration judge review his or her case in removal proceedings.
- The applicant can also file a motion to reopen/reconsider if USCIS denied Form I-751 for abandonment.

Filing Tips

- In the current version of the Form I-751, the CPR and the USC are referred as follows:

- CPR:
    - In part 1, as “Conditional Resident”
    - In part 6, as “Individual”
    - In part 7, as “Petitioner”

- USC/LPR:
    - In part 4, CPR’s spouse as “U.S. Citizen or LPR Spouse”
    - In part 8, as “spouse or individual”

Filing Tips

- Signature:
  - CPR signs under Part 7
  - USC/LPR spouse signs in Part 8.
- Physical Address:
  - Note that there are separate blocks for the physical and mailing address. If they are different, please ensure the form indicates both addresses.

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Open House
August 30, 2017

Resident and Status Branch

Kurt Gooselaw, Associate Center Director
Ramlah Moussa, Section Chief

Resident and Status Branch

The Resident and Status Branch (section 3) has jurisdiction over the following forms:

- Form I-539, Application to Extend/Change Nonimmigrant Status (B1/B2 COS/EOS, F1/F2 COS/reinstatements, J1/J2 COS, M1/M2 COS/EOS/school transfers/reinstatements)
- Dependent Form I-539, Application to Extend/Change Nonimmigrant Status (E1, E2, H4, L2, O3, P4, R2, TD)
- Certain Form I-765, Application for Employment Authorization

I-539 Filing Tips

- Answer all the questions on the application. If any item does not apply, write “N/A”.
- Use the applicant’s full legal name, as shown on his or her passport, unless a legal name change has occurred. Proof of a legal name change must be provided.
- Provide the applicant’s current mailing address in the United States. You may not use foreign addresses for this purpose.
- Properly sign the application in the signature box.
- The applicant must provide a statement explaining the reason for the request.

Documents to Include with Form I-539

- Copies of each applicant's valid passport
- Each applicant's Form I-94 or printout from www.cbp.gov/i94
- Proof of the relationship between co-applicants
- Evidence of means of financial support
- English translations for all foreign language documents

Documents to Include with the Form I-539 (continued)

F and M nonimmigrants

- Properly signed Student and Exchange Visitor Information System (SEVIS) Form I-20 for all applicants.
- Evidence of payment of SEVIS I-901 fee, if required.

J nonimmigrants

- Properly signed DS-2019

Documents to Include with the Form I-539 (continued)

The dependent's application should include:

- Evidence of the principal applicant's status (Form I-797, Form I-94, admission stamp in passport, etc.)
- Evidence that the principal applicant is maintaining his or her status (pay records, W-2 forms, etc.)
- Evidence of the dependent's relationship to the principal applicant
- If the principal applicant is no longer employed, a letter from his or her employer indicating the last date of employment and the principal applicant's most recent pay records.

Common Form I-539 Rejection Reasons

The lockbox rejects applications due to:

- Fee issues
- Missing signature
- Outdated version of the application

Designated School Official (DSO) Assistance in the Filing Process

- Make sure that the Student and Exchange Visitor Information System (SEVIS) is updated correctly before the application is filed.
- Review the application and supporting evidence before the student submits it.
- Remind students of the timelines for filing their applications.
- Students applying for reinstatement should not create a new SEVIS number. The new N number is invalid, and the invalid SEVIS number will be reported to SEVP.

Post-application Submission Requests

- Services such as address changes for all forms are processed within 5 to 10 business days.
- The procedure for expedite requests may be found on the USCIS website.

Accrediting Council for Independent Colleges and Schools (ACICS)

On December 12, 2016, the U.S. Department of Education announced that it no longer recognizes the Accrediting Council for Independent Colleges and Schools (ACICS) as an accrediting agency.

This determination immediately affected two immigration-related programs.

ACICS (continued)

The two affected programs were:

- English language study programs because they must be accredited under the Accreditation of English Language Training Programs Act
- F-1 students applying for a 24-month science, technology, engineering and mathematics (STEM) optional practical training (OPT) extension

We will discuss only the English language study programs since the California Service Center no longer adjudicates Form I-765 for students.

ACICS (continued)

USCIS will issue requests for evidence (RFEs) to anyone who filed a Form I-539 on or after December 12, 2016, requesting a change of status or reinstatement in order to attend an ACICS-accredited English language study program.

Upon receiving an RFE, individuals will have an opportunity to provide evidence in response, such as documentation showing that the English language study program they are seeking to enroll in at their new institution meets the accreditation requirements.

ACICS (continued)

If the student does not submit a new Form I-20 from an accredited school, USCIS will deny a change of status or reinstatement request because the program of study is no longer accredited by an entity recognized by the Department of Education.

Maintaining B Status

- On April 6, 2017, USCIS posted guidance reaffirming that nonimmigrants seeking to change their status from B-1/B-2 to F-1 or M-1 must maintain their B-1/B-2 status up to 30 days before their program start dates.

- The U.S. Immigration and Customs Enforcement's Student and Exchange Visitor Program posted similar guidance on its website on May 10, 2017.

Maintaining B Status (continued)

- The student may be required to file additional Form I-539 applications to extend his or her B status to within 30 days of the program start date.

- USCIS may extend the student's B status only in increments of up to six months for each application filed. *See* 8 C.F.R. 214.2(b)(1).

- When an extension of stay as a visitor is approved, the new validity date will start the day after the previous B status expires/expired.

Contact Information and References

- National Customer Service Center: 1-800-375-5283
- Link to ACICS Web Alert: https://www.uscis.gov/news/alerts/certain-students-applying-english-language-study-and-24-month-stem-opt-extension-programs-affected-acics-loss-accreditation
- Link to Maintaining B Status Web Alert: https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/special-instructions-b-1b-2-visitors-who-want-enroll-school

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CSC
Customer Service Section

Customer Service Section Structure

The Customer Service Section, known as CCB-1, is one of the four sections under the Customer Care Branch (CCB). CCB-1:

- Was created to establish accountability in resolving problem inquiries received from internal and external stakeholders.
- Aims to achieve a high level of customer satisfaction by accurately and completely responding to every inquiry we receive.
- Participates in stakeholder events and outreach activities such as annual open houses and national stakeholder teleconferences.

What makes up the Customer Care Branch?

Customer Service (CCB-1)

- 1 Section Chief
- 7 Supervisory Immigration Service Officers (SISOs)
- 40 Immigration Services Officers (ISOs)
- 1 Community Relations Officer (CRO)

Congressional Unit (CCB-2)

- 1 Congressional Lead
- 1 Supervisory Immigration Service Officer (SISO)
- 7 Immigration Services Officers (ISOs)

What makes up the Customer Care Branch?

Training Employee Development/Internal Quality – EB (CCB-3)

- 1 Section Chief
- 7 Supervisory Immigration Service Officers (SISOs)
- 27 Senior Immigration Services Officers (ISOs)
- 11 Immigration Services Officers (ISOs)

Training Employee Development/Internal Quality – FB (CCB-4)

- 1 Section Chief
- 6 Supervisory Immigration Service Officers (SISOs)
- 34 Senior Immigration Services Officers (ISOs)
- 5 Immigration Services Officers (ISOs)

CCB-1 Workload

Adjudications

I-824, Application for Action on an Approved Application or Petition
N-644, Application for Posthumous Citizenship

Customer Inquiries

In addition to processing a monthly average of 18,000 inquiries received through the National Customer Service Center, CCB-1 monitors 15 shared email boxes; six of which are available to external stakeholders:

1. Premium Processing: CSC-Premium.Processing@uscis.dhs.gov
2. NCSC Follow up: CSC-NCSC-FollowUp@uscis.dhs.gov
3. Schools: CSC.Schools@uscis.dhs.gov
4. Community Relations Officer: CSC-CEO@uscis.dhs.gov
5. Military: CSC.Military@uscis.dhs.gov
6. CSC CNMI: CNMI.CSC@uscis.dhs.gov

Case Status Inquiries

Customers can inquire about their cases in three progressive steps:

1) Contact National Customer Service Center (NCSC)
   - Call 1-800-375-5283 or submit an online case inquiry at www.uscis.gov
   - NCSC will generate a service request (SRMT) and forward it to the appropriate USCIS service center
   - 15 day target date
2) Email California Service Center (CSC)
   - If issue is not resolved within 30 days, email the CSC at CSC-NCSC-FollowUp@uscis.dhs.gov
   - 21 day target date
3) Email USCIS Service Center Operations
   - If issue is not resolved within 21 days, contact SCOPSSCATA@uscis.dhs.gov

SRMT
(Service Request Management Tool)

1. National Customer Service Center (NCSC) staff creates an SRMT when the customer/authorized representative calls them.
2. Customers can create SRMTs through the online portal on the USCIS homepage.
3. Officers at USCIS field offices can create SRMTs.

General Inquiries

- Change of address (COA)
- Outside normal processing time (ONPT)
- Non-delivery of notice
- Typographical errors (Name/DOB/Approved validity period)
- Expedite process
- Refund requests
- Bounced checks
- Return of original documents
- Withdrawal request

SRMT Target Dates

- 15 calendar days for general SRMT inquiries
- 5 calendar days
  - Expedite requests
  - Military
  - Change of address (COA) – to reduce potential for undeliverable mail

Premium Processing

U.S. Citizenship and Immigration Services

- Adjudicative action within 15 calendar days
- $1,225 Premium Processing Fee
- Certain Employment-based petitions
- Special phone line: 1-866-315-5718
- Special email address: CSC-Premium.Processing@uscis.dhs.gov
- Approximately 2,500 premium processing inquiries/month
- One team of 7 officers dedicated to responding to email and phone inquiries about premium processing

Expedite Requests

Customers may submit expedite requests through SRMTs. They must submit documentation to show they meet one of the seven expedite criteria:

1. Severe financial loss to company or person;
2. Emergency situation;
3. Humanitarian reasons;
4. Nonprofit organization whose request is in furtherance of the cultural and social interests of the United States;
5. Department of Defense or national interest situation;
6. USCIS error; or
7. Compelling interest of USCIS.

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U.S. Citizenship and Immigration Services

QUESTIONS?

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Employment Branch 1

Employment Branch 1 Overview

- January 2016 – Expansion of Employment Branch
- November 2016 – The California Service Center restructured its Employment Branch I into three sections, with the creation of EB1 Section 3.
- All workloads are currently within the processing time goals.
- As of May 20, 2017, the CSC began receiving L, O, and P filings from Florida, Georgia, and North Carolina.

Employment Branch 2 Overview

U.S. Citizenship and Immigration Services

I-129 – Petition for a Nonimmigrant Worker

- H-1B initial cap filings
- H-1B extension of stay (EOS) and amendments
- H-1B cap exempt filings (*CSC has sole jurisdiction of H-1B petitions filed by cap-exempt employers*)

I-129CW – Petition for a CNMI-Only Nonimmigrant Transitional Worker (*CSC has sole jurisdiction*)

I-539 – Concurrently filed Application to Extend/Change Nonimmigrant Status

I-765 – Application for Employment Authorization

- C26 – Employment Authorization for Certain H-4 Dependent Spouses

EB1 Workloads

U.S. Citizenship and Immigration Services

EB1 Section 1

I-129 – Petition for a Nonimmigrant Worker

- ❑ E-1/E-2: Treaty Trader / Treaty Investor; *CSC has sole jurisdiction*
- ❑ H-3: Trainee
- ❑ O-1: Persons with Extraordinary Ability
- ❑ P-1/P-2/P-3: Internationally Recognized Athletes or Entertainers, Artist/Entertainer in a Reciprocal Exchange Program / Culturally Unique Artist/Entertainer
- ❑ Q-1: International Cultural Exchange Program Participant

EB1 Workloads (Cont.)

U.S. Citizenship and Immigration Services

EB1 Section 2

- H-2A Agricultural workers *(CSC has sole jurisdiction)*
- H-2B Non-Agricultural workers *(CSC & VSC shared jurisdiction)*
- R – Religious worker *(CSC has sole jurisdiction)*

I-360 – Petition for Amerasian, Widow(er), or Special Immigrant:

- Religious worker *(CSC has sole jurisdiction)*

I-102 – Application for Replacement/Initial Nonimmigrant Arrival-Departure Document

EB1 Workloads (Cont.)

U.S. Citizenship and Immigration Services

EB1 Section 3

I-129 – Petition for a Nonimmigrant Worker

- ❑ L-1A/L-1B: Intracompany Transferee – Manager/Executive / Specialized Knowledge
- ❑ LZ Blanket

Section 1 Best Practices & Filing Tips

U.S. Citizenship and Immigration Services

- E1 / E2 Classifications
- O-1A/O-1B Classifications

Best Practices – Consultations

U.S. Citizenship and Immigration Services

Expedited Processing

Include a consultation (two in the case of motion picture and television related petitions) with your initial filing.

If we approve an expedite request but the petition lacks the required consultation, we then need to contact the appropriate labor organization requesting a consultation. This would further delay the processing of the petition.

Best Practices – Consultations

U.S. Citizenship and Immigration Services

Negative Consultations

A negative consultation does not make the beneficiary automatically ineligible for the requested classification. Consultations are not binding on USCIS. USCIS reviews the totality of the submitted evidence together with the consultation(s) when determining eligibility.

Best Practices - Consultations

Appropriate Labor Organizations

When a labor organization for the beneficiary's field of endeavor exists, include the consultation from that organization. An updated list of organizations can be found on USCIS' website.

https://www.uscis.gov/working-united-states/address-index-i-129-o-and-p-consultation-letters

Best Practices - MPTV

U.S. Citizenship and Immigration Services

Initial Filings for the Motion Picture and Television (MPTV) Field

- When filing an O-1B petition, please specify whether you are seeking classification under the Arts or MPTV standards.
- Articulate how the beneficiary qualifies for the requested benefit and under which enumerated criteria you are seeking to qualify the beneficiary.

Best Practices – MPTV

- The evidence must demonstrate that the beneficiary has been recognized as having a demonstrated record of extraordinary achievement in the MPTV industry.

Best Practices - O1B Enumerated Criteria

U.S. Citizenship and Immigration Services

Criteria #1 (related to events) and Criteria #3 (related to organizations)

Although Criteria #1 and Criteria #3 are similar in language, they are two separate and distinct concepts and must be addressed separately. Please do not merge these criteria and the associated supporting evidence. Also note that the regulations prescribe different forms of evidence for these criteria.

Best Practices - O1B Enumerated Criteria

U.S. Citizenship and Immigration Services

Criteria #3 (related to organizations)

Having been involved in a project for an organization of distinguished reputation may not sufficient to meet this criteria. The evidence must demonstrate that the beneficiary has and will perform a lead, starring, or critical role for the organization.

EB 1-1: Q & As

U.S. Citizenship and Immigration Services

Question 1

The negative control concept is an established principle evidencing capacity to develop and direct the U.S enterprise where the treaty country investor has 50-50 ownership of the E-2 enterprise by the treaty country investor. However, we have seen recent Request for Evidence (RFEs) and denials from CSC challenging the negative control concept. Please advise on CSC efforts to train officers on the negative control concept.

EB 1-1: Q & As

U.S. Citizenship and Immigration Services

Answer 1

While we cannot comment on particular cases, we can say generally that 50% ownership is sufficient to establish control of the corporation. The regulation requires the treaty investor (E-2) to be seeking entry solely to develop and direct the enterprise.

To establish this, the regulation states that people seeking classification as a treaty investor (or, in the case of an employee of a treaty investor, the owner of the treaty enterprise) must:

- Demonstrate that they do or will develop and direct the investment enterprise; and
- Establish that they control the enterprise by demonstrating ownership of at least 50 percent of the enterprise. They can do so by:
  - Possessing operational control through a managerial position; or
  - Other corporate device, or by other means.

EB1-2 Best Practices and Filing Tips

U.S. Citizenship and Immigration Services

Both H-2A and H-2B

For H-2A

For H-2B

EB1-2 Best Practices and Filing Tips

U.S. Citizenship and Immigration Services

Religious Worker Petitions (I-129R and I-360)

FY 17 Supplemental H-2B CAP

- Additional 15,000 visas through the end of FY 2017

EB 1-2: Q & A

Question 1 (H-2Bs):

It appears that USCIS has taken a hard line when applying 8 CFR section 214.2(h)(6)(i)(E)(2) for H-2B beneficiaries who are from non-designated countries.

Background:

A list of designated countries can be found at: https://www.uscis.gov/news/uscis-announces-addition-16-countries-eligible-participate-h-2a-and-h-2b-visa-programs

EB 1-2: Q & A

U.S. Citizenship and Immigration Services

Question 1 – Background Continued-

If someone is from a country that is not on that list, he or she may be a beneficiary of an approved H-2B petition upon the request of a petitioner or potential H-2B petitioner, if the Secretary of Homeland Security, in his sole unreviewable discretion, determines that it is in the U.S. interest for that person to be a beneficiary of such petition. USCIS evaluates all of the evidence presented and evaluates that evidence in totality, considering all evidence presented on a case-by-case basis.

EB 1-2: Q & A

U.S. Citizenship and Immigration Services

Question 1a:

When reviewing 8 CFR section 214.2(h)(6)(i)(E)(2)(i), what factors will USCIS look at in terms of an employer not finding workers with the required skills and not being available?

EB 1-2: Q & As

Answer 1a:

8 CFR 214.2(h)(6)(i)(E)(2)(i) states the following:

Evidence from the petitioner demonstrating that a worker with the required skills is not available from among foreign workers from a country currently on the list described in paragraph (h)(6)(i)(E)(1) of this section;

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 1a –Continued-

The above is simply one example of evidence the petitioner may submit to show that it is in the U.S. interest for the alien to be the beneficiary of an H-2B petition. Evidence of this sort would include but not be limited to documentation demonstrating that workers from the relevant country possess expertise that neither U.S. nor foreign workers from listed countries have, or documentation showing that recruiting efforts from countries on the list of eligible countries were unsuccessful. Submission of this type of evidence does not guarantee that a worker from a non-designated country will be approved as an H-2B beneficiary.

EB 1-2: Q & As

Question 1b:

What must the petitioner prove or disprove in order demonstrate that there are not enough professionals available with the required skills from the designated country in order to satisfy the standard of 8 CFR section 214.2(h)(6)(i)(E)(2)(i)? There may be some professionals available but not enough in sufficient numbers who are available to meet the need of the US employer to come to the USA on a temporary 10-month assignment.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 1b:

The regulations do not specify types of evidence that petitioners should submit to support a claim that there are not enough workers with the required skills available from a country currently on the list of designated countries. USCIS evaluates any evidence and statements the petitioner provides and reviews that evidence on a case-by-case basis.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 1c:

Does USCIS require proof that a petitioner tried to recruit from the designated countries?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 1c:

There is no requirement that the petitioner must meet all four of the prongs under the provision in order for USCIS to grant H-2 status to a beneficiary from a non-designated country. However, if a petitioner asserts that it tried to recruit from a designated country, it is usually best to submit documentary evidence to establish that claim. USCIS evaluates all of the evidence presented and evaluates that evidence in totality, considering all evidence presented on a case-by-case basis.

EB 1-2: Q & As

Question 2:

How does USCIS interpret H-2B temporary services or labor?

Question 2a:

Please clarify USCIS' legal interpretation of the H-2B laws. Does USCIS follow Matter of Artee Corporation, LOS-N-46504, November 24, 1982, where USCIS looks to the nature of the "need for the duties to be performed to determine the temporariness of the position" versus the nature of the job duties?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 2a:

This distinction from *Matter of Artee Corporation* was codified into the regulation, which now states at 8 CFR 214.2(h)(6)(ii): “Temporary services or labor under the H-2B classification refers to any job in which *the petitioner's need* for the duties to be performed by the employee(s) is temporary, whether or not the underlying job can be described as permanent or temporary.” (emphasis added) A petitioner must demonstrate that its need is for a limited period of time, generally of one year or less. Clarifying guidance on what constitutes a petitioner’s temporary need can be found at:

- https://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/guidance-temporary-need-h-2b-petitions

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 2b:

There are many professions and jobs where the work can last more than 1 year and year round. However, where the petitioner can document the work of the H-2B professional will only last under 10 months because the need of the end user client is only for a temporary period of 10 months and not on a continuing basis year round, will that be sufficient enough to meet the standard in Matter of Artee Corporation, LOS-N-46504, November 24, 1982? Or will USCIS take the view that since the H-2B worker can in theory perform the job year round, that it cannot qualify for an H-2B visa regardless of the actual need of the employer?

EB 1-2: Q & As

Answer 2b:

This question is too general to answer in this forum. USCIS adjudicates each petition based on the facts presented in each individual case, using the "preponderance of the evidence" standard, as well as the standard presented in *Matter of Artee Corporation* and subsequently codified in the regulations.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 3 (Religious Workers):

How can a petitioner find out if a site visit has been successful (approved)?

EB 1-2: Q & As

Answer 3:

USCIS does not release the compliance review report from the site visit. An approval notice is evidence that a petitioner satisfactorily completed an on-site inspection.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 4:

For the EB-4 category, the case law is confusing whether the two years of religious work immediately preceding the filing of the Form I-360 can be part-time, or whether it must be full-time. Can you please clarify?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 4:

The two-year continuous employment must be full-time work (at least 35 hours). Section 204.5(m)(2) of Title 8 of the Code of Federal Regulations (8 CFR) specifically states that the position must have been full-time, and 8 CFR 204.5(m)(4) requires that the religious worker have worked continuously for two years in one of the positions described in (m)(2).

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 5:

How long can the beneficiary of a Form I-129R hold R-1 status: 6 or 7 years? May the days spent outside of the United States be recouped?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 5:

A CFR 214.2(r)(6) states that an alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The time spent outside of the United States may be recaptured.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 6:

Petition expiration date vs. I-94 expiration date – Will USCIS honor the longer I-94 expiration date (even though petition expired) if it is given by U.S. Customs and Border Protection (CBP) as long as 5 years have not maxed out for R-1 holder?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 6:

The validity date errors on the I-94 should be corrected by bringing it to the attention of the port of entry that issued the I-94 or with the Deferred Inspection Office of CBP.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 7:

Can documents be submitted as double sided pages for supporting evidence or must they be submitted as one-sided?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 7:

USCIS recommends that you submit single-sided copies of the petition and supporting documents. It helps with the adjudication process because then adjudication officers don't have to flip pages while reviewing the petition and supporting documents.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 8:

Has the EB-4 classification for non-minister religious workers been extended past September 30, 2017? If not, what can we do to expedite those cases? Will USCIS expedite Form I-360 for non-minister religious workers as well as their subsequent Form I-485 filings in the case of a sunset?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 8:

Currently, the non-minister special immigrant program will end on September 30, 2017. USCIS continues to monitor legislative action regarding this program. As in the past when the end date for the non-minister special immigrant program approaches, USCIS will prioritize these I-360 petitions. USCIS may expedite any petition or application that meet our expedite criteria.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 9:

Do you expect either the nonimmigrant or the immigrant Religious Worker programs to be targeted for reduction by the Trump Administration?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 9:

We cannot comment or speculate on any measures which the administration might or might not take. Please note, however, that Congress determines whether the number of visas available under these programs may be reduced or limited.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 10:

Is there any plan for USCIS to allow employers who have submitted more than 200 Form I-129 R-1 cases during the past 10 years, [where] all have been approved and granted visas, to not have to submit any documents related to the employer and the same work location? At present we are submitting about 50-55 items of supporting documents (about 300-400 pages) with each petition both initial and extension petitions.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 10:

USCIS currently does not have plans to do so. We evaluate each petition based on its own record and merits.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 11:

Will the USCIS ever consider granting work permit to the spouse of an R-1 beneficiary?

EB 1-2: Q & As

Answer 11:

At this time, employment authorization is not available for the spouses of R-1 beneficiaries. We cannot speculate about whether employment authorization will become available for these individuals.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 12:

Will USCIS ever allow premium processing again with an I-129 R-1 classification and with the I-360 immigrant visa?

EB 1-2: Q & As

Answer 12:

USCIS currently has no plans to extend premium processing service to Form I-360 petitions for special immigrant religious workers. USCIS accepts Form I-907 for I-129 petitions seeking R-1 classification if the petitioner has previously completed a successful on-site inspection at the beneficiary's place of employment.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 13:

Are there plans for joint I-360 and I-485 concurrent filing in the near future?

EB 1-2: Q & As

Answer 13:

No. USCIS currently has no plans to allow customers to concurrently file Form I-485 together with Form I-360 for special immigrant religious workers.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 14:

With the EB-4 quota reached for individuals from India, Mexico, Guatemala, El Salvador, and Honduras, will USCIS continue to process the EAD/AP?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 14:

In order to be eligible to file for employment authorization and advance parole, the applicant must have a pending Form I-485. If an individual is not able to file Form I-485 because the EB-4 quota was reached, those individuals will not be eligible for employment authorization or advance parole.

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Question 15:

What guidance does USCIS Fraud Detection and National Security Unit receive in conducting on-site inspections of a petitioning organization and what is the best way for a petitioning organization to raise concerns regarding on-site inspections which they feel go beyond the scope of the regulations?

EB 1-2: Q & As

U.S. Citizenship and Immigration Services

Answer 15:

The immigration officers in the field who do Administrative Site Visit and Verification Program (ASVVP) site checks go through a two-week site check training program. The stakeholders would need to provide more specifics on the types of actions they feel are beyond our regulations. If you have questions or concerns regarding the on-site inspections that you feel go beyond the scope of the regulations, send them to the same office that you would contact to correct information on a receipt notice and or approval error.

Section 3 Best Practices & Filing Tips

U.S. Citizenship and Immigration Services

-
- L-1A / L-1B Classifications

EB1-3 Best Practices & Filing Tips

L-1A / L-1B classifications

- Fill out the form completely and accurately.
- Do not mark amendments when there is a change of employer requiring a new fraud fee.
- Make sure to disclose previous filings.
- Enter wages, compensation, type of business, the year established, employees, and income on Form I-129.
- Do not include other classification supplements.
- Include duplicate copies.
- Use single sided paper (or double sided if can flip from bottom up).

EB1-3 Best Practices & Filing Tips

L-1A / L-1B classifications

- Provide a cover letter with the evidence list.
- Place tabs securely on the evidence
- Include a Form I-129S if you are extending a blanket visa
- If selecting either:
  - A change in previously approved employment; or
  - An amended petition

  Please explain the nature of the change or amendment.

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U.S. Citizenship and Immigration Services

Employment Branch 2

EB 2

Pre-Submitted Question

U.S. Citizenship and Immigration Services

Post AAO Appeal Action at CSC – Members have provided examples of several FY17 H-1B cap petitions that CSC had denied which were overturned by the AAO on appeal. How long should it take to hear back from CSC once AAO has overturned a denial? Is there an avenue for following up on denials overturned on appeal?

Answer

There are no written instructions/guidance on how long it should take to hear back from CSC once AAO has returned an appeal. CSC's current goal is to process returned appeals within 45 days of receipt from the AAO. Calling the National Customer Service Center at 1-800-375-5283 is the appropriate avenue for inquiries on this topic.

Pre-Submitted Question

H-1B Ten Day Grace Period Before Admission – 8 CFR §214.2(h)(13)(i)(A) provides that an individual who has been granted H-1B status may be admitted up to ten days before the effective starting date of the H-1B petition. We have seen examples where a beneficiary was admitted up to ten days before the effective starting date and USCIS issued RFEs indicating that the H-1B could not be extended for three years after the expiration date of the prior H-1B because then the six-year maximum period of stay would run out earlier. These RFEs are not recognizing that individuals can be admitted up to ten days before the start of H-1B status and are counting this as time spent in H-1B status. Please advise on efforts to train officers on this section of the regulations so beneficiaries can receive the statutorily mandated six years in H-1B status.

Answer

If someone spends time in the United States during a grace period related to an H-1B period of authorized stay, USCIS considers this time as time spent in H-1B status. Accordingly, this period counts against the 6 year maximum.

Pre-Submitted Question

Cap Exempt H-1Bs – Affiliation with an institution of higher education for the purposes of H-1B cap exemption can be demonstrated under 8 CFR §214.2(h)(19)(iii)(B) by showing:

a. That the institution of higher education and the nonprofit have shared ownership or control by the same board or federation; or

b. The nonprofit was operated by an institution of higher education; or

c. Attached to an institution of higher education as a member, branch, cooperative, or subsidiary.

Cont.

The new regulations related to highly skilled workers have not changed this language. However, we have seen extremely inconsistent adjudications, burdensome requests for evidence, and examples where the same evidence that has been the basis for H-1B cap exemptions for many years are being questioned.

Petitioners are spending greatly increased resources responding to these inconsistently issued requests and have no ability to predict whether the next petition based on the same evidence will be approved. Please advise on efforts to train officers and/or to bring about more consistent adjudications in this area.

Answer

The new AC21 rule states that USCIS will not defer to past determinations of cap exemption for cases filed after January 17, 2017. The new rule supersedes past guidance, including the 2011 Interim Policy Memo. Instead, the final rule includes the final evidentiary criteria that USCIS will now use to determine whether individuals employed at a nonprofit entity will be exempt from the H–1B cap.

Pre-Submitted Question

Should a request for a refund of a premium processing fee be honored when the beginning validity date on an initial (not extension) H-1B approval I-797A was erroneously entered by the PP unit (2017 versus 2016)? 2016 was the year clearly requested by the petitioner? Only after several requests and a lapse of almost three months did the PP Unit finally issue a new correct I-797A.

Answer

The premium processing fee will not be refunded due to a typographical error on the I-797A, as a decision was made on the case within the 15-day timeframe.

Pre-Submitted Question

Why can't CSC PPU adopt VSC's ability to accept faxes in excess of 15 pages? This page amount is too low given that that includes the RFE itself which is often 5-6 pages.

Answer

We do not accept faxes that are longer than 15 pages since some petitions require a more lengthy response, which may tie up the fax machine and prevent other faxes from being received. Petitioners also have the option of overnight delivery via various providers.

Pre-Submitted Question

U.S. Citizenship and Immigration Services

Why do we have to kill so many trees by submitting 500+ paged petitions in duplicate?

Answer

The amount of evidence submitted with each petition varies widely, and we understand that some filings require extensive documentation. However, submitting a duplicate facilitates any necessary consular processing of your H-1B petition.

Filing Tips

In general, if you are responding to a request for evidence, also submit the following:

- An index of the evidence, including colored cardstock dividers to separate each section of evidence.
- Clear and legible copies of the evidence. Do not submit original documents unless USCIS requests them.

Filing Tips Continued

- If you are requesting consulate notification, provide a duplicate copy of:
  - Form I-129 (including Labor Condition Application);
  - Initial evidence; and
  - Any evidence submitted in response to this request.
- If the beneficiary is in the United States and you are requesting a change of status or extension of stay, you may also choose to submit a duplicate copy of the Form I-129 and supporting evidence in case the beneficiary decides to seek a visa at a consular office abroad.

Filing Tips Continued

If you submit a document that is in a foreign language, you must also submit a full English language translation of that document.

- The translator must certify that the translation is accurate and complete and that the translator is competent to translate from the foreign language into English.
- USCIS will not review documents that are not in English and not accompanied by a translation that meets the requirements described above.

H-1B Cap Processing Time and Tips

U.S. Citizenship and Immigration Services

- USCIS generally processes cases in the order they are received.
- On May 11, 2017, CSC began adjudicating FY18 cap-subject H-1B petitions. For FY18, CSC received 58,800 cap cases. We are working hard to process most FY18 cap cases by September 30, 2017, and have prioritized these cases accordingly.
- Tips: Make sure the petition is filled out completely, correctly, and includes all required signatures. Also, provide supporting documents to substantiate all claims.

Tips for H-1B Amended Petitions

U.S. Citizenship and Immigration Services

- Explain in the supporting letter the reasons why you are filing the amended petition. Describe whether the change is in work location, job duties, or wages.
- You must file an amended petition when there are material changes to the previously approved Form I-129 that may affect the beneficiary's or the employer's eligibility. Submit evidence that:
  - The position is a specialty occupation;
  - The beneficiary is qualified for the position; or
  - An employer-employee relationship will exist.

Simeio-related Amended Petitions

- State in the supporting letter the work locations where the beneficiary was previously approved to work
- State the work locations where the beneficiary actually worked and the periods the beneficiary worked at those locations
- Provide copies of all LCAs obtained for any new work locations that were not previously approved
- Provide supporting documents such as payroll records to show the beneficiary's work locations

About This Presentation

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