

Questions for 9/12/01 NAFSA/CSC Meeting

Division I

1. Q. At the last liaison meeting, you agreed to expedite certain I-539 cases that involved employment (such as a change to F-1 when an assistantship was required or to J-1 when pay by the university was required). When we send in these expedited applications, how long do you estimate it should take to receive an approval notice?

A. Within a week after the fee is accepted, if the proper documents are included. If not, an RFE will be sent which might delay processing of the application.

A. Q. What are the standards for expedite treatment? In the past, a COS to F-1 status where the applicant is a graduate student with graduate research or teaching assistantship was considered eligible for expedite treatment. Recently expedite was requested and denied where a COS to F-1 was requested for a graduate student admitted to a graduate degree program which requires each degree candidate to complete a required internship scheduled after six months of intensive study. Denial of such a change interferes with a program requirement thus should receive expedite treatment. Do you agree?

A. An expedite can only be requested after three months of the case pending.

3. Q. Recently approved COS applicants through the California Service Center have been receiving only page 3 of their I-20. Is it possible to have page 4 returned?

B. If page 3 and 4 are not submitted, we will not make a request solely for page 3 and 4. Page 4 is on the back of page 3.

Editor's Note: Advisor's may generate a new page 4, if necessary, to replace the lost page, and substitute it for the original.

Division II

4. Q. The CSC is now sending RFEs for documentation of an alien's extraordinary ability for O-1 extension petitions. This was not required previously and we wonder what has caused the change. Might there be a nationwide directive? Or is this a regional procedure? We had no difficulty obtaining extensions for O-1 holders in the past until this summer.

A. Please see attached.

5. Q. When was the current, strict interpretation of “when an event began” implemented and, I suppose, why. What criteria are being used to judge that an O-1 initial and/or extension is an “event”? In the higher educational field teaching is academic year or semester driven while research is project driven. Each of these seem self-evident as “events”. The issue of an event always seemed to be very broadly interpreted. The NAFSA Advisor's Manual offers as an example of an event a "faculty level promotion," so I don't think Stanford or other schools were trying to push the O-1 envelope when the classification was used in this way. What if they start invoking the "temporary" in "H-1 Temporary Worker?" Recent RFE's suggest that these are no longer considered events. Since this material is voluminous, under what circumstances should applicants for EOS of O-1 automatically include this material to avoid delay?

A. Please see attached.

6. Q. If it is simply a question of packaging, we can likely work our way through the several RFEs we have received. But some of them come with lengthy boilerplate iterations of the basic O-1 documentation needed for such a petition. If we can establish that the extension is intended to fill out an "event," such as a research project, then is new documentation is needed?

A. Please see attached.

Answers to 4, 5, 6:

This O section clearly outlines the requirement that the event or activity have a beginning or end date. To merely look to a portion of the form I-129 that requests validity periods while ignoring the section of the form that requires an articulation of the actual event is an inappropriate standard that seems to ignore the requirement to articulate an event.

In addition CSC, has sought guidance from Headquarters both from Service Center Operations and Office of Programs on this issue. Although we have not received formal written guidance, the point of view expressed is in those areas of employment where an event might not be as easily defined given the nature of the activities, the Service would take a more liberal approach in defining the terms of event. However, event is still recognized, as an element in the classification and as such, a request for articulation of what constitutes the event is appropriate.

In order to facilitate us in proper adjudication, we would ask that petitioners explain how the related activities make up an event or support the event. In the case of professors, it can be established through contractual terms

identifying the semester or school year. The researcher could identify his event under the terms of the research project or terms of the grant. The business executive could define event through the project she is heading such as a roll out or a product, expansion. In each example the concept of event remains intact while providing flexibility based on the field of endeavor.

Please not that although the RFE might appear to be requesting evidence that might most easily identified or associated with artists or performers, these evidentiary requirements can be met with other professions. It is an articulation of the nature of the event or activity that suffices. It must be noted that the law maintains the need for an event regardless of the field of expertise for the alien.

By regulation, the event does require beginning and end dates. The concept of activities is also attached to these activities being associated with and in support of the event. If an architect is working on a project that is the event, then it is feasible that several buildings could comprise that project. However, the event as such should be defined in the project. If the architect was to commence a new project that is not associated with this previous project, than the Service's position would be that there is in fact a new event.

In the case of those areas in the sciences, business, academia or the arts, it is not unrealistic to expect a definition of event in the petition. It is not unreasonable to require the petitioner to define the terms under which the alien is being sought for employment. Clearly these terms would be defined by contract or oral agreement that would identify what scientific project, length of academic stay, business endeavor and artistic engagement the alien is coming in to perform.

Clearly there are cases where an itinerary would not be appropriate. The RFE as such is not demanding an itinerary if it is not appropriate or where a contract would suffice. In some instances the itinerary would be defined as the academic year, the semester, the performance season or concert halls where the alien would be performing, the business enterprise, the product roll out, the lecture series and venues of lectures.

It is not the CSC standard to require separate contracts to outline each "event" if the event is for a series of concerts at various venues as long as the broader concept of the event is defined as a concert series and supported by contract. However the CSC has used, and continue to use the statutory language that defines competition, event, or performance in the broader term wherein the event can be "an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project entertainment event , or engagement". (56 Fed. Reg. 31556 (July11, 1991))

CSC recognizes that by adhering to this statutory definition unnecessary and repetitious extension requests can be avoided. Therefore, a request for a contract is appropriate and supported under regulations as under regulations as part of the evidentiary requirements for the O classification and will be requested. The request can be met by incorporating these “sub” events in to the terms of the contract or oral agreement.

In some instances we have seen incomplete contracts and itineraries that do not identify dates, venues, and other essential elements to support the petition. It is unclear in these instances what the alien will be doing or how the requested period of stay is substantiated. In these cases, an RFE generally will be issued to seek clarification on these points.

7. Q. I sent an H-1B application to CSC for a UCR employee, his work site is Upton, NY. CSC sent me a receipt notice and a couple of weeks later a "transfer" notice. The file was transferred to the Vermont Service Center. The transfer notice has the "receipt" WAC number. I don't have an EAC number, so I cannot trace the progress of the application at the Vermont Center. What should I do -- other than wait for approval? Is this a new CSC policy to transfer I-129 applications, if the work site is in a different Service Center (from the employment site) area?

B. Unless the petitioner has centralized filing status granted by CSC, cases outside of our jurisdiction will be sent to the appropriate service center. When we receive cases from other service centers, those cases retain their original number. For example: LINXX-YYY-ZZZ or EAC11-222-33333. Have you tried finding it under the old WAC number? If you have and had no success, send Sheila Embry an E-mail. She will see what can be discovered.

Editor's Note: Filing jurisdiction of petition is the place of employment.

8. Q. If a Premium Processing application is submitted, but the case has already been approved, will the \$1000 Premium Processing fee be returned? An example is that an I-907 form for Premium Processing was sent to CSC on a Monday. On Wednesday, a Notice of Action was received that noted the case was approved on the Monday the I-907 was sent. Obviously, the case was approved before the request for the Premium Processing was received by INS. Will the \$1000 fee be returned?

A. Currently we are initiating the refunds at the California Service Center. Refunds have primarily been based upon filings of the I-907 subsequent to adjudication. The Service has initiated these types of refunds. In the event a

petitioner believes they are due a refund, they may go through the inquiry process. Please state the reasons why the refund is believed due.

Division III

9. Q. What is the status of the Division III e mailbox? There hasn't been any response since 8/15. Reminder emails have been sent, but still no response.

B. The student e-mail box issue is up and running once again. The address is csc.student.ead@usdoj.gov and is being manned by two division III officers. Depending on the nature of the question /problem, the e-mail may not be answered until the actual file has been obtained. If it is at the National Records Center, it may take a little while. In this case a courtesy message should be sent

Editor's Note: As of 11/2/01 it is unclear if the email box is currently running due to the reorganization. Information about the email box will be disseminated as soon as it is known. Also, the CSC has suggested sending your email message with a "return receipt" if that is possible.

10. Can a student apply for OPT without having been in F-1 status for 9 months, provided he was lawfully enrolled as a full-time student in another non-immigrant status that does not prohibit full-time study? Does that enrollment in another status need to be documented and included in the OPT application?

A. Practical training is available to F-1 students who have been lawfully enrolled on a full time basis for at least nine consecutive months. This goes back to the question when is a student a student. If the student has been attending school in another classification for some time and only recently applied for F-1 status near the end of studies the nine months of time in F-1 status would start from that date.

If there has been a change of status request pending due to Service backlogs since the student first started attending, then the status would be deemed to be valid from the date of initial application for change of status. The perceived intent would carry a lot of weight during the adjudication process. (Is the student simply attempting to prolong their stay by obtaining OPT?)

11. Q. What is the best procedure to follow when mistakes (such as name, dob etc.) have been made on the EAD?

A. The best procedure would be to immediately contact the DSO to make provisions to return the incorrect EAD to the Division. It would be appropriate to make a photocopy of the incorrect card to keep as well as

any correspondence received by the service. Once the incorrect EAD is received, a corrected one will be made.

Editor's Note: The CSC suggested having the DSO hold onto the EAD while they request the file from their office in Harrisonberg, VA. This can be better coordinated when the email is up and running again.

12. Q. Is the CSC current on data entry for I-765 applications? If not, what is the date?

A. Pending receipt of the walk through reports, I will answer this one.

13. Q. During the "mailroom crisis" of this spring, it seems that many I-765 applications were lost at the CSC. Many advisors report cases where the post office receipt was returned but the check was never cashed, and a receipt was never received. If a new application is sent requesting expedite, what is the possibility it will be processed as an expedite?

A. If the post office receipt was returned and the check never cashed then probably there are "pockets" of cases still in the front log. These cases have yet to be receipted. Each case would be looked at the ACD of this division and a decision made as to approve or deny the expedite request. Normal criteria would have to be met and not simply show evidence of inordinate processing time for the first application filed.

14. Q. Over one year ago NAFSA was told that CSC (along with all service centers) was ordered to scan for EAD production after adjudication by INS Officers. This has added four to six weeks to the processing time such that production normally is now 4 ½ months. Is there a possibility that front-end scanning could be re-instituted?

A. The director has requested input from divisions regarding this very issue. It is currently being explored and a decision would be forthcoming.

15. Q. An F-1 applied for OPT in March. Notice of action was received in April. In June the student went to the local INS Office and learned that an RFE was issued May 10. Student did not receive RFE. Early July was successful in reaching CSC by phone. IIO indicated that RFE was written but not sent but suggested that it would be sent and that within 30 days would hear from CSC. Early August the student called again because she did not hear and was told by the IIO that nothing in the system showed that an RFE was contemplated or sent. She went to the local office and requested an interim. The local office looked into the system and found that no RFE was requested and issued an interim card.

Three days later she received an RFE in the mail requesting a copy of the I-538. Can you explain the above?

A. Without a receipt number it would be hard to accurately state what happened to this scenario.

Division V

16. Q. For Adjustment of Status (AOS) applicants who are subject to 212(e) but who have requested a waiver, will the CSC accept only the I-612 approval notice together with the AOS docs, or will the CSC accept a receipt notice? How about the letter of "no objection" from the Dept of State? In other words--at the AOS stage--what is the acceptable evidence confirming the waiver of 212(e)?

A. CSC will accept evidence that a waiver has been granted. Regulations require that the waiver be granted prior to filing the I-485.

17. Q. After the Dept of State has sent their "no objection" statement to the CSC, what is the current "turnaround" time to receive the receipt notice? Approval notice? After how much time has elapsed should the applicant begin the inquiry procedure for the receipt notice? Approval notice? And, what inquiry procedure should be followed for the receipt notice? Approval notice?

A. Items are current within 90 days. Contact division V if you have specific questions.

18. Q. If the 212 (e) approval notice has been issued but not received by the 212(e) waiver applicant, is there a procedure to obtain a duplicate of the I-612? What is the procedure? How long before a duplicate approval notice is issued?

A. File with I-824 (Duplicate Approval Notice). See the JIT report.

General Questions

19. Q. Current turnaround times for the following petitions submitted by an AOS applicant: I-131, I-765, I-485, and fingerprint appt? The JIT continues to be helpful in estimating these times but if additional info is available it would be appreciated!

Answer: (Provided by Stephen M Brickett, ACD, division IV)

A. Turnaround time for I-485 applications is generally within six months of receipt providing there are no problems with fingerprint scheduling and agency response.

20. Q. How long should an AOS applicant expect to wait before the fingerprint appt notice is received? If it's finally not received, what's the current inquiry procedure?

A. (Provided by Stephen M Brickett, ACD Division IV)

An applicant may fax an inquiry to (949) 389-3484 if a fingerprint scheduling notice has not been received within 120 days of the date of the receipt notice.

21. Q. Is data entry current on the CSC Address Change Form for I-90, I-485, I-751 and I-765 applications that have been faxed to date?

A. We are current with faxed COA updates. (Division IV).

22. Q. NAFSA is provided regular JIT updates. In the past NAFSA has been advised that the JIT report dates are that documented in the I-797 as the "received date". Is this still the case?

A. Division IV's reported JIT date to the public is oldest I-485 in the Center. It is not the oldest date we are adjudicating. I-485 applications out of necessity of the fingerprinting process, are almost immediately upon receipt of the FBI processing. Cases are, however, placed on the JIT shelf in date receipt order when agency checks are received.

23. Q. Can they ask LA District Office to issue the temp EADs to students who have been waiting for MORE THAN 5 MONTHS? At CSUF, we have several of these students, some of whom are in danger of losing their jobs!" Enough is enough" - students are paying \$100 for NO SERVICE!

A. If the student have a receipt notice showing a case is pending beyond 90 days, the districts will issue an interim EAD. The problem arises if these cases are part of the frontlog and have not being receipted in the system. No receipt notice has been generated and the districts will likely not issue an interim EAD