U.S. Citizenship and Immigration Services
Vermont Service Center
Q & A: Stakeholder Conference 9/20/2010

G-28 Issues

⇒ Often, the NCSC Vermont Service Center e-mail account is responding that there is no G-28 on file when an inquiry is made. This may happen even when the attorney has received an I-797 receipt notice and/or other correspondence on the matter. Is it possible that the G-28s are being separated from the files at some point in the process or that the presence of the original G-28 is not indicated in your systems by the contractor doing the initial intake?

✓ When the VSC receives an e-mail in the NCSC Follow Up account the officer researches the local systems and verifies the most current G-28 information. Without receipt numbers that fit this situation we cannot verify your concern.

Duplicate Approval Notices

⇒ Can you provide clarification on the process for receiving a duplicate approval notice from VSC when the attorney does not receive the initial approval notice? This seems to be an increasing problem when taken in conjunction of the increasing reports of attorneys not receiving the initial I-797 receipt notice and VSC systems indicating that there is no G-28 on file. It is our understanding that if it has been more than 30 days since the approval notice has been issued than the attorney must file form I-824 requesting a duplicate approval notice and pay the filing fee, even of the attorney has not received the initial receipt notice. Will the VSC consider waiving the fee if the attorney listed on the form G-28 submitted with the initial application has not received the receipt notice? Examples include, EAC-10-131-52251 and EAC 10-022-50976

✓ If you have not received the approval notice and less than 30 days has passed, you may contact the VSC and we will give you a complimentary duplicate approval notice. If more than 30 days has past since approval then you must file an I-824 for a duplicate approval notice with fee.

Posted Processing Times

⇒ There appears to be a lag of about a month and a half between the compilation of the processing time data and the publication of the processing time information for the service centers. Are there any efforts being undertaken to make these reports available more quickly?

✓ This issue is current under discussion with HQ . Additional information will be provided once we have further HQ direction.

⇒ To better set stakeholder expectations, would VSC consider indicating more accurate processing times on the report? For example, one month on L petitions and two months on H petitions do not seem accurate, leading to numerous inquiries on cases that are 'beyond normal processing times.'

✓ This also appears to be a Headquarters issue.

NCSC Issues

⇒ Recently supervisors at NCSC indicated that individuals should receive a response from NCSC or the Service Center within 15 days of an inquiry. Additionally, it was mentioned that if a person calls and waits 15 days and there is no response, then a follow-up can be made. The USCIS website still indicates that an individual should wait 30 days before a follow-up should be made. Can you clarify?

✓ The applicant/petitioner/attorney of record should wait for the 30 days to hear something. The new 15 day rule did not change this process.

EAD/AP Expedite Requests

⇒ Some of the other service centers have established expedite protocols for EAD and Advance Parole renewal applications, for example, when an application has been pending for 75 days or if there are urgent circumstances. Would VSC consider providing any special processes for EAD and Advance parole expedite requests?

✓ Cases that are outside of the normal processing times will be entertained for an expedite request. The USCIS website defines the procedure for expedite requests. VSC will entertain expedite requests when outside of normal processing time or under urgent circumstances.

Biometrics: "Homebound" policy

⇒ Are there any alternatives to obtaining biometrics in situations where the applicant is otherwise indisposed- i.e., where the applicant is institutionalized and is unable to go to an ASC, like sending someone to collect biometrics or accepting biometrics taken by state officials? If so, how would one go about requesting the alternative? Have there been any such accommodations in the past?

✓ As one of the Director's pillars, customer service is of indistinguishable importance, and the Applicant Support Center (ASC) Program has been a champion of customer service.

- USCIS realizes that not all customers can readily appear at a USCIS office for the processing of actions needed to complete the requested benefit. As a result, USCIS has developed and implemented outreach programs that bring the benefits processing to the customer.

- There are customers who are within driving distance of a local office but whose state of health or condition make it extremely cumbersome, if not problematic, to travel to a local USCIS office. In these cases, USCIS has developed a "Homebound" policy to provide benefit services for these special-situation customers. ASC ISOs routinely conduct outreach to homebound applicants who are unable to go to the ASC for biometrics. To prevent abuse of these homebound services, USCIS has established a detailed list of requirements that must be met before USCIS resources are committed to serving these customers.

- All Application Support Fingerprint Centers follow these policies and procedures in processing homebound requests for rescheduling.

- There are two types of requests for "homebound" rescheduling: 1) I-90 benefit applicants, and 2) all other benefit applicants.

I-90 Benefit Applicants:

- Per USCIS directive, I-90 applicants requesting "homebound" service must submit evidence of their inability to appear for their scheduled appointment at the ASC. The evidence must include a copy of the biometrics appointment notice, a description of the applicant's medical limitations, two passport-style photos, and police clearances from every place that the applicant lived for the past five (5) years.

- I-90 applicants must submit their requests in writing to the National Benefits Center (NBC) at the address below:

  - National Benefits Center
    Attn: Request for Homebound Service
    705B SE Melody Lane, Box 2000
    Lee's Summit, MO 64063

- If a request is received at the Lockbox, an Application Support Center (ASC), Field Office, Service Center, or National Customer Service Center (NCSC), the request should be forwarded to the NBC for evaluation. The NBC may send the applicant a letter detailing the above requirements before making a determination on the rescheduled request.

All Other Benefit Applicants:

- Local offices have established procedures for "outreach" programs whereby those offices make a determination and then, once warranted, provide benefits services to applicants seeking immigration benefits (other than I-90 benefits). Local offices fully the "outreach" programs to the fullest extent possible.

- USCIS is committed to providing customers with disabilities the same access to its programs, activities and facilities as customers without disabilities. In addition, applicants can now request accommodations for disabilities from the USCIS public website.
- Accommodations vary depending on the individual's disability and involve modifications to practices or procedures that allow applicants with disabilities to participate in immigration processes.

  - If an applicant is unable to use their hands, they may be permitted to take a test orally rather than in writing.

  - If an applicant is hearing-impaired, they may be provided with a sign language interpreter for a USCIS-sponsored training session.

  - If an applicant is unable to travel to a designated USCIS location for an interview, they may be visited at their home or a hospital.

- If an applicant needs an accommodation for their appointment due to a disability, impediment or impairment that affects their ability to demonstrate eligibility for the benefit

they're applying for, or if a physical disability prevents them from going to the designated USCIS location for their appointment, they can call the National Customer Service Center (NCSC) at 1-800-375-5283 (TDD: 1-800-767-1833) to request an accommodation. If the applicant is a naturalization applicant and either has or will be seeking an exception from the English and/or civics testing requirements, the applicant should not call the NCSC. To request an exception from the testing requirements, the applicant must submit Form N-648, Medical Certification for Disability Exceptions.

Important

- An applicant may request an accommodation for any interaction with USCIS including an ASC appointment, InfoPass appointment, interview appointment or naturalization ceremony. Additionally, an applicant can request an accommodation to attend a USCIS public event such as town hall meeting.
- If an applicant is initially contacting USCIS (e.g., for an InfoPass appointment or to attend a public event), the applicant may call the NCSC at any time. If an applicant needs an accommodation for an appointment in conjunction with an application (e.g., an ASC or interview appointment), the applicant should call the NCSC after receiving their appointment notice.
- The applicant should call USCIS even if they indicated on their application that they need an accommodation to ensure that it is fulfilled.
- An applicant should call USCIS to request an accommodation each time they will be visiting a USCIS office.

I-751

⇒ Are I-751 applications entered differently into the system than other petitions? Is there a way to make sure that both the applicant and the G-28 receive a copy of all USCIS correspondence?

✓ Notices for all of our I-751s are either sent to the applicant or the G-28 representative but not both.

- I751s are entered into two systems due to USCIS-wide system limitations. I-751 filings are assigned one receipt number for the actual I-751 that will be worked and managed in the Marriage Fraud Application System(MFAS) (this number appears on the I-751 receipt notice issues shortly after filing), and a second receipt number related to a "CR-I89" record in the CLAIMS system that is used to produce the new I-551 card once the I-751 is approved (this number appears on the ASC appointment notice issued a couple of weeks after filing).
- Due to the way the MFAS system produces notices, only one notice is produced per case. Receipt notices are addressed to the attorney (if there is one) OR to the Conditional Permanent Resident (CPR) if no attorney or representative was used. Approval letters contain the address of the CPR at the top and the address of the attorney or representative (if there is one) at the bottom. Our outgoing mail unit has instructions that if there is an attorney address at the bottom of the notice, it is to be

folded so that the notice is mailed to that address. ASC appointment notices go to the CPR or the address that is indicated on the I-751 as the mailing address.

- o If a representative has been named, pursuant to an acceptable Form G-28, then the representative should receive any Request for Evidence (RFE).

- o When an I-751 is approved, and a new I-551 card is produced, it will be sent to the LPR, because this information comes from the CLAIMS system. The part of CLAIMS that produces the cards does not accommodate a representative address in addition to the LPR's address.

- o VSC has a request in to HQ Office of Information Technology for a modification to address this issue. However we are being told that until there are major updates and upgrades to case management systems within USCIS (Transformation), this likely will not change.

Referrals for Interview

⇒ Has VSC started referring an increasing number of I-751 petitions with waiver requests to the DO for interview?

✓ No, the policy for referring I-751 petitions, Joint or Waiver, has not changed. The overall referral rate at the VSC has been between 8.4% and 10% of total actions for the past two years. In general, just by the nature of the type of case, the rate of referral for interview for waiver cases tends to be higher.

⇒ Is it possible for VSC to clearly indicate the amendment when transferring so the DO would consider the more straightforward grounds of divorce when appropriate?

✓ VSC interprets the April 3, 2009 memo to allow the amending of an I-751 from a Joint (A or B) to a Divorce (D) filing provided the CPR submits the divorce decree within the 87 day timeframe allowed when an RFE is issued for evidence of the termination of the marriage. We understand that the language in the AFM currently requires that all waiver grounds that apply should be requested and considered at the time of filing of the I-751. However, when only one waiver ground is requested at the time of filing, and a petitioner seeks to then change the waiver ground during the pendency of the petition, current USCIS standard operating procedure directs that such petitions are better handled in an in-person interview to ensure that the intentions of the petitioner are clear and to avoid multiple requests for evidence to address additional issues that arise from the amended basis for filing. If an interview is warranted, the petition is forwarded to the field office with complete documentation, including the documentation requesting to amend the waiver basis for filing and a clear indication of that request stated in the relocation memo contained in the file. VSC is currently in discussions with HQ Service Center Operations on this issue.

Student Issues

SEVIS II

⇒ At the April 6, 2010 Stakeholder's meeting VSC indicated that you had no SEVIS II updates. Do you have any SEVIS II updates at this time?

✓ Since the inception of SEVIS II, the development timeline has been driven by concerns with SEVIS I's operational and security vulnerabilities. SEVP updated SEVIS I to mitigate many of those issues. The aggressive schedule proved to be counter-productive. It constrained the ability to build a new system that replicates the functionality of the current system while providing an enhanced design with more flexibility, robust reporting, a one person – one record approach and a paperless process. Therefore, ICE decided to re-baseline SEVIS II.

o This description of SEVIS II's "enhanced design" is very similar to USCIS's description of Transformation's goals, and the two projects will likely be inter-linked. We do not have a new time schedule from SEVP, but at the NAFSA conference in Kansas City, it was suggested that the implementation of SEVIS II would not occur before 2012-2013 at the earliest.

Student Travel

⇒ AILA has received reports that SEVIS is updated when an F-1 student is the beneficiary of an I-129/H-1B petition and that this can cause them to be denied entry when they attempt to travel on their F-1 student visa stamp. Can you provide guidance for students wishing to travel after an H-1B petition has been filed on their behalf?

✓ When F-1 students enter the United States on a student visa, they will usually be admitted for the duration of their student status. That means they may stay as long as they are a full-time student, even if the F-1 visa in their passport expires while they are in the United States. In order to travel outside the United States and return, however, students need to be in possession of a valid student visa. In addition to a valid student visa, students also need to submit a SEVIS-generated Form I-20 which is provided to them by their school. The student and DSO must have signed the Form I-20 within the last 12 months.

o For students participating in post-completion OPT the regulations at 8 CFR 214.2(f)(13)(ii) state that a student who has an unexpired EAD issued for post-completion OPT and who is otherwise admissible may return to the United States to resume employment after a temporary absence. The EAD must be used in combination with an I-20 ID endorsed for reentry by the DSO within the last six months.

o The EAD of an F-1 student covered under a cap-gap extension, however, is considered expired. Consequently, if a student granted a cap-gap extension elects to travel outside the United States during the cap-gap extension period, he or she will not be able to return in F-1 status. The student will need to apply for an H-1B visa at a consular post abroad prior to returning. As the H-1B petition is presumably for an October 1 or later start date, the student should be prepared to adjust his or her travel plans accordingly.

- If it appears that the student is no longer working for the OPT employer, and wishes to enter to travel or vacation until the H1B job begins, the student will likely be denied entry, as she or he is no longer in a valid student status.

- If the student is in a valid student status, and has the proper documents, a pending or approved I-129 H-1B petition should not affect his or her ability to travel. Because of occasional problems in the connection between USCIS's Claims system and SEVIS, the DSO should check that the student's status is still active in SEVIS. If it has been terminated incorrectly, the DSO should contact the SEVIS helpdesk for a data fix, as this could cause the student problems upon returning to the US.

- Please note that particular questions about student travel should be asked of ICE or DOS, as they have the authority in this area.

Temporary Protected Status

Interplay between TPS and H-1B status

⇒ INA section 244(a)(5) states that "The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this Act." INA section 244(f)(4) provides that TPS is a lawful status for purposes of adjustment of status or change of status. This is also clarified in the USCIS Q&A dated 8/14/08 announcing the 18-month extension of TPS for Nationals of Sudan.

- Are TPS benefits granted in conjunction with H-1B status or can the individual only hold the benefits of one status at a time?

✓ TPS is not granted in conjunction with H-1B. A separate application must be filed and the applicant must meet the TPS eligibility requirements. We cannot make someone choose between TPS and another nonimmigrant status. If the individual would like to hold TPS and H-1B status, he/she may do so, but the individual will need to comply with the terms and conditions for each status. For TPS, the individual must timely register and re-register (if extended) and not take any action that would make him/her ineligible (e.g. engage in criminal activity; depart the U.S. without appropriate authorization from DHS). For H-1B status, the individual must comply with the terms and conditions of employment with the H-1B employer.

- If the individual chooses TPS over H-1B and TPS is terminated, the individual may be able to change back to H-1B status if the H-1B requirements are met and the H-1B time limits have not been exceeded. If the individual chooses H-1B over TPS and the H-1B status ends while TPS is still effective for the individual's country of nationality, the individual can still apply for TPS under the late initial filing provisions (LIF). See 8 CFR 244.2(f)(2). However, the individual must be sure to apply for TPS within 60 days of the end of his or her H1-B status in order to meet the requirements regarding LIF for TPS purposes. See 8 CFR 244.2(g).

⇒ Where an individual with TPS has an approved change of status to H-1B, may they still use the EAD card issued based on TPS, and subsequently resume working the H-1B without filing a new H-1B or by traveling and being readmitted in H-1B status?

✓ If the individual wishes to maintain H-1B status, he/she must comply with the terms and conditions of the approved H-1B petition. Once the individual falls out of H-1B status, he/she must either request a change of status to H-1B or be admitted in H-1B status in order to once again obtain H-1B status.

⇒ If an individual in H-1B status who has TPS benefits travels on the TPS-based Advance Parole, is the individual still considered to be maintaining H-1B status and can he/she continue to work for the H-1B employer upon being paroled into the U.S.?

✓ If the individual who was in H-1B status is paroled into the U.S. based on TPS-related advance parole, he/she is not currently in H-1B status. If the individual has approved TPS and has a valid employment authorization under TPS, he/she can work for any employer. If the individual does not have evidence of employment authorization and has not been admitted into H-1B status, he/she would not be eligible to work for the employer until the appropriate employment authorization has been obtained.

⇒ If an individual granted TPS fails to timely re-register during any designated re-registration period, is the withdrawal of TPS automatic and does that individual revert back to the nonimmigrant status he/she previously held?

✓ The withdrawal of TPS is not automatic. However, once this comes to the attention of USCIS, an ITD (intent to deny) will be issued providing the individual with the opportunity to file a late re-registration with good cause. If there is no response, or the good cause is not met, then TPS will be withdrawn. The individual will then revert back to the nonimmigrant status or other status s/he previously held, provided that the individual has maintained such status. [The person doesn't just "revert back" to the prior NI status if s/he hasn't continuously maintained such status, too, while in TPS.]

⇒ If the individual files a late re-registration for good cause, what is his/her status while the late re-registration is pending?

✓ The individual still technically has TPS. However, TPS will be withdrawn if good cause is not met.

⇒ Is there an official position on whether or not 244(f) of the INA excuses the lack of an alien's lawful admission (EWI) and maintenance of status as required for a COS under 8 C.F.R. 248.1(a) and (b)? The 05/26/09 unlawful presence memo and the 8/14/08 Q&A on the 18-month extension of TPS for Nationals of Sudan could be understood to mean that lack of admission and/or failure to maintain status prior to the grant of TPS is forgiven when applying for a COS from TPS.

✓ To the best of our Knowledge, DHS' current position remains that INA, 244(f) does not "excuse" an alien from meeting all relevant requirements for change of status or

adjustment of status. That statute only means that during the time the alien is in valid TPS status, that time will be treated as lawful nonimmigrant status for purposes of COS or AOS. It does not cure an alien's lack of lawful admission (EWI) or any periods of unlawful presence that the alien may otherwise have had. See, e.g., *Serrano v. Holder*, 2010 WL 2010007 (N.D. Ga. 2010)(slip copy)(TPS beneficiary seeking adjustment of status failed to meet requirement to have been inspected and admitted, or paroled under INA, 245(a)). In the event DHS, EOIR or the courts reach a different interpretation of the law, USCIS will notify stakeholders and will adjust its adjudications accordingly.

⇒ When TPS is "terminated" and the individual may be able to "change back" - does "change back" mean filing for a change of status?

✓ If the alien has never been granted H-1 B status and then seeks it after TPS has terminated, the sentence shouldn't read "change back", but rather "may seek" H-1 B status. However, filing a COS form doesn't seem the applicable route once the alien no longer has TPS. If the alien has allowed his TPS to expire before filing the COS, then he probably needs to go through all the usual steps to get H-1 B status from abroad after approval of his employer's Form I-129. I understand, though, that if the ending of the alien's TPS status occurred suddenly, and through no fault of the alien's, and he had no chance to file a COS form while in TPS, s/he may qualify for an exception to the general rule that the alien must still be in a lawful non-immigrant status to file for COS. However, since we usually give lots of forewarning before a country's termination of TPS, it seems unlikely that the alien wouldn't have sufficient opportunity to file for COS to H-1 B if s/he otherwise qualifies for that status.

⇒ When TPS is "withdrawn" and the alien reverts back to the nonimmigrant status (or lack of status) he/she previously held - does this mean that they automatically revert back or should a change of status be filed?

✓ When TPS ends for an alien (either by termination of his country's designation or withdrawal) and s/he still maintains some other lawful status, the alien does not need to do anything else, except continue to meet the requirements for maintenance of that other status, in order to retain such other status. For example, if an alien has both valid student status and TPS, and TPS ends, the alien does not need to file a COS to keep maintaining student status. The individual does need to keep meeting the student status requirements, of course. Another example would be where an alien has both valid H1-B status and TPS. The alien does not need to file a COS to keep maintaining the H1-B status when TPS ends. However, as with the prior example, s/he does need to keep maintaining the H1-B status.

New H-1B and L-1 filing fees

⇒ It is our understanding that VSC and CSC have been instructed to hold all H-1Bs and L-1s filed as of 8/14/10 pending creation of a standard RFE to inquire whether the employer is covered by the new filing fees under P.L. 111-230. Has this standard RFE been implemented? Has VSC started to issue RFEs on petitions filed since 8/14/10? In this interim period, will VSC accept a statement from the attorney that the petitioner is not subject to the new fees or does the statement have to be signed by the petitioner?

✓ The VSC is no longer holding H-1B and L-1 petitions due to the new fee under P.L. 111-230. An RFE is being issued on all cases where the new fee was not attached and it is not clear that the petitioner is exempt the fee. The VSC will accept the attorney's statement as long as there is a properly executed G-28 in the record and the statement explains why the petitioner is exempt. It is not enough for the attestation to say the petitioner is exempt. The attestation does not need to be signed.

H-1B Issues

Cap Subject FY 2011 Filings

⇒ Can you provide an update on the cap-subject FY2011 H-1B petitions received during the initial filing period in April, 2010? How many petitions did VSC receive during this petition? How many are still pending?

✓ 10,400 cap cases were received during the first five business days in April. The total number of cap filings for the month of April was 14,000. Our goal is to have the April cases completed before October 1, 2010. Nearly all of the initial 10,400 cases have received an initial adjudication.

IT Consulting Companies

⇒ It is our understanding that end-client letters are not absolutely necessary when filing H-1B petitions for IT consulting companies. Please confirm whether other evidence such as affidavits from co-workers, security badges, screen shots of the projects for the end-users, photos of the work-site with the employee on the premises, e-mail communications about the project, etc can be used in lieu of end-client letters. Please provide guidance as to what other evidence can be used to show that the beneficiary will be working on the project for the duration requested.

✓ The January Employer/Employee memo and our current RFEs give numerous examples of evidence that may be acceptable to establish the petitioner's right to control the beneficiary. Sufficient information from an end client can be a strong piece of evidence to establish the existence of work for the beneficiary and the petitioner's right to control the beneficiary's employment, however it is not the only evidence that is relied upon at the VSC. USCIS considers the totality of the evidence submitted to establish an employer-employee relationship, the work assignment with an end client, and the duration of such work assignment. While end client letters may provide important and unique insight into assessing an employer-employee relationship such as describing the employment relationship between the beneficiary and the end client, the ultimate work performed by the beneficiary, the and the duration of the end client work, end client letters are only one type of documentary evidence to be considered. USCIS is aware that some end client companies have a policy that prohibits them from confirming the existence of contract employees. In addition to the suggested items above, petitioners could provide a copy of the contract or contracts that relate to the end client employment, the related work order(s), invoices, or a statement from the end client addressing their policy on

confirming contract worker status. Regardless of the quantity or types of documentation provided, USCIS will consider the totality of the evidence.

Temporary Leave Issues

⇒ What happens if an H-1B worker on temporary authorized disability is cleared to resume work, but only on a part-time basis at first? Does USCIS require that an amended I-129 H-1B petition and/or LCA be filed? Or does USCIS not require an amended petition because it is a medical disability situation not a voluntary reduction in hours? Does it make any difference if the LCA and I-129 were set up for hourly wage payments instead of a set salary?

✓ An amended petition is required whenever there is a material change in the terms and conditions of employment. USCIS is working on guidance to officers on what constitutes a material change. Department of Labor (DOL) regulates when a new LCA must be filed. USCIS defers to DOL on when a new LCA must be filed.

Documenting Eligibility for Extensions of H-1B status beyond 6 years under AC21 Section 106(a)

⇒ A print out of the DOL webpage showing that the Labor Certification application is still "in process" is currently the best way to document a pending labor certification application is pending. However, where a Request for Review/Reconsideration or Appeal is pending, DOL has not consistently updated the case status system to reflect that the case is still pending. In circumstances where there have been several communications with DOL and no change of the online web status to show that the case is still in process and that the Labor Cert is not yet final, will VSC accept copies of email correspondence or affidavits from counsel that this filing occurred along with evidence of the proof of the appeal and delivery to DOL?

✓ VSC has accepted, and will continue to accept, copies of email correspondence or affidavits from counsel or the employer that a request for review/reconsideration or appeal on a denied labor certification has been filed with DOL. In addition, adjudicators have been asked to elevate these cases to the attention of a senior adjudicator.

Extensions of Previously Approved Petitions Without Change

⇒ In the Q and A for the April 6, 2010 Stakeholder's Meeting, VSC indicated that it may approve an H-1B extension despite the failure to maintain a valid employer-employee relationship between the petitioner and the beneficiary if it can be demonstrated that the petitioner did not meet all of the terms and conditions through no fault of their own. Can you elaborate on this? In what situations can it be determined that the failure to maintain a valid employer-employee relationship was not the fault of the petitioner.

✓ These situations are adjudicated on a case-by-case basis. As such, it's not possible to provide a list of examples.

Extensions of H-1B Status for Beneficiaries Placed at Third-Party Worksites

⇒ Previously, it was sufficient to show W-2s and paystubs as evidence of the maintenance of status when filing for H-1B extensions for individuals placed at third-party worksites.

Now, VSC is issuing requests for evidence of all work performed during the past three years. These requests seem overly burdensome. Can VSC clarify the basis for these requests?

✓ This is not a routine request, but could be used if compliance issues arose during the previous H-1B approval period. Please provide examples of when VSC has issued requests for evidence of all work performed during the past three years and the reason for such request was not articulated.

H-1B Extension Validity for Beneficiaries placed at Third-party Worksites

⇒ In third party placement situations, USCIS is utilizing the Contracts/Client letters to determine that there is "qualifying employment" for the requested validity period. In many instances where clients are unable or unwilling to commit to a Statement of Work beyond 6 months we are seeing H-1Bs being approved for 1 year. Can VSC use evidence of past employment history in the form of W-2s and paystubs (for extensions with the same employer) as a test for future "qualifying employment?" Please advise us of the criteria USCIS is using in deciding the validity period to be granted for H-1B requests, keeping in mind that H-1B extensions are costly to petitioners, and shortened validity periods can lead to a number of consequences, such as the expiration of drivers licenses tied to I-94 validity for H-1B beneficiaries and their dependents.

✓ When an employer-employee relationship is established in a third-party employment situation, USCIS grants an approval period to cover the amount of time for which the third party work assignment is established. To accommodate third party work assignments that are documented for less than one year, USCIS will provide a one-year approval. Past employment history may not be used to establish future employment.

J- Waiver issues

Request to streamline/alter VSC policy regarding J-1 waiver approval notices on behalf of foreign medical graduates.

⇒ VSC has jurisdiction over J-1 waiver applications filed by foreign medical graduates seeking a waiver of INA 212(e) based on a commitment to work for 3 years in a medically underserved area of the U.S. (commonly referred to as Conrad waiver cases). Physicians must complete the Conrad waiver commitment in H-1B status. Because those H-1B petitions are exempt from the H-1B cap, they must be filed with CSC. As a result, CSC must coordinate final approval of the J-1 waiver (I-612) with VSC before it can approve the petition. Previously, CSC would accept the Department of State's recommendation letter for the J-1 waiver in support of the H-1B petition and then work with VSC to coordinate approval of the I-612. However, recently, the CSC premium processing unit has instead begun issuing RFEs for every case in which the DOS recommendation letter is submitted, asking for a copy of the USCIS approval notice for the J-1 waiver before they will approve the H-1B petition. In at least two cases, the failure to produce the I-612 notice in response to the RFE has resulted in denial of the petition (WAC-10-184-51557; WAC-10-185-51038). In other cases, the CSC is working with VSC to coordinate J-1 waiver approval only after the attorney contacts the CSC in response to the RFE. This leads to weeks of administrative delay in these cases filed on behalf of physicians who

are urgently needed to begin work in underserved areas in service of their J-1 waiver commitment. We respectfully request that VSC

- prioritize processing of Conrad waiver cases;
- proactively communicate the approval information to CSC, which has jurisdiction over the H-1B petitions filed on behalf of the physicians, in a manner that efficiently links notice of the waiver decision to the H-1B filing at CSC on the physician's behalf; and
- provide a receipt number of I-612 Conrad waiver application to counsel immediately, to facilitate counsel's ability to track the waiver decision in aid of CSC's and VSC's activity on these cases.

o We ask for special consideration of these issues, since they all involve severe delays of health care to citizens in medically underserved areas.

✓ The VSC does prioritize the processing of I-612 waivers and has a target goal of 60 days for processing. We routinely work hand in hand with the California Service Center to process waiver cases relating to premium filings at their office. The VSC has been issuing receipt notices to applicants and their attorneys since April.

o The primary issue here appears to be CSC processing of specific I-129s and not the VSC process in general.

Request to include full employer and facility information on J-1 waiver (I-612) approval notices on behalf of foreign medical graduates.

⇒ We have been informed by Karen Robinson at the Department of State's Waiver Review Division (WRD) that, at the request of USCIS, WRD includes in its Conrad waiver recommendation letters the name of the facility at which a Conrad waiver physician will perform the J-1 waiver commitment, rather than the name of the sponsoring employer, i.e., the ultimate H-1B petitioner. This policy is causing confusion at the CSC in situations where the sponsoring employer has a different name than the facility at which the Conrad waiver physician will work. Since the employer is not named on the WRD letter (but rather only the facility, which has a different name), CSC is uncertain whether employment by the H-1B petitioner is actually covered by the J-1 waiver. To resolve this problem, we would ask that VSC please ask WRD to list the name of both the sponsoring employer and all facility worksites at which the physician will be employed, or simply list the addresses of the covered worksites along with the name of the sponsoring J-1 waiver employer. USCIS will then be able to match up the employer name and the worksite locations listed on the H-1B petition to verify that all are covered by the J-1 waiver. When we approached Karen Robinson at WRD about re-formatting the WRD letters, she replied that she could not change the format because WRD's existing format had been requested by USCIS. So it appears that a request for a formatting change must originate from USCIS.

✓ We are aware of this issue occurring more frequently than in past months/years, and we will be working with HQ and the CSC to take care of this issue.

⇒ The regulations found at 8 CFR 214.2(l)(5)(ii)(G) state that if an alien admitted under an approved blanket petition will be performing different job duties than those listed in the approved Form I-129S, the petitioner shall complete a new Certificate of Eligibility and sent it for approval to the director who approved the Blanket petition. Please detail how to accomplish this filing with VSC. Please kindly detail the appropriate Form to utilize to request approval of the new job duties. For example, should a new Form I-129S be filed? Is a fee required? If no fee is required, please provide any advice for ensuring that the filing is not returned for lack of fees. Please additionally confirm how approval of the new job duties will be evidenced. For example, upon approval will the company receive a Form I-797, Approval Notice or an endorsed copy of the filed Form I-129S?

✓ The Form I-129 should be filed with the appropriate fee when an alien admitted under an approved blanket petition will be performing different job duties. An approval notice on Form I-797 will be issued if the petition is granted.

I-102 Applications

⇒ AILA members are reporting that they are receiving boilerplate RFEs on various I-102 cases requesting information that was specifically mentioned in the attorney cover letter. Are I-102s being used for training new examiners?

✓ The I-102 adjudicators are new adjudicators. Training, round tables, and routine meetings stress the importance of not asking for documentation already submitted. If the documentation already submitted is deficient, then adjudicators should articulate the deficiencies. Please provide examples. We have shared this stakeholder question with the I-102 adjudicators.

⇒ What options does a practitioner have if an I-102 is denied but the I-94 clearly exists? After paying the filing fee for a replacement I-94, the Service has responded that the record cannot be found and the I-102 has been denied.

✓ Clear evidence of an issued I-94 is a copy of such I-94 or the I-94 number *and* the I-94 number can be matched in one of several arrival databases. Entries prior to 2003 are archived and are more difficult to match than entries made in recent years. Furthermore, entries from the 1980's and 1990's have proven difficult to match in our electronic databases.

TN Issues

⇒ Members have reported receiving TN approval notices listing a different job classification than the one for which employment authorization was sought. For example EAC-10-197-51398 where the individual was to be employed as a Graphic Designer, but the approval notice stated the individual is going to be a Writer, Technical Writer, etc,. The concern is that the individual will be turned away when questioned by Customs and Border Protection. Is there a mechanism for getting approval notices corrected in this situation?

✓ Perhaps this question arises because TN job codes are different from H-1B job codes. For example, the TN job code for a graphic designer is 120 whereas the H-1B job code for this occupation is 141. TN job codes do not follow the three-digit Dictionary of

Occupational Titles job codes that are used for H-1Bs. The receipt number provided is for an L1 petition. Please check the receipt number and we will follow up on this.

O & P Petitions

⇒ 8 C.F.R. Section 214.2(o)(2)(ii) states that the evidence to accompany an O petition should include copies of written contracts between the petitioner and alien beneficiary, or if there is no written contract a summary of terms of the oral contract under which the alien will be employed. The O page of the USCIS web-site, updated on August 20th, 2010, states that UCIS will accept an oral contract, as evidenced by the summation of elements of the oral contract and that the evidence that can be used to evidence the oral contract may include, but is not limited to emails between the contractual parties, a written summation of the terms of the agreement, or any other evidence which demonstrates that an oral contract was created. Can VSC confirm that it will allow petitioners to submit a summary of the oral contract rather than the evidence beyond what is required in the regulations the regulations outlined in the new O page of the USCIS web-site?

✓ The VSC does not require evidence beyond that required by regulation.

⇒ Where the regulations specify that evidence of a summary of the terms of an "oral agreement" may be submitted if there is no written contract, VSC will not require evidence of an "oral contract". 8 CFR §214.2(o)(2)(ii)

✓ VSC does not specify the form of the summary of the terms of the oral agreement under which the alien will be employed. Petitioners may submit any evidence that demonstrates the agreement.

⇒ Where the regulations specifically require a "contract" or "contractual agreement" but do not specify the form of the contract, VSC will accept either a written contract or evidence that there is an oral contract. 8 CFR § 214.2(o)(2)(E)

✓ As indicated on the USCIS website, various forms of evidence of an oral contract may be acceptable. As long as we have some acknowledgement that the beneficiary has accepted the terms, the regulatory requirements can be satisfied.

Owners as Beneficiaries

⇒ How is the Service treating cases where the O-1 sponsoring company is owned either fully or partially by the beneficiary? At the recent O and P Stakeholder meeting on July 20th, 2010, it was made clear by the Service that the January 8, 2010 Neufeld H-1B memo should not be applied to other visa categories, including O-1 petitions. Nonetheless, we have recently been seeing RFEs that specifically state that a beneficiary cannot have an ownership interest in the company that is sponsoring the petition.

✓ The January 8, 2010 Neufeld H-1B memo does not apply to the O class.

o An O alien may not petition for himself or herself. 8 CFR §214(o)(2)(i)

- o USCIS acknowledges that a sole stockholder of a corporation can be employed by that corporation as the corporation is a separate legal entity from its owners and even its sole owner. However, where there is no separation between the corporation and the alien (the alien signs his/her own petition because they are the sole owner) then the petition may not be approved as this would essentially be petitioning for him/herself. It is not the percentage of control that the alien has in the corporation, but rather whether a true separation exists between the legal corporate entity and the alien.

O & P Processing Times

⇒ Can you provide an update on O and P processing times? How long should practitioners wait before making an inquiry on an O or P petition through NCSC?

✓ Processing timeframes are available on the following link.

- ➢ https://egov.uscis.gov/cris/processTimesDisplayInit.do

✓ and P petitions should have an action taken within two-weeks of receipt.

- ➢ After you receive a receipt notice, please first check your case status on the website at this link:

- ➢ https://egov.uscis.gov/cris/Dashboard/CaseStatus.do

✓ If you have not received an approval, denial, request for evidence, or some other notice of action from VSC within 14 days of the date of your O or P receipt notice, you may make an inquiry through NCSC.

O-1 Artists

⇒ Schools and Universities will occasionally hire artists to teach classes because of their extraordinary ability as artists. The term "arts" is defined in 8 C.F.R. Section 214.2(o) as 'any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. We have seen denials of O-1 petitions where the VSC is asking for evidence for extraordinary ability as a teacher. Please clarify when an art teacher can be considered to be working in a 'field of creative activity or endeavor'

✓ The O-1 classification is divided into the O-1A (for those in the fields of science, education, business, or athletics) and the O-1B (for those in the field of art).

- o The continuation of the term "arts" in 8 CFR 214.2(o)(3)(ii) as mentioned above further states:

  Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

- Generally, an individual coming to the United States to teach, no matter the curriculum, is considered to be in the field of education, as their main objective is to teach. Thus, the teacher needs to meet the requirements of the O-1A classification.

- With that said, I-129 Petitions filed for teachers in the O-1B classification will be reviewed and may be deemed approval on a case by case basis.

L-1 Approvals for Canadians

⇒ What steps should be taken to obtain an I-797 approval notice from VSC following a Canadian L approved at the Border/Port of Entry. In cases where it has been months since the individual was originally admitted and no I-797 has been issued, what assistance can be provided. In some instances individuals with multiple entry I-94 arrival/departure records are regularly stopped by CBP and asked for the I-797. How long should an individual wait after the initial admission as an L-1 before requesting assistance through the NCSC?

✓ Generally, the I-797 approval notices are issued within a few weeks of receipt of the approved petition from the Border/Port of Entry, but in some instances the petitions are returned to the Border/Port of Entry for specific updates. If 30 days have elapsed, however, since the petition was granted, you may contact the NCSC at 800-375-5283 to follow-up.