

**NSC Stakeholder Teleconference  
April 14, 2011**

These notes were taken by NAFSA members and staff during the conference call. They reflect information provided by government officials in an informal setting. They are best used as general information concerning current agency processes and policies, and it is important to recognize that agency processes and policies are subject to change. NAFSA notes and summaries do not constitute legal advice.

**General comments: Warren Hansen new NSC Deputy Director. Marilyn Wiles retiring April 29. Warren will serve as Acting Director. Recent meetings with TSC to achieve consistency in adjudications. The next NSC stakeholder conference call will take place May 12, and the focus will be Refugee/Asylee issues.**

**I-140:**

1. Why is the processing of EB-2 NIW immigrant petitions taking only about 2 months, and the processing of EB-1 outstanding professor/researcher immigrant petitions taking about 5 months?

**Posted processing times at 4 months, standard processing time. Stakeholders noted that TSC processing times significantly shorter than NSC times.**

2. Are all the supporting documents for an EB-1 extraordinary ability or outstanding professor/researcher immigrant petition being scanned at the lock box? If so, how should these supporting documents be prepared? For example, should all staples be eliminated and no tabs used? Should colored paper and highlighting not be used?

**HQ may put out memo on this topic. Highlighting can cause scan problems. Tabbed material comes through “somewhat intact,” so use of tabs continues to be helpful, and contractor is taking additional steps to ensure that tabbed material is not disassembled. Colored paper can be helpful. NSC added that it can be helpful to place colored page on top of each section, matching the tab, so that if disassembled, NSC can reassemble. In other words, if you have an Exhibit A, you may add a cover sheet for that exhibit indicating “Exhibit A” and a tab indicating “Exhibit A.”**

3. Is the USCIS website accurate when it lists a 4 month adjudication time for all I-140 applications at the NSC?

**Slight modification coming, since NSC is at 4.5 – 5.5 for all except 5.5 - 6 for NIWs.**

4. An RFE requesting copies of the recruiting summary and resumes supporting the PERM application was recently brought to the attention of the Liaison Committee. During an exchange of emails with the NSC staff, it was suggested that the information was relevant to a determination pursuant to 20 CFR §656.30(d). This regulation permits the revocation of an approved PERM application if fraud is uncovered by either DOL or DHS. Are there generalized factors that would cause the examiner to request documentation to make a fraud determination? If there are generalized factors that are reviewed, please explain why these factors are reviewed by the NSC and not by the DOL in the first instance. If there was specific information in the file that indicated possible fraud, why wouldn't the RFE provide the information to the petitioner and counsel so that they can respond directly to the evidence perceived to indicate fraud. Basic due process requires that petitioners be provided an opportunity to respond to or explain adverse evidence before a finding of fraud is entered.

**NSC may develop lines of questioning if fraud indicators are noted, but if there's adverse information unknown to the petitioner, it will be made known in a Notice of Intent to Deny issued to the petitioner. Stakeholders added that RFE was for recruiting materials, and that if there's an indication of fraud, it should be presented when the additional evidence is requested. What would cause NSC to look behind the labor certification and request information related to fraud? Looking at fraud indicators is a significant portion of the adjudicator's role. Often NSC sends RFEs and the response does not result in a fraud-related NOID. In this case, not clear to the officer whether there was a fraud indicator or not, so it was the officer's discretion to request additional information to explore further. NSC is reluctant to discuss, on this call, what might raise fraud concerns. Also, often such RFEs for recruitment materials are not fraud-related but just an attempt to better understand the job requirements, etc.**

#### **I-485:**

1. Is there a recommended process for transferring a pending I-485 application (currently at the NSC) that is linked to an employment based petition (approved I-140) to an I-130 family based case when the priority date becomes current for this category? (If it is not an immediate relative petition.) Is the request to substitute the I-130 for the I-140 properly filed at the NSC, or should the request be filed with the National Benefits Center? If the request is to the NBC, should additional notice be provided to the NSC?

**Applicant may transfer a pending I-485 to an approved I-130 if “visa immediately available.” Applicants should submit written request to Service Center where I-485 is pending, and it is helpful to submit copy of I-130 approval notice. The Service Centers will coordinate the move of the I-485.**

2. Is the USCIS website accurate when it lists a 4 month processing time for all I-485 applications at the NSC?

**Difficult to say that all are processed within 4 months. Concurrently-filed cases are adjudicated in sequence by officers (in other words, one officer handles the I-140 and another the I-485) so plan to wait through the processing time for both. If the “visa is immediately available” and your EB-related I-485 has a lag beyond the posted time, please inquire through NSCS. The posted times are to be considered only a general guide.**

**Concurrent I-765/I-131:**

1. Will the fact that advance parole will now be stated on the EAD (when the I-131 & I-765 are concurrently submitted) result in a faster, or slower, processing time?

**Processing time is not expected to change for the combined benefit or for each form.**

2. A member reported an RFE for an I-765, based on I-485 eligibility, which read “CIS records indicate that you and your spouse’s VISA has expired on March 18, 2011. However you and your spouse’s I-94 are current and valid till December 31, 2013. Please submit copies of you and your spouse’s newest VISA.” Eligibility for an EAD does not depend on a valid visa. Indeed, even the expiration of status for someone with a pending I-485 should not determine eligibility. Why would an RFE request this information? The RFE was responded to and the case was approved. The receipt number is LIN-11-903-68650.

**This seems to have been a misunderstanding on the part of the adjudicating officer, and NSC has provided additional training, so stakeholders should not continue to experience this problem.**

3. Can you please provide an update on I-131 Advance Parole and I-765 EAD application processing times? The committee continues to receive occasional inquiries regarding I-765 applications that have been pending beyond 90 days. Please provide updated instructions on the preferred means to bring these cases to the NSC's attention.

**Initial (c)(9) EADs are taking about 75-80 days, and (c)(9) EAD extensions are taking about 45-days. If you have an application beyond posted processing time, submit inquiry through NCSC.**

4. The committee receives frequent inquiries concerning EADs issued for only one year when the applicant is the subject of visa retrogression. What are the criteria for the determination of whether the card is valid for one year or two years? If the card should

have been issued for two years, is there a preferred means of bringing these cases to the attention of the NSC so that a new and corrected card can be issued?

**NSC needs incorrect card back before correction can be issued, so return the original card to NSC with letter explaining the problem. Correction should take place promptly.**

5. Please provide an update on the combined EAD/Advance Parole documents. Is the NSC currently issuing the combined documents? Are there any particular steps an applicant should take to get the combined cards beyond submitting the applications at the same time?

**Yes. Now issuing combined documents. No additional steps required by applicant. Lockbox has assured NSC that applications will stay together, and that's what's important for NSC. If the applications are mailed separately they will be processed as two separate applications and not adjudicated together in one document.**

#### **Technology Issues:**

1. Members are reporting an increase of cases that are receipted, but not accessible through the online case status system. Two examples are LIN1190213566 and LIN1190297042. What steps can be taken to make sure that a receipted case appears in the case status online system?

**For some cases, there have been delays in showing up in case status system, and it's a central issue that can't be corrected at NSC.**