California Service Center Stakeholders Meeting

Wednesday, July 29, 2009

The California Service Center Stakeholders Meeting was coordinated to include many other groups, including NAFSA. Though NAFSA submitted questions from members for consideration by CSC, answers were not provided during the meeting. Below is a summary from the open Q & A session.

Open Q & A from attendees:

1. Q: I-539 RFE address?
   A: The address listed on the RFE and website: 24000 Avila Rd., Laguna Niguel, CA 92677

2. Q: I-751 processing times not on website. Did not appear on last two updates.
   A: Will talk to SCOPS – they are the appropriate channel since they produce the processing time reports.

3. Q: What to do if case approved with wrong DOB?
   A: If not CSC error, then re-file with fee.

4. Q: Can CSC see if a J-1 wavier is approved by the DOS?
   A: No - CSC can't see DOS approvals for NOSes. Approval must come back from DOS first. If DOS doesn't concur with waiver, CSC will not approve the I-612.

5. Q: For an I-751, how does CSC want to be notified of a divorce proceeding?
   A: If the filing indicates that divorce is pending, CSC will RFE for evidence (divorce decree). If CSC is not aware of divorce proceedings, have to file another I-751.

   Rebuttal: Some memo in place that covers this situation…

   A: Maybe don't send a new I-751, maybe call NCSC…?

6. Q: Can a site inspection be done for all people at the site (a whole parish)? And can petitioner request for site inspection prior to filing petition?
   A: No. Also, can't file Premium if no visit first.

7. Q: If there is no LCA available, is there any other recourse in order to file an H-1B?
   A: No. H-1B petitions must be filed with an LCA certified prior to filing.

8. Q: For an I-539, is a marriage certificate necessary to establish marriage to an F-1, if the I-94 and/or visa indicates F-2?
   A: CSC will not RFE if evidence of relationship is already established in filing documents, example F-2 visa included. If not clear, then they will RFE to establish the relationship.

9. Q: What is the process to appeal an H-1B decision?
   A: CSC will review an appeal – it will be treated as a Motion to Reopen.

10. Q: If an H was filed without a diploma, must you file an I-851 with a fee?
    A: Yes.

    Q: If an RFE is issued for an independent 3rd party ed eval for an H-1B, does the petitioner need to respond?
    A: Yes.

    Q: If the petition is subsequently denied?

    A: File an MTR

11. Q: If an H was filed without a duplicate for the KCC and PIMS, but the applicant was Canadian, will you RFE? (Note: Such a case was RFE'd.)
    A: CSC will research the answer.

12. Q: In reference to #5: What should an applicant do if an application is denied due to service center error? The "follow up" email procedure is fine, but eats up time tolling towards filing of an MTR. Is there any way that when someone uses the "follow up" procedure time spent on it will NOT toll towards timely filing of an MTR (NOTE: and MTR needs to be filed within 30 days with fee)?
    A: Time continues to toll regardless of use of the "follow up" procedure. Be careful what you deem to be a service center error. Best option is to use: csc-NCSC-FollowUp@dhs.gov

    NCSC should forward the error to CSC. AILA and ACIP have a liaison to filter error cases to CSC also.

13. Q: Premium for Rs – If an inspector gave a negative inspection report is it still OK to file Premium?
    A: No. Must pass site visit.

14. Q: EB-5: Are more areas being "TA recognized" (?) or ("TEA designated") in light of the current economy? Are more regional centers coming on-line?
    A: Each I-526 stands on its own. USCIS is considering EB5 premium processing.

15. Q: MTRs (Motion to Reconsider/Reopen): Processing times published the same as for public as for AILA?
    A: Current processing times for MTRs are 60 days. Perhaps referring to a slight backlog that was caused by a contractor mailroom backlog. This problem has been resolved.

16. Q: Pending I-129s: How can we change the requested start date or other information on the petition?
    A: Send the change via US mail to the general mailbox. Clearly indicate in bold letters on envelope or correspondence: "PLEASE INTERFILE WITH (WAC-#)."

17. Q: Interim EADs: Being produced at district offices again?
    A: Probably not –at least not to our knowledge.

18. Q: How much time is given to respond to an RFE for an H case?
    A: 30-84 days depending. Can be 30 days, 42 days or 84 days. If CSC knows that evidence is coming from overseas, then typically given 84 days to respond. There is no provision for requesting additional time. Best course of action is to respond to the RFE, and explain if a piece of evidence will require more time to obtain. (e.g. – if you have to procure a document from the home country, what is the procedure and how much additional time is it expected to take.)

19. Q: Rs – Do all Rs require a site inspection first?

A: Yes.

20. Q: COS I-539 to F-1: What happens if during the time CSC is processing the case, the I-20 start date has lapsed? Will you require a new original I-20 with a deferred start date? Should DSO's defer the start date in SEVIS?
    A: DSOs DO need to defer the start date in SEVIS, but that CSC DOES NOT require the submission of a new I-20 (as in an original or even copy of the I-20). Of course, an individual Adjudicator MAY ask for an I-20 (copy or original) on a case-by-case basis.

21. Q: Cap-exempt H case: What if you later find out that the employer was not cap exempt? Will petition be denied, or adjudicated as cap-subject if numbers remain?
    A: If cap already reached, then it will be denied. If cap not yet reached, then CSC will adjudicate as cap-subject and RFE for the proper cap-subject fees.

22. Q: What to do if a case is outside the posted processing times?
    A: Follow-up with NCSC, then "follow up" email as appropriate.

23. Q: There is anecdotal evidence that O-1 denials are on the rise…
    A: Maybe denials are slightly higher than 5 years ago, however, it is a similar ratio to other I-129 petitions. Extensions are not guaranteed to be approved. If person doesn't meet the qualifications of O-1 at the time of the extension, then possible denial. "Sustained acclaim" principle applied to extension cases, so if the person doesn't demonstrate sustained pattern of acclaim, then likely to be denied. (NOTE: Bret seems to be referring to areas other than the Arts).

24. Q: How do you verify if a PW amount is correct for an H case?
    A: We don't verify. Not CSC jurisdiction.

25. Q: Can an H-1B be granted extension beyond the 6th year based on the spouse's pending I-140 with their H-1B employer?
    A: No, a souse's pending I-140 isn't "portable" to extending their spouse's H-1B employment beyond the 6th year.

26. Q: How long does it take to adjudicate a case after an RFE response is received by CSC?
    A: 30 days to make a decision after an RFE response received (note: seems ot apply to regular processing, not premium).

27. Q: For OPT applications, does CSC require copies of I-20s to show CPT history or can the history be accessed in SEVIS?
    A: Yes, I-20 copies are required.

    Rebuttal: Seems different standards are in place with VSC vs. CSC…

    A: VSC and CSC are trying to work together on the list of required documents. Product Line managers have a monthly teleconference to discuss issues. We share templates for letters, etc.

28. Q: How can one prove combined experience and education – will you accept an experience evaluation with letter from a past employer? Can the beneficiary submit a affidavit of work experience?

A: Will accept evaluation and past employer letter, but not an affidavit from the beneficiary to verify work experience.

29. Q: Have the standards to meet a Conrad State 30 changed recently? (Example sited from a recent denial that claimed that one must establish that one *is already* placed in a critically needed area vs. *will be* placed...)
    A: No changes that we are aware of.

30. Q: Are RFEs developed locally?
    A: It is a collaborative effort of both CSC and HQ. SCOPS reviews the templates. Our in-house counsel, VSC, etc. all work together.

31. Q: I-539 for a COS to F-1: will CSC consider using Department of State FAM guidelines/standards for establishing ties to home countries for minor/young applicants who do not own property or have bank accounts?
    A: Applicant can submit an affidavit of support from family in foreign countries.

32. Q: Can the cap-exempt and non-cap exempt officers work together? (On RFE templates?)
    A: They will consider it.

33. Q: I-90s…
    A: DIV XII can't do them here. It is a Lock Box issue.

34. Q: Are USCIS employees bound by the Privacy Act?
    A: All USCIS employees are bound by the Privacy Act, including contractors. All officers are required to go through training – it is ongoing/recurring.

35. Q: COS from B-2 to F-1: Will CSC deny application if start date is beyond 30 days after expiration of I-94? And if the start date is beyond 30 days at time of adjudication, does CSC request for a new I-20?
    A: Start date of school must be within 30 days of the ending date of the B-2 I-94. Can't approve it if it is beyond 30 days. Will need a new I-20 if it is more than 30 days after the start date.

36. Q: 8CFR contains provisions for untimely filing for "extraordinary circumstances." Is it proper to deny a late petition even if the circumstances were well documented?
    A: One must prove that the circumstances were beyond the control of the individual. It is the officer's discretion to determine this, and he will not get into a debate about this. Officers will often give a "split decision."

37. Q: E-filing status says that an RFE is coming, but it doesn't come for two weeks. What to do?
    A: Call NCSC.

38. Q: How best to submit an attorney change of address?
    A: Most conservative and best procedure is to file a new G-28 for each pending case. You can also call NCSC.

39. Q: If an LCA and I-129 both had requested 3 years and the I-797 was granted for one year, is there a reason for this?

A: Could be an "off-site employment", or a licensing issue." If not, contact NCSC. May not be an error, it depends on the evidence provided.

40. Q: Transformation process at CSC – any local manifestations of this?
    A:
    - This is a HQ question.
    - Digitization of files… a contract was awarded and has made some progress since 2 years ago.
    - N-400s – not done here.
    - DHS says that processing times will all be within 90 days, per Obama recently. (?)
    - 90 day turn-around for on-line inquiries
    - New I-551 coming

41. Q: Is there any weight given to an attorney cover letter, especially if it contains legal argument?
    A: A cover letter explaining/detailing the evidence included can help shape the Adjudicator's interpretation of the filing, call attention to the most pertinent items, and can affect the decision. Ultimately, it depends on the evidence submitted.

Follow-up questions from the floor taken (without note cards):

42. Q: Re: L-1 and site inspection question…
    A: If the petitioner failed the prior site inspection, but passed the subsequent site inspection, then they might still qualify for premium processing. A petitioner can fail the site inspection but the petition is approved. Site inspections are coordinated by Fraud Detection and National Security (FDNS), which doesn't normally share a lot of information. Hence, petitioners aren't currently notified as to whether they passed or failed. CSC will ask SCOPS and FDNS if this obvious logistical problem can be rectified.

43. Q: I-20 start date issue and several related questions…
    - What if the I-94 end date has passed because an application was not adjudicated within the time period granted on the I-94?
    - RFEs have been asking for the *original* I-20s.
    - DSO should be deferring the start date of the I-20 in SEVIS so that CIS can see the dates in SEVIS. If not in SEVIS, then should RFE.
    - What should be done if all of the RFE items were already included with the original petition? We know that we should respond to all RFE items, but is there a way the RFE could be more clear as to what you are requiring? If it is for financial documentation, maybe the RFE could indicate that you want different financial information so that we are not sending the same financial information.
        - A: CSC tries to tailor RFE letter. Adjudicator will try not to request for duplicate information. If RFE is asking for information already included in original application, then point this out when responding to the RFE. If there is a pattern of requesting for documents that was included in application, it could be a training issue.
    - Why are RFEs for COS to F-1 requesting applicants to document actual clock hours to proof full time status? Clock hours are only required for language programs. Would transcripts that are sealed, fulfill the requirement to prove how many hours a student is enrolled? (The DSO does not have this information.)
        - A: CSC will review this so that adjudicators understand that it doesn't apply to degree seeking students. Transcripts should also suffice.

44. Q: Would you consider giving time to a beneficiary to depart the U.S. in a denial in the case of an H portability? If you could postpone the departure date/I-94/status end date, this would allow the person to leave the U.S. without accrual of unlawful presence.
    A: CSC can't set this process locally.

45. Q: Hard copy of premium processing receipt never received.
    A: Email receipts were temporarily shut-off for a few days. Problem should be resolved.

46. Q: What is the best way to submit an attorney change of address again?
    A: File a separate G-28 for each case.

47. Q: In a prospective new H-1B petition, what would happen if the employer didn't submit a business license? (the case has a future start date)
    A: Possible that the case would be denied. Not a typical issue.

48. Q: An RFE was issued for degree completion requesting diploma/transcripts, but case was denied because ***sealed*** transcripts were not provided. What can be done?
    A: Possibly a $585 fee for MTR.

49. Q: In the case of the VSC processing cases transferred to the CSC, it seems that the CSC's required list of documents varied from what was required by VSC.
    A: CSC recognized that there were differences in the way CSC and VSC adjudicated B-2 extensions and they are reviewing this. They also recognized that there were discrepancies when I-539 COS and reinstatement applications were transferred from VSC to CSC. They are reviewing and will continue to work with VSC on this.

50. Q: If a COS is pending and a second COS is filed, would both COSes be considered?
    A: It depends on the situation… (?)

51. Q: In the case of an approved STEM OPT, and the person was approved for an H-1B, then the H-1B was later rescinded, could the person fall back on the STEM EAD (OPT)?
    A: Interesting question…We'll investigate this with Headquarters and see what the person can revert to…

52. Q: New R regulations state that a person can have an aggregate up to 5 years. It is unclear if one can recapture time in the case of seasonal or intermittent work. What kind of evidence would one need to submit?
    A: We'll need to investigate, since it's a new regulation, but presumably passport and I-94 copies…

53. Q: For an I-129 COS, if we later find out the person was not in status at the time of filing, can the petitioner ask for a split decision? Will CSC adjudicate for consular processing?
    A: Possible… (In this case the petition was outright denied by VSC.) They will look into it…

54. Q: H remainder issue: The individual was in the USA on an H-1B 10 years ago for a short time, but did not use all of allowed 6 year stay. The pertinent Aytes Memo states that in this situation, if the employment is cap-subject, the person may choose to either 1) opt to use the remainder of the previous 6 years of stay or 2) initiate another, new 6 year stay if they have departed the USA and contiguous countries (unless Canadian or Mexican nationals). Hence, if the person was NOT subject to the cap during the previous stay, could they continue to use that cap-exempt status?
    A: It is unclear, we'll have to investigate…

55. Q: R site visit – What's the rationale for not telling R petitioner that site inspection failed/passed?

A: CSC is not sure why petitioner is not notified. But it would be a good idea to notify petitioner. Will take up with SCOPS and FDNS.

56. Q: FDNS – Is there any way to establish a stakeholder type meeting with them? (FDNS is the Fraud Detection and National Security unit, which is part of USCIS. At CSC it is also known as "CFDO", and conducts local site visits for L and R employers.
A: This question needs to be raised at the national level with HQ as FDNS is part of USCIS.

External Stakeholders Meeting
California Service Center
July 29, 2009
1pm – 3pm

General Questions

1. The CSC's standard automated response email template to inquiries sent to the CSC-NCSC-FollowUp@dhs.gov address previously specified that inquiries must include the NCSC tracking number, but based on a recent automated response it appears that this is no longer required. Following is a sample automated response received by a member:

> From: CSC NCSC Follow Up [mailto:Csc-NCSC-FollowUp@dhs.gov]
> Sent: Wednesday, July 01, 2009 4:43 PM
> To: [redacted]
> Subject: Thank you for your inquiry
>
> Hello and thank you for your inquiry. This email address is intended to be used only to follow up on inquiries submitted via the National Customer Service Center (NCSC) at 1-800-375-5283. If you have already inquired with the NCSC and have either not received a response or do not believe that the response addressed your question, you may submit an inquiry. We will need the following information to process your inquiry:
>
> * Date of your inquiry with the NCSC; AND
>
> * Summary or copy of the response from NCSC or the USCIS office; AND
>
> * A brief explanation of why you believe the inquiry was not addressed.
>
> If your inquiry contains all of the required information and it is determined that your inquiry was not addressed by the NCSC or the USCIS office, you will receive, within 15 days, a follow up response to your inquiry via email or U.S. postal mail.

a. Please confirm whether the CSC needs the NCSC tracking number for all inquiries.

   A tracking number is no longer required, but is helpful.

b. Please let us know the minimum length of time that must elapse after contact with the NCSC before an inquiry may be sent to the Csc-NCSC-FollowUp@dhs.gov address based on lack of a response from the NCSC.

   It depends on the type of inquiry that was taken by the NCSC. Please allow 5 days for Expedite Requests, 5 days for a Change of Address, 5 to 15 days on inquiries regarding I-765s reaching the 90th day, and 30 days for all other general inquiries.

2. Please confirm the appropriate inquiry procedures for cases that were inadvertently rejected in the mailroom (e.g. a member reported a cap exempt H-1B petition being rejected by the mailroom for being subject to the cap)? Please confirm these matters can be handled without an NCSC inquiry given that there is no case number to referemce.

Inquiries should follow the normal procedures through the NCSC system with follow-up through the CSC customer service division Div XII if unresolved.

3. How long would a check (payment of fees) need to be valid after the time of arrival at USCIS? Sometimes, university-issued checks are not valid for very long. If the department requests a check and then there are complications with the case that delays the filing, occasionally a university might submit a case where the check expires within 1-3 days after being delivered to USCIS by FedEx. Is that acceptable? What happens if the filing is received during a flood of filings and it takes USCIS some time to open the mail and process checks?

Fee-ing in of most applications occurs within 24 hours of receipt barring any anomalies. If a fee instrument is expired at the time of deposit, the bank has the option to accept or reject expired fee instruments. If the fee instrument is rejected by the bank, the bounced check procedure is implemented. The finance center will issue a bounced check notification pursuant to 8 CFR 103.2(a)(7)(ii). If payment has been made within 14 calendar days of the notice, the application will be processed. A processing fee will be charged; a request for reimbursement of the processing fee can be submitted to the CSC Customer Service Division and may be reimbursed if it is determined to be a service error.

4. Since the processing times on the USCIS web site are from April 30, 2009, can CSC provide the current processing times for all lines?

The processing times are posted by HQ and CSC does not control the website. We are currently within processing time on all form types.

5. Can CSC provide any updates on the "csc-ncsc" follow-up e-mail address?

CSC-NCSC-Followup@dhs.gov mailbox is available to our customers who have exhausted the NCSC process and in the case of a Service Error. The email box has been available since April 20, 2009. Our customers should receive a reply within 10 to 15 calendar days of receipt.

Employment-Based Questions

6. We would like to propose a few scenarios regarding the proper filing procedures based on dates of expiring documents. The answers provided are from an email that the CSC sent to AILA and ACIP on June 25, 2009.

> **Q**. When CBP grants an additional 10 day departure period on Form I-94 upon entry to the U.S. with a valid H-1B visa, in addition to the petition expiration date, should the LCA and the I-129 start dates for an H-1B petition extension reflect the end of the I-797 period or the end of the I-94 date?
>
> **A**. The requested start date on the I-129 and the LCA should reflect the end date of the I-797 in order to avoid a gap in employment authorization. When CBP grants the

additional 10 day period at the end of the H-1B stay on the I-94 and then an extension is filed, please remember that the LCA dates need to coincide with the actual end date of the initial petition, not the I-94, if you wish to avoid a gap. CSC is seeing petitions where the LCAs have a date that starts on/after the 10 day period on the I-94. We can only grant the petition pursuant to the dates on the LCA and the beneficiary is NOT eligible to work during any gap. We are seeing filings where attorneys are requesting start dates earlier than the LCA allows and then they send in requests saying the extension I-797 has an error on the dates. These are not service error as the petition start date is coinciding with the LCA.

a. In the situation where the CBP officer annotates the I-94 to include the 10 day departure period, what date should be listed on the I-129 form, Part 3, Item 2, as the H-1B status expiration date? *In this situation, please list the end date on the I-797.* Should the I-797 petition validity end date, the I-94 end date or both end dates with notation be entered on the form? *It would be fine to list both dates.*

b. If the I-94 end date is shorter than the I-797 end date, should the LCA validity period and the requested start date on the I-129 reflect the I-94 end date as the start of the new validity period? *Yes.* How should the petitioner/applicant avoid a gap in status/authorization? *The I-129 extension petition should request a start date that coincides with the expiration of the prior status and be filed before the end date reflected on the I-94 or the I-797, whichever is shorter.* There are times when an individual may enter the United States with a passport that expires before the Form I-797 expires. In this situation, CBP admits the individual to the end date of the passport validity. This results in an I-94 being "shorter" than the I-797.

c. Same example as above, if the I-94 expires before the I-797 and the petitioner files an extension of stay based on the I-94 expiration date rather than the I-797 expiration date, how should the petition be flagged not only for mail room acceptance but for adjudication so that it is not deemed as having been filed too early (prior to 6 months before the I-797 expiration date)

The petition should not be rejected. In this scenario, the I-94 expiration date should be listed on the I-129, Part 3, Item 2, as the "Date Status Expires".

d. Same example as above, when the I-94 expires before the I-797 and the petitioner files an extension of stay based on the I-94 expiration date rather than the I-797 expiration date, if the Service denies the petition because it was filed more than 180 days before the I-797 expires and is deemed to have been filed "too early" what action should the petitioner/attorney take?

The petitioner could inquire with the National Customer Service Center. The petition should not be denied. In this scenario, the I-94 expiration date should be listed on the I-129, Part 3, Item 2, as the "Date Status Expires".

7. Blanket L I-94 and I-129S Extensions. Some CBP officers issue a 3 year I-94 at each entry, despite the fact that the individual's I-129S certificate of eligibility (which is inscribed on the visa as the "Petition Expiration Date") is set to expire sooner. The consistent past practice of USCIS was to always approve an I-129L request for extension of stay based upon the Petition

Expiration Date/I-129S expiration in these cases, given that it reflects the underlying approval dates of the I-129S citing an inadvertent I-94 error at entry. Such approvals are supported by the extension of stay procedures at 8 CFR 214.2 (l)(15) which require a copy of the previously approved certificate of eligibility I-129S with the extension filing. Given that we have heard of limited reports of denials under this fact pattern recently, we ask that you please confirm that the CSC will continue approving such matters moving forward.

We are unaware of denials of requests for extensions of L-1 stay under the facts you have presented. We note that under 8 CFR 214.2(l)(11), the beneficiary of a blanket petition may be admitted for three years "even though the initial validity period of the blanket petition may expire before the end of the three-year period." Further, if the blanket petition will expire while the alien is in the United States, the burden is on the petitioner to file for indefinite validity of the blanket petition or to file an individual petition in the alien's behalf to support the alien's status in the United States. Id. Assuming the alien is otherwise eligible for an extension of stay, if the request for extension of stay is filed within I-129 or I-129S (as applicable) petition validity period it should be considered timely filed, notwithstanding any other issues.

8. When a Form I-797 receipt notice under the name of the Principal Applicant who filed an I-829 is issued, it states, "your Permanent Residence Card (Form I-551)…is extended one (1) year. However, Form I-797, Verification of Inclusion of a Dependent in Filing of Form I-829, states, "This verification extends the validity of your alien registration receipt card and allows you to remain in the United States, with work authorization for one year from the filing date" Since I-829 Petitions are filed within a 3 month period prior to the expiration date of the I-551, the date of the filing of the I-829 petition is usually different than the I-551 expiration date. According to 8 C.F.R. §216.6(a), "Upon receipt of a properly filed Form I–829, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition." Please confirm that the Form I-797, Verification of Inclusion of a Dependent in Filing of Form I-829 extends the Form I-551 of the dependent one year from the expiration date on the I-551. (sample attached)

We recognize that the language occasionally produces misalignment respective to the extension period for the principal and dependent. This may be due to cases of dependents following to join. We will look into the matter.

9. After filing an I-829 Petition, is the alien required to attend a biometrics appointment?

Yes. The alien should receive a letter through the mail for an appointment at an application support center.

Also, are children under 14 years required to attend a biometrics appointment?

Yes. Although fingerprints are not required for children under 14, photo and signature will be needed for card production.

10. How should we file a status inquiry on pending I-526 or I-829 cases that are past the posted processing times?

Status inquiries should be made through the National Customer Service Center (NCSC) at 800-375-5283. If the inquiry cannot be resolved effectively through the NCSC process, it may then be submitted to the designated EB5 mailbox at USCIS.ImmigrantInvestorProgram@dhs.gov.

11. In the rare situation when an H-1B receipt is not issued quickly, what is the best avenue to request the receipt?

The CSC is current with the data entry of all incoming Forms I-129. Please inquire with the National Customer Service Center if the petitioner does not receive a receipt notice or a rejection notice within 15 days.

Right now, employers use premium processing to get the receipt issued more quickly but is there another option?

Premium Processing does not provide an I-797 receipt notice in a more expeditious manner.

This is particularly important now that the new I-9 handbook requires the receipt notice for an H-1B to begin work at a new employer.

12. A University with an affiliation agreement with a hospital reports that until recently, it has not experienced any difficulties in establishing the affiliation and cap exempt status. However, the University reports that it has recently received two RFEs regarding the same petitioner. Based on the language of one RFE, the adjudicator appears to use the language from a 2006 unpublished AAO decision regarding school districts, to the extent that the RFE itself asked for "a copy of the affiliation agreement or contract signed by an authorized official of both the school district and the institution of higher learning."
Has USCIS issued any additional guidance regarding related or affiliated institutions, or do CSC adjudicators still adhere to the standards from the June 6, 2006, Aytes Memorandum and the revised Chapter 31.2 of the Adjudicator's Field Manual?

The June 6, 2006, memo is the latest guidance. In cases where the affiliation agreement is outdated, we may ask for a copy of the updated agreement.

13. Assuming no change in attorney or applicant address, how does an I-612 (based on No Objection/Positive DOS recommendation) applicant or the applicant's attorney obtain the I-797 approval notice if the case has been approved but no notice received? Some members have reported that a concurrently filed H-1B change of status petition was approved but that they never received the copy of the I-612 approval notice. Also, is attorney address information electronically transferred from DOS to the USCIS CLAIMS system or is manual re-entry of the data required in order to generate an I-612 approval notice?

The AILA-VSC Committee comments from the September 17, 2007 liaison meeting state that I-612 approvals are "now solely within the jurisdiction of the VSC." From the minutes it is also understood that the CSC is only involved to the extent that VSC must approve the I-612 before the CSC can approve the H-1B Petition. Therefore, should we request a Form I-797, I-612 approval notice from the VSC?

Please verify with the VSC any special processes they have in place with the DOS.

The VSC adjudicates all I-612 waivers based on "No Objection" letters. If an I-612 waiver based on a "No Objection" letter was approved, a request for a duplicate approval notice should be filed with the VSC.

Family-Based Questions

14. Can CR (conditional residents) file relative petitions (I-130) while in CR status? If so, are there any restrictions?

Yes, the right, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally to conditional permanent residents, including the right to file petitions on behalf of qualifying relatives. However, please note that failure to timely remove the conditions can affect the adjudication of the I-130 petition.

I-212 – not processed at CSC

15. If a Form I-212 was mailed to CSC after the cut-off date for mailing Forms I-212 to the CSC, what is the proper procedure for the applicant to retrieve the I-212 package from the CSC since it has original affidavits and documents? In this situation, does the CSC normally forward the application to the appropriate location for adjudication or return the application to the applicant or attorney?

We would return the application to the sender.

Nebraska Service Center- Meeting with NAFSA Reg Ombuds, Open House

July 29-30, 2009

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General

1. Current Processing Times

- Since the processing times on the USCIS web site are from April 30, 2009, can NSC provide the current processing times for all lines?
- We are happy to report that recently we have been receiving some decisions very expeditiously. Do you plan also to examine cases that may have been pending beyond normal processing times as well?

NSC receives about 917,000 applications per year. Of these, 16 of the 19 forms processed at NSC are being processed within the recommended time frames. They expect to have the other three forms caught up by the end of summer.

I-765 processing

NSC receives 19,000 I-765 applications each month. They are currently being processed in a week or two. There are only about 300 applications which have been at the Service Center more than 90 days and these are being delayed by outstanding RFEs or security checks. (Not all I-765s are OPT-related there are actually 25 types of I-765). Advisers should factor in time for mailing to and from the Service Center and card production time (which can be as much as two weeks). EADs should be in students' hands within about 6 weeks of application.

Because applications are being processed in such a timely manner, advisers should not request expedited handling. If the adviser or the student requests expedited handling when regular processing is as current as it is, it is likely that the request will actually slow the processing of the applications because they have to be routed differently for review of the validity of the expedite request. Encourage students to allow 3 months for processing.

There is a new follow-up address for inquiries about applications OTHER than OPT/Economic Hardship applications (for which the NSC.Schools@dhs.gov address can be used). After following the carefully prescribed steps described on NAFSA's website for National Customer Service Enquiry and have waited the required 30 days, advisers can now e-mail NSC directly at NCSCFollowup.NSC@dhs.gov to get information on other applications. Please include the ticket number you were assigned when you called NCSC in your e-mail. This is a public address, so it can be given out and used, provided that the correct SRMT (Service Request Maintenance Test) protocol has been followed. This is NOT a status inquiry e-mail address.

E-filing is not recommended, especially for I-765s. It takes time for the electronically submitted application to be matched with the supporting documentation which still needs to be mailed.

If an RFE is sent then the clock stops on processing until the response and all the requested evidence has been received. So the quicker the response is sent, the quicker the file gets back to the processor's desk.

I-140 and I-485 processing

The goal for I-140 is 4 months processing time. Some categories are well under this, 3rd preference, for example, is at about 4 weeks right now. 1st and 2nd preference are slower.

There is a new Q and A available for I-140 petitions. This document is located on the Forms and Fees page of the USCIS website under I-140 and is called "Question and Answers: Petition Filing and Processing Procedures for form I-140, Immigrant Petition for Alien Worker."

For I-485 processing, it is often not the actual service center processing which is slow, but rather the process is slowed down with security checks and the availability of visas.

2. Eligibility for OPT- Certificate Programs

Recent RFEs and NSC responses seem to indicate that NSC will only recognize a "Certificate" program with a prerequisite of at least a bachelors degree. In an e-mail to a DSO, NSC recently stated:

> "We have been asked this question before so did some research and this is what we found: According to the International Affairs Office for the U.S. Department of Education, there are no Certificate Programs offered at the Associate Level that are considered a higher level of education. The student would have to have completed the actual Associate program. The Certificate programs recognized as a higher level of education are offered at the Masters and Doctors programs. So with that said there isn't two different levels when it comes to the Certificate and Associate degrees. The Certificate programs only come into play at the Master's and Doctor's level."

This may be in response to a case originating in NAFSA Region I, where a student applied for OPT on the basis of completing a certificate at the Associates level. That application was denied, we believe in error. That particular student had never done OPT at *any* level, so we believe that this issue of "higher educational level" was not relevant. It appears that the Department of Education may have misunderstood the NSC inquiry, associating the term "higher educational level" to mean post-baccalaureate.

The F-1 regulations, however, do not limit post-completion OPT eligibility to degree candidates, or to study at a particular degree level; 8 CFR 214.2(f)(10(i)(A)(3) also extends eligibility to F-1 students "After completion of the course of study."

- Can NSC confirm for us that post-completion OPT is available to any F-1 student who has been lawfully enrolled on a full time basis in a DHS-approved college, university, conservatory, or seminary for at least one full academic year, and who has completed (or will complete within 90 days) the full course of study for which the I-20 was issued?

NSC confirmed that they <u>should</u> be allowing students who have completed "programs of study" to pursue OPT. The question concerned recent rejections of OPT applications filed by students who had completed certificate programs at the Associate's level. If a student has had an OPT application denied or received an RFE, please submit the case via Issue Net.

To facilitate the successful review of OPT applications based on "other" levels of education, NSC has asked for clarification as to how the "other" level fits into the familiar Associates,

Bachelors, Masters, PhD levels. Advisers should also clarify if the student has completed other levels of study and whether or not OPT has been authorized. The more information provided up front, the better the chances of approval within the regular time frames.

3. "Signature Waived" Notation

An institution reports an increase in EADs with "signature waived" notations. Can NSC explain the reason for these, when students provide signatures on the I-765?

The signature for the EAD is scanned directly from the I-765. If any part of the signature crosses the line on which students are supposed to sign, the signature is rejected. Rather than send an RFE for all of these, NSC has negotiated to have the signature requirement waived. This prevents RFE delays. However, EAD's without a signature may cause problems with DMVs in some states. Advise students to try to "float" their signatures above the line. That way they can be scanned cleanly and applied to the EAD.

4. New Inquiries Process for Employment-based cases

During the 6/25/09 teleconference, NSC stated that it had requested a new e-mail address for employment-based inquiries and expected to have it up and running soon. Until then, NSC advised that we should continue to use the [ils.nebraska@dhs.gov] e-mail address. Can NSC provide an update on the new e-mail address?

Please see USCIS press release of August 6 that outlines this protocol:
USCIS Guidance On Case Status Inquiries With The Service Centers

5. Guidance in Adjudicators' Field Manual for Outstanding Researcher/Professor

We have received some reports of RFEs that appear to reflect the learning curve/training issues for newly hired staff at Service Centers. For example, a number of RFEs confuse the publication standards for Extraordinary Ability (contributions of major significance to the field) with the outstanding researcher/professor standard (original scientific or scholarly research contributions or authorship of scholarly books or articles as evidence of international recognition in field, but there is no requirement that it be of major significance).

Aside from general training issues, we believe that such RFEs may in part be due to the fact that the Adjudicator's Field Manual section on E12 Outstanding Professors and Researchers is sparse in its guidance to adjudicators. For the most part, the AFM E12 entry refers adjudicators the section on E11 Extraordinary Ability, stating, "The same general guidelines discussed in the preceding section relating to the adjudication of a petition for an alien of extraordinary ability apply to the adjudication of a petition for an outstanding professor or researcher." This can lead to conflation of the differing EB1 and EB2 standards, and result in either unnecessary RFEs or denials.

- Given the lack of AFM guidance tailored to the E12 outstanding professor or researcher category, what guidance do NSC adjudicators use in determining whether an individual's research or publications meets the "international recognition" standard, and how does that differ from the "major significance" standard?
- What other sources of guidance (e.g. AAO decisions, etc.) does NSC use in adjudicating this type of petition?
- Before bi-specialization, NAFSA and other academic associations had engaged in dialogue with California Service Center adjudicators regarding topics in the academic world that might be of assistance to adjudicators working with petitions from academia. Conversations included conventions of academic publishing, academic titles, grant structures, discussions about what postdocs do and what activity takes place in a lab, and about the difference

between fundamental or basic research and applied research. CSC found this to be helpful in evaluating the types of evidence submitted by academic institutions. Would NSC be interested in similar discussions?

NSC indicated that they are very careful and very thorough with their processing. At the same time, NSC emphasized the difference between E11 and E12, the former being very much more restrictive than the latter. NSC leans very heavily on the citation record which, to their minds indicates more than a list of publications (e.g. just because something has been published doesn't mean it is being read). The criteria list is not to be regarded as a simple check list, it is meant to determine if the individual is truly outstanding.

Texas Service Center- Meeting with NAFSA Reg Ombuds

August 6, 2009

NAFSA Questions

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Information for Regulatory Ombudspersons

1. Suggestions for filers

What are the most common applicant errors you are noticing relating to I765 (c3B) and I140 applications and what are your suggestions for filing these for ease of processing?

I-765 Cases

1. **The DSO is requesting for C3A when they should file for C3B. Contractor will reject if I-765 requests C3i.**
2. **The DSO is not updating SEVIS to match what is on the I-20 for the graduation date. TSC clarified that if the graduation date changes after the I-765 is submitted, then the documentation (I-20) submitted with the I-765 does not now match what is in SEVIS (e.g. I-20 with I-765 says end date of May 31, SEVIS says end date of August 31).**
3. **The DSO needs to ensure that the name, country of birth, and country of citizenship is correct.**

I-140 Cases

Not all of the initial evidence is being submitted at the time of filing. TSC gave the example of ability to pay documents and degree evaluations. When asked about Outstanding Researcher cases, TSC requested that cover letters provide a roadmap of documents included in submission. For example, supporting documents be tabbed according to the cover letter, and that any reference letters provide specific detail on the foreign nationals accomplishments.

Quality review should be accomplished to ensure that all required evidence is included in the package when the I-140 is submitted to TSC for processing.

2. Contacting TSC.Schools@dhs.gov

What is the protocol for using the TSC.Schools@dhs.gov email? What is the average response time?

This email should be used when requesting an update on the status of an I-765 Student case. The response time for this email box is 5 business day.

3. TSC contact guidance

- What is the appropriate TSC contact?
- Can you explain the process and organization of the I765 and I140/I485 lines? For example workflow, how many adjudicators, shifts in priorities depending on season, etc?

EAD inquiries

DSO should use the TSC.Schools@dhs.gov mailbox. This mailbox is checked each day for incoming inquiries (for STUDENT I-765 cases ONLY).

I-140 & I-485 Inquiries
Currently there is no public mailbox dedicated just for I-140 and I-485 inquiries. Continue to contact the National Customer Service Center. NCSC will forward the inquiries to the Service Center for action.

Process of Organization
I-765, I-140, and I-485 cases are processed in receipt-date order. The older cases are processed first. Other factors such as FBI Name Checks, Fingerprints, and IBIS/Security hits will affect the processing of a case.

Employment Authorization Documents (EADs)

4. Lengthy EAD processing times

Recently members have reported I-765 applications taking right at or over 90 days.

What is the reason for the lengthy processing time and do you expect this to continue?

During the months of May, June, and July, several officers did not have access to the E-Verify Program. This challenge caused a delay in processing times.
All officers now have access to the E-Verify System. Also, in July additional resources were dedicated to the I-765 Program to get those cases under 90 days.

Is the USCIS policy guidance on obtaining interim work authorization under 8 CFR 274a.13(d), as set for in the 2006 Aytes memo, still in effect at TSC?

Yes, the USCIS policy guidance, dated August 18, 2006, entitled, Elimination of Form I-688B, Employment Authorization Card, is still in effect. A copy of that policy guidance is available on the USCIS website.

5. EAD errors

Regulatory Ombudspersons have been contacted more frequently recently about EAD errors. Examples include:

- 24 months given for post-completion OPT (c3B) instead of 12 months

  The problem has been identified and corrected to ensure that this oversight does not occur again.

- Start and end dates that differ from the dates requested, especially on pre-completion (c3A) OPT

  This happens when the dates that are being requested on the I-765 Application have already passed. When the start/end dates are in the past, the officer will go with the date of adjudication; especially on pre-completion cases. If a pre-completion case, TSC will call the DSO to see if the DSO/student still wants the same period length of OPT even with a later starting and ending date.

- Someone else's photo and signature place on the EAD

  The problem has been identified and corrected to ensure that this oversight does not occur again.

Questions:

- What is the process to correct such EADs when the errors are TSC errors?

  NOTE: Any mailing must be coordinated through the DSO, students should not use the below mailing address.

  Send the incorrect EAD, a statement addressing the error, and a copy of the I-765 Application, via FEDEX to (this address for <u>DSOs ONLY</u>, do <u>NOT</u> give to students):

  USCIS

  Texas Service Center

  Attn: SISO T. Vaughn

  8001 N. Stemmons Freeway

  Dallas, TX 75247

  TSC advises that the student could still use EAD card. NAFSA advised TSC that employer may not allow the student to start work with an EAD card with error (especially E-Verify cases).

- What is the process to correct such EADs when the errors are applicant errors?

  The applicant must file a new I-765 Application with the proper fee and supporting documentation attached. The supporting documentation will include a statement addressing the error and attaching the incorrect EAD card.

6. EADs not received by students

Regulatory Ombudspersons have been contacted more frequently recently about EADs not being received even though the Online Case Status Service states the EAD has been mailed.

- Are you seeing common mistakes as to why this might be?

TSC has identified that applicants have moved and failed to inform the Service Center of the change of address. TSC advises that contacting the NCSC with an address change is the quickest way to update an address (within 5 days). (Updating an address using Online AR-11 is not as fast.) Adjudicator can see if the address is different by looking at the address history.

- What is the process when an EAD is not received by the applicant and is returned to TSC?

If the EAD card is returned as undeliverable, the applicant must notify the TSC with the correct address before TSC can re-mail the EAD. EADs are returned as undeliverable within 2 weeks (1 month from date of mailing). If TSC sees the USPS "forwarded address" sticker when receive the EAD back, TSC will send out to new address. EAD cards returned are destroyed within 180 days if the TSC does not receive any contact/update with a new address.

- What is the process when an EAD card is not received by the applicant and NOT returned to TSC?

The applicant must file a new I-765 Application with the proper fee and supporting documentation attached.

7. Delivery of TSC mail and names on apartment mailboxes

A representative at TSC has stated that mail from the TSC will not be delivered by USPS to an apartment mailbox unless the applicant name is on the mailbox.

- Can you confirm whether or not this is true?

Since that question should be addressed to the USPS, TSC cannot comment on it. The representative that provided the customer with that information should have referred him to the USPS to get an update on their process.

8. CLAIMS updates of SEVIS with OPT approval data

It appears that SEVIS is often not updated with OPT approval data. Our understanding is that this data should move from CLAIMS to SEVIS.

- Can you describe what fields a TSC adjudicator must complete in USCIS systems in order for OPT approval data to be included in the CLAIMS-SEVIS interface?

CLAIMS must be updated with the SEVIS number in order for the OPT approval data to be included in the CLAIMS-SEVIS interface.

Online Case Status Service

9. Cases in process/processed that don't show up in the Online Case Status system

There seems to be inconsistencies with the Online Case Status Service and actual experience from applicants. For example, there have been reports of cases that do not show up on the Online Case Status Service.

- What is the process involved in getting data from USCIS adjudications systems into the Online Case Status system?

If the applicant/petitioner has submitted a petition or application to TSC and it does not appear in the Online Case Status Service, he/she should submit an inquiry to the National Customer Service Center (NCSC). That inquiry will be forwarded to the Service Center to get the case receipt number uploaded into the system.

TSC recommends that applicant get a copy of the cancelled fee check as the receipt number is normally written onto the processed check. If Online Case Status Service is still not updated within 30 days, then use the NCSC Follow-Up Email Address to notify the TSC. TSC advises that the NCSC will require the name and date of birth of the applicant if you do not have the Receipt Number.

- What can an applicant or petitioner do to monitor the status of his or her application or petition if it does not appear in the Online Case Status system?

Once the applicant has submitted an inquiry with the National Customer Service Center (NCSC), it will be forwarded to the Service Center to get the case receipt number uploaded into the system. This action will allow the applicant or petitioner to monitor the status of his/her case via the Online Case Status system.

I-140 processing

10. Non-receipt of I-140 receipt notices

How should we report non receipt of an I-140 receipt notice?

Please utilize the existing process and route such inquiries through the National Customer Service Center (NCSC). The inquiry will then be forwarded to the Service Center for appropriate research and/or corrective action.

11. Possible to put beneficiary name on transfer notices?

Is it possible for the SC to put the name of the beneficiary on Transfer Notices? It is very difficult to track internally without the beneficiary name.

The change requested is not within the Service Center's ability to effect.

VSC Session on I-539/I-765 Student Issues – August 20, 2009

NAFSA Summary

1. **Communication Between USCIS and SEVP**
   a. USCIS HQ, USCIS SCOPS and SEVP hold monthly calls, although communication is "not close"
   b. VSC made clear they cannot fix specific problems in the SEVIS program, but they can communicate the problem to SEVP.

VSC Accomplishments for I-765	**1.1.2009 – 8.1.2009**	**1.1.2008 – 8.1.2008**
I-765 Student Receipts	22, 938	23, 415
Adjudication Times as of First Week of August	30 days	83 days
Remaining pending filings as of First Week of August	About 1,852	About 6,875

* VSC would like to be within 70 days on any I-765

   c. Everyone is now cross-trained with I-765 and I-539 applications (J, F, M)
   d. Reason for 30 day turnaround in 2009 for I-765s was that it took fewer resources to adjudicate cap cases, since there were less applications. As such, those resources were used to adjudicate student I-539s and I-765s.

VSC Accomplishments for I-539	**1.1.2009 – 8.1.2009**	**1.1.2008 – 8.1.2008**
I-539 Student Receipts	10,343	10,697
Adjudication Times as of First Week of August	55 days	120 days
Remaining pending filings as of First Week of August	About 2,780	About 5,815

2. **Maintenance of Status**
   a. An I-539 applicant requesting change of status to F, M, or J must be maintaining valid non-immigrant status
   b. Change in Procedures on M Validity
      i. For consistency with CSC, VSC began adding the 30 day grace period for M1 extension into the validity date, as long as it does not exceed one year.
   c. OPT
      i. Along with the I-20 containing the recommendation for OPT, student should submit copies of any prior I-20s that contain recommendations for any prior OPT or CPT
      ii. Although SEVIS will show CPT was authorized, USCIS officers can't see the amount of time that was offered and whether the work was Full time or Part time
      iii. VSC can see the dates applied and granted previous OPT and CPT. With OPT, further information is somewhere in the system, so they can find, but they cannot access the CPT information at all.
      iv. OPT approved for Associates Certificates

3. **SEVIS**
   a. Occasionally, VSC receives requests to do a data change in SEVIS.
   b. Note that often SEVIS Helpdesk is advising DSOs to contact VSC to do the change. VSC then advises DSOs to contact the SEVIS Helpdesk because VSC has view accessibility ONLY in SEVIS, with an exception for officers that do reinstatements.
4. **Questions/Follow Ups**
   a. Can you withdraw an I-765?
      i. Yes, as long as the validity date has not yet started. Alert SEVIS and the VSC and send a letter from the student withdrawing the application.
   b. What should be done if there is clear Service error on the I-765 for a student?
      i. Contact VSC using the school e-mail vsc.schools@dhs.gov
   c. Goal for changing from J to F is around 55 days.
   d. If Economic Hardship is accepted for one year, will a second request for economic hardship in a subsequent year be more difficult to obtain?
      i. No. Send all pertinent information. The approval of a previously submitted economic hardship request will have no effect.
   e. E-filed I-765s usually take longer to adjudicate than mailed in I-765s.

National Customer Service Center Presentation

1. New Web-Site

- New web-site to be launched on Sep 22
  - Improved case status area and navigation
  - Will give additional context on the case status, including processing steps, where the case is in the process, and will include processing times and goals
  - National dashboard will show # of receipts and pending applications
- There will be an 800 number to call to provide feedback on the new system

2. Public Phone Inquiries

- Two tiers:
  - Tier One – NCSC contractor follows written scripts and can only access what we can access online [**VSC noted it was important to use language from the scripts when communicating with NCSC]**
  - Tier Two – USCIS officer, has access to USCIS systems
- 6 criteria to determine if an NCSC call should go to "Tier 2" – a VSC officer
  - Approved case: Non-delivery of document or document not received
  - Request for evidence – explanation needed
  - Pending case: consulate or POE has not received notification of approved I-129
  - Pending case: Change of information on I-129

    - Pending case: companion cases have been separated
    - If there's a Service Center error on a card, approval, or receipt
- Less officers on the phone = more adjudications
- VSC Tier 2
    - averages 1700 calls/month
    - average call answered in 2.5 min
    - aerage talk time is 5 min

3. Written Correspondence
- Currently responding in 30-60 days
- Sorted by form type – clearly mark form type on the envelope

4. Service Request Management Tool (SRMT)
- Inquiries generated by NCSC call center, local office
- Completed 147,000 inquiries from Oct '08 to June '09
- National response target times are established
- Can take expedite requests through SRMT
    - NCSC should pass along all information
    - Customer Service officer will review to determine if it meets the expedite criteria

5. E-mail Accounts
- They try to be consistent among stakeholders
- vsc.schools@dhs.gov
- vsc.ncscfollowup@dhs.gov
- Also have internal stakeholder accounts

6. VSC Schools Account
- Average of 20 requests per day
- One officer/day
- 48-72 hour response time
- To assist DSOs and Foreign Student Advisors with general concerns regarding student issues – specific case issues should still go to NCSC e-mail

7. NCSC follow up email account - vsc.ncscfollowup@dhs.gov

- Average of 100 requests/day
- Five to six offers working the requests
- Established to assist customers with issues that were not resolved through the NCSC phone # or website
- Wait 30- days after calling NCSC
- E-mails should be sent to the service center with jurisdiction
- scopsscata@dhs.gov – if no response from NCSC email within 21 days, contact this email address

- Must be the applicant/petitioner/attorney of record or AILA liaison for the attorney of record
- Cannot provide information related to VAWA, T, U or S visa status
- They are utilizing the account to determine trends, etc

8. June 4 cases
   - Over 700 RFEs were sent out on August 19, 2009, with respect to those cases with the full response period
   - Will refund the fees if someone filed a motion
   - To alert VSC of problem cases, send inquiries to the ncsc e-mail account and put 'June 4 issue' in the subject line
   - Per Michael Aytes, VSC adjudicates between 4,000 and 5,000 cases a day so 1000 RFEs spread around all working groups is not unusual

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

VSC Stakeholders Meeting Questions
August 20, 2009

H-1B petitions

1. H-1B cap cases

Can you provide an update on the processing of H-1B cases subject to the FY2010 cap?

Response: The VSC has completed approximately 34,800 FY10 cap cases. Approximately 4,000 cases are awaiting RFE responses and another 5,000 cases are pending. We are receiving between 1,200 and 1,600 cap cases a month.

2. 3rd Party Work Sites

Please provide clarification on what type of evidence should be submitted with an H-1B petition where the beneficiary will be working at a 3rd party work site. In the past, VSC has indicated that it would accept a letter from the end-user (at the 3rd party site) confirming that the duties of the position as a specialty occupation and the location where the beneficiary will be working would be acceptable. Is this still the case? If so, is it sufficient to send such a letter in response to an RFE requesting copies of contracts between the petitioner and the company where the petitioner will be stationed?

Response: A letter from the end user at a 3rd party worksite is sufficient to establish the work assignment. A letter can be submitted in lieu of a requested contract. VSC has recently eliminated contract requests from its RFEs. To establish an itinerary of work, a 3rd party worksite letter will be requested in the RFE.

3. Improper rejection by the mail room

We have had increasing reports of H-1B petitions being rejected by the mail room where the company headquarters are not located in the jurisdiction of the VSC, but the individual's work site is within the jurisdiction of VSC. This seems to be happening even when attorneys are making clear indications in the file, on transmittal sheets, and on the envelopes that the work site is within VSC jurisdiction (for example - EAC-09-XXX-XXXXX). What can attorneys do to ensure their cases can get accepted by the mail room? Has VSC done any additional training on this issue with mail room contractors?

Response: The contractor staff is instructed to look at the address listed in Part 1.2 of the I-129 petition as well as the address listed in Part 5.5, the location where the beneficiary will work. If the address listed in Part 5.5 is within VSC jurisdiction, the contractor is instructed to accept the filing. The example provided was initially rejected in error.

4. Incorrectly Issued Form I-94s

There appear to be problems with Form I-94s issued with change of status petitions. Specifically, the Form I-94 is listing the beneficiary's country of birth rather than the country of citizenship, even though the forms clearly indicate the country of citizenship and a copy of the informational page of the passport has been included with the filing (for example - EAC-09-XXX-XXXXX and EAC-09-XXX-XXXXX). This can be an important distinction, especially when the beneficiary is a Canadian national and therefore visa exempt. What is the best way to obtain a corrected Form I-94 in this situation? Is any additional training being provided to the adjudicators on this issue?

Response: The country of citizenship was incorrectly data entered in the examples above and therefore caused the incorrect information to print on the I-94. If you receive an incorrect I-94, the best way to correct this is by calling the national customer service line and an amended approval notice can be mailed to you.

5. J-1 Waiver Exempt H-1Bs

Individuals who receive a J-1 waiver based on committing to a medically underserved area are exempt from the H-1B cap. It is our understanding that jurisdiction over such H-1B petitions is determined by place of employment. But if this cap-exempt individual is working for a cap-exempt employer at a location that falls within VSC's jurisdiction, at which Service Center should the petition be filed? Does cap-exempt employer trump cap-exempt individual such that these petitions should be filed at CSC? There seems to be some inconsistency in having these receipted at VSC. What is the best way to ensure that the properly filed petition gets receipted?

Response: It is correct that a cap-exempt employer trumps a cap-exempt beneficiary. If the petition claims a cap exemption, then the proper filing location is the CSC. VSC rejects the majority of cap-exempt petitions that are incorrectly filed at the VSC. For any cap-exempt petitions that are erroneously receipted at the VSC, we will complete the adjudication at our office.

Committee Comment: This was discussed during the meeting, and liaison reminded VSC that CSC does not have jurisdiction over cap exemptions based on receipt of a qualifying J-1 waiver. VSC said they would continue to look into this to get it sorted.

6. Exempt based on "Employed At"

H-1B petitions in which the beneficiary is "employed at" an exempt institution but "working for" a for-profit entity are exempt from the H-1B quota. A common situation is a physician working for a private practice, but working at a non-profit university hospital. Should these petitions be

filed based on place of employment, or are they considered to be "cap exempt employers" under the jurisdiction of the CSC?

Response: Any H-1B petition claiming a cap exemption should be filed with the CSC.

7. In the rare situation when an **H-1B** receipt is not issued quickly, what is the best avenue to request the receipt? Right now, employers use premium processing to get the receipt issued more quickly but is there another option? This is particularly important now that the new I-9 handbook requires the receipt notice for an H-1B to begin work at a new employer.

Response: The only option for expedited processing is the premium processing service. All other petitions/applications received at VSC are receipted on a first in, first out basis. I-129s for H-1B beneficiaries may be filed up to six months in advance. If an employer needs the receipt notice more quickly, it is suggested that the I-129 be filed sooner rather than later.

Committee Comment: If a receipt is not received after three weeks, please call NCSC to report "non-receipt" of notice.

8. On some Premium Processing cases we receive an email notification within 1-2 days of receipt, yet on others we don't. What is the criteria for sending email notifications on Premium Processing cases? In the cases where we don't receive the email notification, the original receipt notices are not received until 6-9 days after filing and sometimes not at all. Is there a way to ensure that the email notification gets generated?

Response: An automated system generates the email notification when the case information is data entered. This notification is sent to the email address provided on the I-907. If the email address on the I-907 is not correct, not legible, or not entered correctly in CLAIMS by the contractor, the notification will not be sent. Also, if petitioners/representatives have their e-mail security set too high, the automatic notice may be blocked. If a notification is not received promptly or is received by mail, call the Premium Processing phone line to ensure that the email address in CLAIMS is correct. While the officer on the phone can correct the information for subsequent contacts, the email notification cannot be reproduced.

9. What is the procedure for requesting a refund of the $1,000 Premium Processing fee? How long does it generally take to process a refund? Does initiating an investigation constitute "action" for purposes of Premium Processing?

Response: A request in writing will be accepted. Refund requests are processed as soon as they are received. An officer will review the history of the case and if appropriate, a refund letter will be generated and signed off by a supervisor. The refund approval is then forwarded to another VSC department for processing and then sent to the Burlington Finance Center, which issues the refund. The entire process may take two to three months.

Like issuing a notice of intent to deny or a request for evidence, the opening of an investigation for fraud or misrepresentation constitutes an action for premium processing purposes pursuant to 8 CFR § 103.2(f)(1) and will push a case beyond 15 days without a refund.

10. The numbers of H-1B visas available are erratic. Is this due to denials on H-1B petitions making additional numbers available?

Response: HQ maintains the H-1B cap count. There could be various reasons for changes to the cap count. For example, if an error is discovered in a response to any of the questions in Part C of the H-1B Data Collection Supplement, a change can affect the cap count. The filing of multiple petitions by an employer for the same beneficiary will result in the denial or revocation of all such petitions, which will make additional numbers available. Likewise, denials of H-1B petitions make additional numbers available.

11. An employer has filed an H-1B petition on behalf of a beneficiary and a subsequent renewal. After a gap due to ineligibility for seventh year the same employer files a third petition when the applicant becomes eligible under AC21. Would the third petition be considered an "initial filing" and subject to the $500 fraud fee?

Response: Each employer is only required to pay the $500 fraud fee one time for a beneficiary. In Part 2.2, it is suggested you check either 2b (continuation of previously approved employment) or 2c (change in previously approved employment). If the I-129 is completed in this manner, the mailroom will not reject for the fraud fee.

12. VSC handling of J waiver applications with CSC

Our understanding is that since October 6, 2006, DOS forwards all 212(e) waiver recommendation letters to VSC when those waiver recommendations are based on a "no objection" letter from the exchange visitor's home government. VSC then adjudicates the 212(e) waiver. Is this still the current protocol?

Response: Yes. The VSC has jurisdiction over all "no objection" waivers.

VSC apparently does not issue I-797 receipt notices for waivers it processes on the basis of a "no objection" letter. When schools file an H petition with CSC with a copy of the DOS waiver recommendation letter alone, it is often frustrating not to be able to refer CSC to the VSC case number for the waiver case. It can also cause delays in processing the H case. Is there a good way for us to help to coordinate the processing of I-129's in CSC and related I-612's in VSC?

Response: Unfortunately, the "no objection" waiver system cannot issue a receipt notice. It is important to include a copy of the waiver recommendation letter from DOS with the filing of the H petition because the alien's name on the recommendation letter will be the name that is entered in CLAIMS for the waiver. This will make searching the systems easier for CSC. If CSC finds the "no objection" waiver in CLAIMS, it then contacts VSC and requests adjudication of the waiver.

H-2B petitions

13. Designated Country List for H-2Bs

On December 19, 2008, a Final Rule was published in the Federal Register designating a list of countries whose nationals can be the beneficiary of an approved H-2B petition. The notice states that the rule does not affect those individuals who are currently in H-2B status. However, we have seen denials of the petitions for individuals in H-2B status and applying for extensions who were nationals of countries not listed in the Final Rule. Please provide a clarification of how the VSC understands of this rule.

Response: The Federal Register notice (73 FR 77729) identifying foreign countries whose nationals are eligible to participate in the H-2B visa program states that:

> This notice does not affect the status of aliens who currently hold H-2B nonimmigrant status.

Both CSC and VSC, together with Service Center Operations (SCOPS), have interpreted this to mean that those aliens who were already in H-2B status at the time the announcement was published would not be affected by the notice; however, should those aliens later apply for an extension of their H-2B stay, the designated list would then apply to them.

L-1A and L-1B Intracompany Transferees

14. Qualifying Corporate Relationship

There have been requests for voluminous amounts of information regarding the qualifying corporate relationship in L-1A and L-1B petitions. This includes questions that are well beyond the scope of the regulations - such as 1) evidence that the overseas entity has been continuously in contact with the incorporator and other representatives throughout the U.S. entity's incorporation process and how the overseas entity funded the incorporation of the U.S. entity; 2) evidence of the ownership and control of each parent, subsidiary and affiliate organization of the foreign organization, rather than just the two entities that are the subject of the petition (for example - EAC-09-XXX-XXXXX). Given that the petitioner must show that the qualifying relationship exists by a preponderance of the evidence, can you provide guidance on the type of evidence that would be acceptable to meet this burden?

Response: Officers look at each petition separately, weigh the submitted evidence and determine whether or not the petitioner has established the qualifying corporate relationship. Generally, if the petitioner is a large, well known corporation, a statement from the petitioner would be sufficient. However, if the evidence is not satisfactory, the officer will ask for additional evidence to meet the requirements of the regulations in regard to establishing the corporate relationship. Where a request for blanket certification has been made, officers may legitimately ask the filing entity for information regarding any or all of the entities listed on the request, if necessary to properly adjudicate the request.

The example provided has been reviewed. The initial RFE was erroneous and a subsequent RFE was issued. The petition was subsequently approved.

15. I-797 Receipt and Approval Notices for Canadian Citizens

Generally, when a Canadian citizen applies at the port of entry to enter the U.S. in L-1 status, the petition is forwarded to the VSC and a Form I-797 receipt and an approval notice are generated. In some situations, the Form I-797 approval notice is not being generated by the VSC, and the individual may need the approval so their non-Canadian citizen spouse and/or children can apply for visa stamps at the appropriate consulate or embassy. Is there a procedure we should follow to ensure the approval notice is generated by VSC in these situations? How long should we wait before following up with VSC if the approval notice is not generated?

Response: The I-129 L-1 filing received from the port of entry (POE) will generally have the approval notice generated within a two-week period. This may vary some depending on the workload.

If the approval notice is not received three weeks after the receipt notice, a follow-up through the Customer Service Helpdesk at 1-800-375-5283 would be appropriate.

16. Standards used in evaluating whether a position is one requiring 'specialized knowledge'

Requests for evidence on this issue present shifting standards for what the VSC considers to be "specialized knowledge." A number of requests reference the Puleo memo describing "specialized knowledge" (for example - EAC-09-XXX-XXXXX). Others have referenced a 1970 House report as guidance for L-1B adjudication (for example - EAC-09-XXX-XXXXX). Yet others have taken language directly from the AAO decision of July 2, 2008 discussing "specialized knowledge." We would appreciate guidance on what standards VSC will use to evaluate whether a position is one requiring specialized knowledge.

Response: Determining whether the position requires specialized knowledge is heavily dependent on the nature and scope of the individual business, product or service. The petitioner should submit whatever type of evidence they feel establishes that the position requires specialized knowledge. The officers look at many factors when determining if the beneficiary qualifies for the specialized knowledge section of the L-1B nonimmigrant classification. Factors used in the officer's decision include: all the evidence submitted and the guiding relevant statute, regulation, policy memoranda and precedent decisions. We note, however, that the Puleo memorandum is consistent with other guidance issued by USCIS, as well as congressional intent in creating the L-1B classification.

17. Types of evidence to be presented

Given the petitioner's burden to prove by a preponderance of the evidence that the position in the U.S. requires specialized knowledge, and that the beneficiary has been working at a position requiring specialized knowledge for a qualifying organization overseas, can you provide guidance on the types of evidence that can be presented to satisfy this burden?

Response: There is no specific evidence identified in the statute or regulations to establish that the position requires specialized knowledge.

The petitioner is in the best position to know what type of evidence will establish an individual's eligibility for the "specialized knowledge" worker within that company.

Types of evidence which may establish the position requires specialized knowledge may include but are not limited to evidence such as:

- Detailed job descriptions
- Training records
- Detailed descriptions of the position duties and nature of the position,
- Evidence of previous experience, education requirements for the position.

18. The Adjudicators Field Manual at 32.3(b) suggests that "the regulations do not require submission of extensive evidence of business relationships or of the alien's prior and proposed employment. In most cases, completion of the items on the petition and supplementary explanations by an authorized official of the petitioning company will suffice. In doubtful or marginal cases, the director may require other appropriate evidence which he or she deems necessary to establish eligibility in a particular case." Nevertheless, extensive documentation is being required by the Service Centers in both H-1B and L-1 cases for well known companies with proven track records in both business and as immigration filers. Can the Center offer suggestions in terms of filing tips to ensure that requests are not made, or advise adjudicators that voluminous document requests for established filers should not be required?

Response: It is the policy of the VSC to request only that evidence necessary to make a determination as to the approvability of the petition. A letter from an authorized official of the petitioning company explaining the qualifying relationship or describing the alien's prior and proposed employment generally is sufficient. However, if the petitioner's letter is vague or merely repeats the language of the statute or regulations, the letter alone will not satisfy the petitioner's burden of proof. The VSC has discretion to request additional documentation if the evidence submitted is marginal or appears doubtful.

19. ACIP and other stakeholder groups have long recognized the Puleo memo (James A. Puleo, Memorandum to District Directors, et al (CO 214L-P), Interpretation of Special Knowledge, March 9, 1994) as a valuable resource in defining specialized knowledge. At the same time, we recognize that the examples the memo uses are somewhat dated, and the memo does not take into account third party placement situations as provided in the Visa Reform Act of 2004. Is the agency contemplating updating the memo? If so, would stakeholder groups be able to provide input and examples as to what would constitute specialized knowledge in both on site and third party placement situations?

Response: This question should be addressed to SCOPS.

20. The L-1B definition of specialized knowledge was refined in the Immigration Act of 1990 to facilitate international transfers. Congress recognized an overly restrictive stance by Legacy INS at times in the 1980s and expressed a desire to take a more expansive view. The Committee Report at Conference Report, Pub. L. 101-723 set forth that "One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem. The bill therefore defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the company." Furthermore, INS in its 1991 proposed rule (56 Federal Register 31553, 31554 (July 11, 1991)) enunciated the view that the intent of the new law "as it relates to the L classification was to broaden its utility for international companies. The L regulations have also been modified to include a more liberal interpretation of specialized knowledge as defined in section 214(c)(2)(B) of the Act."

Given this, it has long been held that specialized knowledge need not be proprietary, unique, or narrowly held within a company. (e.g. Puleo memo). At the same time, RFEs issued by the VSC recently have sought evidence to demonstrate such criteria, particularly that certain knowledge is "narrowly held within a company." Companies differ vastly in size and structure of their business. Furthermore, companies vary in the nature of their products and services, and the numbers of employees who may have the specialized knowledge to provide a critical structure or service will vary accordingly. Given this, we would appreciate it if the Center could explain its definition of "narrowly held within a company" and its continued applicability to L-1B adjudications.

Response: The VSC reviews all submitted evidence and takes guidance from statute, regulations, policy, and decisions in determining whether the alien possesses "specialized knowledge." Each petition is reviewed on the merits of the specific case to determine whether the alien has "specialized knowledge." VSC recognizes that the nature and scope of business entities and their goods or services can differ widely. Nevertheless, the L-1B classification was not intended to be a catch-all category for intracompany transferees, irrespective of the depth or breadth of their knowledge or experience. While there is no requirement that the knowledge be proprietary in nature, in order to establish eligibility for the L1B classification, the petitioner should be able to demonstrate that the knowledge which the beneficiary possesses is unique, uncommon, distinct, different, noteworthy or advanced, and that such knowledge is necessary to fill the duties of the position offered.

21. On I-129 petitions requesting L-1A classification for a start-up company, the dates of employment will typically be for one year from the date of approval. However, in cases where a date of employment is specified on the I-129 form, the approval notice is issued with that specific date range. In cases where an RFE is issued, for example, this can hurt the client as by the time the case is approved, it can be a month or two after the start date of the approval notice. When you are given only one year to start-up the operations of the company, a one or two month delay can be devastating. In addition the applicant must then wait for an appointment at the US Embassy and subsequent visa issuance. In order to maximize the amount of time, can we put From: Approval To: One year on the I-129 form?

Response: The VSC will accept an I-129 L-1A petition for a start up company with the following requested employment validity dates:

From: "Date of Approval."
To: "One year from date of approval"

If the petition is otherwise approvable, the petition will be granted for a one-year period from the date of the approval.

22. Is VSC amenable to accepting requests for extensions of time in which to respond to RFEs for L-1 petitions? In some cases, the RFEs request voluminous information from the foreign employer which can take some time to collect. If so, what would be the procedure for requesting the extension? Should we send an email or fax to the Premium Processing Unit?

Response: The time allowed to respond to a request for information that will be obtained from an overseas location is 87 days. Additional time may not be granted to respond to a request for evidence per 8 CFR 103.2(b)(8)(iv).

Q-1 International Cultural Exchange Visitors

23. Standards to be used in evaluating the work component of the position

The Q-1 regulations state that the work component of a Q-1 cultural exchange visitor's employment or training must serve as the vehicle to achieve the objectives of the cultural component. Recent denials and requests for evidence from the VSC seem to suggest that the beneficiary must be 100% engaged in the performance of a culturally-specific art form in order to qualify (for example - EAC-09-XXX-XXXXX/AAO EAC-06-XX-XXXXX). We believe this runs counter to the regulations and prior VSC and AAU interpretations on the subject. Please clarify.

Response: The petitioner must establish that the beneficiary will be engaging in employment or training of which the essential element is the sharing with the public of the culture of the alien's country of nationality. In addition, the regulations clearly identify accessibility to the public, for the purposes of the beneficiary exposing the public to the foreign culture of their country's nationality as an essential requirement for eligibility in this classification.

When adjudicating the request for the Q classification, USCIS must be persuaded that the sharing of the culture of the international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

Committee Comment: This response was brought to the attention of the Director of the VSC, and he indicated that he would report back to AILA with a more specific response.

Nonimmigrant Student Issues

24. Effective date for COS to F-1 and J-1

We have noticed that F-1 and J-1 change of status (COS) approval notices now have an effective date printed on them; noting the date on which the F-1 or J-1 status begins. How is this COS effective date determined? Are we correct in understanding that this date would generally be the program start date of the I-20 submitted for change to F-1 status or the program begin date of the DS-2019 submitted for change of status to J-1?

Response: The change of status effective date is either the date of adjudication, or a date in the future depending on the specific scenario. Issues we consider are the date the applicant's current status expires and the F1 or J1 program start date. The effective date may or may not be the program start date on the I-20 or DS-2019. In general VSC would give the date of adjudication; however, in instances where the applicant may be in a valid status up until the program start date, we may give them the program start date as the effective date to allow them to maintain their current status for as long as possible. For instance, if an H1B is in a valid status up until or beyond the program start date, they may wish to continue to be employed until they begin their program.

Does CLAIMS update the SAVE database with such change of status information?

Response: CLAIMS should update the SAVE database with the change of status information. If it does not, Social Security can submit Form G-865 to the proper USCIS office to verify their status information.

25. Program start date and change of status to F-1

A. What is the Service Center's adjudication policy and procedure when reviewing a change of status application if the Form I-20's program start date has passed? Must the adjudicator look to see that the program start date has been deferred in SEVIS before proceeding with the application? There appear to be inconsistencies in how this is handled -- can VSC please clarify?

Response: If the program start date has passed and has not been deferred, VSC will continue to adjudicate as long as the applicant's record has not been canceled or terminated in SEVIS. If the program start date has been deferred in SEVIS, the officer will notate the new program start date on the I-20.

B. Under SEVP policy, a school is instructed to defer the program start date in SEVIS if it appears the change of status will not be approved before the program start date as originally set. NAFSA would like to confirm that the change of status application remains approvable after subsequent deferrals of the start date in SEVIS pursuant to this SEVP policy, provided the applicant's immigration status at the time of filing was valid to at least 30 days before the program start date on the I-20 initially submitted in support of the application for change of status.

Response: If otherwise approvable, a change of status will remain approvable regardless of subsequent deferrals of the program start date provided that the applicant's status at the time of filing was within at least 30 days of the program start date indicated on the initial I-20.

26. Change of status from J-1 to F-1

J-1 exchange visitors can remain in the United States up to 30 days after their program end date, as part of their duration of status. Can you confirm that an application for change of status from J-1 to F-1 is approvable if the 30-day J grace period falls within the 30-day window prior to the F-1 program start date?

Response: If otherwise approvable, an application for a change of status from J-1 to F-1 is approvable if the 30-day J grace period falls within the 30-day window prior to the F-1 program start date.

27. Protocol for advisers use of VSC.Schools email address

Please clarify when advisors can use the vsc.schools@dhs.gov email address, and when they have to go through the NCSC.

Response: The advisors should ensure that the student has attempted to address their concern through the NCSC. However, the vsc.schools@dhs.gov account allows the advisors to deal with issues that are not of the norm. For example, if a student has applied for post-completion OPT, but was unable to finish all course requirements, how should she proceed? In general, the vsc.schools box should be used when the issues involved are complex, unusual or particular to the student in question.

28. Procedures for withdrawing I-765 application for OPT

Please outline the process to follow when a student wishes to withdraw an application for OPT after it has been filed? What should the advisor do to assist with this type of request?

Response: The student should submit a letter to the VSC requesting the withdrawal. The letter should contain the receipt number of the I-765 and the student's signature. The advisor should cancel the request for OPT in SEVIS and email vsc.schools@dhs.gov with a scanned copy of the applicant's withdrawal request letter.

29. Revocation of OPT employment authorization

Current procedure at the Service Centers is to revoke OPT employment authorization only in the event the EAD is returned prior to the authorized start date. Requests to revoke after the employment authorization start date has passed have consistently been denied.
8 CFR 274a.14(b)(1), however, gives USCIS discretion to revoke employment authorization any time, "(i) Prior to the expiration date, when it appears that any condition upon which it was granted has not been met or no longer exists, or for good cause shown; or (ii) Upon a showing that the information contained in the application is not true and correct."
Can VSC consider exercising its discretion to revoke OPT after the OPT start date upon request of the student, and allow the student to recapture the unused portion of the OPT at a later time or for another degree done at the same educational level?

Response: The current procedure at the VSC, and at the other Service Centers, is to revoke OPT employment authorization only in the event the student requests the revocation prior to the authorized start date. We do not require that the student return the EAD prior to the start date. While we generally would not revoke OPT based upon a request by the student received after the start of the employment authorization, students are free to request revocation and offer a persuasive case. USCIS could use the discretion offered by 8 CFR 274a.14(b)(1) to revoke OPT in an especially unusual case, but any such revocation would be based upon the particular factors presented by the student.

30. VSC process for EADs returned to VSC because of faulty address

When an EAD is returned to VSC because an address is faulty, or is undeliverable, how long will VSC hold the card before destroying it?

Response: The VSC will hold EADs returned as undeliverable for one year prior to destroying them.

31. CLAIMS updates and SEVIS OPT indicators

Is CLAIMS now consistently updating the SEVIS requested / pending / approved status indicator for OPT applications?

Response: VSC has not received complaints recently that the status indicators in SEVIS are updating improperly. Because we do not own the SEVIS system, such complaints are our only indication of such problems.

U Visa Issues

32. Please provide an update on the status of U visa processing.

Response: As of the date of this document, the VSC approved 4,092 U visas for principal applicants and denied 296 U visas for principal applicants during this fiscal year. During this time period, the VSC approved 3,043 derivative U visa applicants and denied 125 derivative U visa applicants. The VSC issued approximately 5,800 Requests for Supplemental Information and 6,600 Requests for Additional Evidence during this time period. As these figures should be viewed in context, further discussion will be provided at the I-360 VAWA/T&U break out session.

33. T & U visa issues: Please review the new information and Q&A's that have come out concerning these visas emphasizing the purpose and the requirements.

Response: Stakeholders are encouraged to ask specific questions related to the VAWA and T & U visa program at the conference.

I-601 Waivers

34. Processing Times

How long is it taking the VSC to process I-601 waivers?

Response: The only stand alone I-601s that the VSC processes are those filed at the American Embassies and Consulates in Canada. Processing times vary depending on workload priorities. Since April 2009, the VSC has been focusing on consular returns as a priority. However, this month additional resources will be allocated to processing the Canadian I-601 workload.

Can the processing time be posted with the processing times chart on the USCIS web site?

Response: Processing times reported on the USCIS web site are controlled by Headquarters. We would refer you to HQ for this question.

35. Response to RFE

How long is it taking the VSC to review responses to requests for evidence for I-601 waivers?

Response: This timeframe varies also depending on workload and priorities. Since April 2009, VSC has been focusing on consular returns as a priority which has caused some delay in the review of some RFEs. However, this month, resources will be returned to processing the Canadian I-601 workload.

How long after a response to a request for evidence would it be appropriate for our members to wait before initiating an inquiry?

Response: Approximately 60 days.

NCSC Follow Up Account

36. Staffing

How many officers are handling inquiries sent to the Vermont Service Center NCSC follow-up email account? How many inquiries on average do you receive in a day? Do you plan to add more officers as the email address gets more widely disseminated?

Response: The VSC currently has 5 officers providing responses to inquiries received to this account. The VSC receives, on average, 20 to 30 inquiries per week. We will add more officers to the email account as we deem necessary to ensure the response times do not suffer due to higher volume of work. The VSC strives to keep the response time between 48-72 hours. The officers are currently responding to inquiries within 24-48 hours. If a file needs to be reviewed, an interim response will be sent to advise the customer of this.

37. Signatures on G-28s

Often, when an inquiry is sent to the NCSC follow up e-mail account, the response is that there is no original signature on the Form G-28 that is on file. Does the VSC continue to follow the guidance for signatures on the USCIS web-site at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9453d59ae8a8e010VgnVCM1000000ecd190aRCRD&vgnextchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD allowing for facsimile signatures of the attorney or accredited representative? If the NCSC indicates that there is no original Form G-28 on file, does the attorney need to submit a new original Form G-28, or will a copy of the Form G-28 which was submitted with the initial application suffice?

Response: If an attorney is making the inquiry with the VSC or the AILA liaison is making an inquiry on behalf of an attorney, the officers review the electronic record to determine if Form G-28 was accepted and inputted into the electronic system. If there is no Form G-28 on record or the attorney listed on the Form G-28 does not match the name of the attorney requesting information, the officers will request submission of a valid Form G-28. We cannot accept scanned copies of a Form G-28 because the petitioner or applicant signature must be original. The VSC has established a special P.O. Box for mailing and expedited processing of new Forms G-28 (Vermont Service Center, PO Box 600, St. Albans, VT 05479-0600). You may mail the Form G-28 to the officer's attention to facilitate a speedy response from the Customer Service Unit.

Applications for Temporary Protected Status (Form I-821)

38. We have had reports of a number of cases where the attorneys have received a notice of intent to deny the Form I-765 requesting criminal records and proof that Form I-821 was previously filed or was pending.

Response: This is correct. A notice of intent to deny is issued on a re-registration I-765 if new criminal charges are found after running the fingerprint check in the current re-registration period that would render the applicant ineligible for TPS. The initial application is reviewed for J&Cs for any prior charges; however, if there are new charges since the approval of the initial TPS application, then it is the responsibility of the applicant and his/her attorney to provide the outcome for the charges.

A notice of intent to deny is also issued when an initial Form I-821 has never been filed. In the case listed below, systems show that this applicant has never filed an initial application. Part 1 on the I-821 is "b" which indicates the applicant wishes to re-register for TPS. Applicants cannot re-register for TPS until they have an approved or pending initial TPS application.

This initial evidence was submitted with the initial filing. After submitting the information, the members have been asked to file a motion to reconsider due to service error and to pay the $585 fee (for example - EAC-09-XXX-XXXXX). Will VSC consider expediting a new Form I-765 in this situation?

Response: No. This applicant has never filed an initial application and that has to be done before he can re-register.

What can attorneys do to prevent this situation from arising?

Response: Attorneys can request proof of an approved/pending initial I-821 filing or current EAD with a classification of C19 (Initial I-821 pending) or A12 (Initial I-821 approved).

Attorneys should confirm that their clients have been approved for TPS prior to filing a re-registration. If the I-821 application is meant to be filed as an initial, then Part 1(a) should be checked to indicate "This is my first application to register for Temporary Protective Status (TPS)." If any questions in Part 2 are marked yes, the attorney should provide an explanation for those affirmative answers. The filing should also include all court dispositions for any criminality issues.

39. Problems with VSC's Treatment of I-601 HIV Waivers for TPS Re-registrants and Late Initial Registrants.

We respectfully ask the VSC to explain why its agents are requesting HIV-positive applicants for TPS re-registration and late initial TPS registration to submit Forms I-693 (medical reports) to support their I-601 HIV waiver applications. We have responded to each of these requests thus far by explaining that TPS applicants are not required to submit Form I-693 pursuant to 8 C.F.R. §245.5 and 8 C.F.R. §244 *et al*, yet our HIV-positive clients continue to receive these time-consuming requests for evidence from the VSC. These requests have unfortunately resulted in significant delays in the processing of our clients' TPS re-registration and EAD applications.

Furthermore, we ask the VSC to explain briefly its procedures for adjudicating HIV waivers for TPS applicants and whether it provides instruction to its agents on the proper procedures for adjudicating I-601 HIV waivers. Perhaps a centralized and educated corps of agents should be reviewing these applications. Hopefully in the near future the HIV ground of inadmissibility will no longer be an issue for our clients and your office, but we very much appreciate your assistance with this matter in the meantime.

Response: The CDC requires this form in order to make a determination on each case. If the form is not completed and sent, the CDC will deny and, therefore, the I-601 and the TPS application will be denied.

40. Problems with VSC's handling of EADs for applicants granted TPS in court.

A number of advocates have been having problems obtaining EADs for applicants granted TPS by the court. According to information provided several months ago by the VSC, the proper procedure is to file the I-765 with a coversheet explaining that this is an EAD application based on a TPS grant by the immigration court, and to include a copy of the judge's order. Once we got the receipt notice we were instructed to email a copy of the notice to the VSC using a designated email address and that was supposed to permit the VSC to track these applications and insure that they are handled properly. However, even though I followed these instructions, I received a NOID because I had not included a copy of the TPS application even though the

instructions I had been given did not require a copy of the application. However, in response to the NOID, I sent in a copy of the application. That was in March, and I am still waiting for a response. Please clarify what the proper procedure is for obtaining a work permit for an applicant whose TPS application has been granted in court.

Response: Please provide a receipt number and we will look into this case. The instructions for how to properly file an application for TPS after a grant by an immigration judge have been published in the Federal Register.

Consular Returns

41. Can you provide an update on the resources VSC is devoting to consular returns? We receive numerous inquiries from members where their Form I-130 was returned to VSC by a consular post years ago. Is there a process the attorney can initiate to get these cases moving again?

In April 2009, the VSC trained an additional team of adjudicators to work on consular returns in an effort to clear this backlog. Our goal is to eliminate the backlog by the end of the calendar year. Once this goal is reached, we will try to keep the processing time for consular returns to within six months. Please be aware that some processing delays are attributable to the amount of time it takes for petitions to be forwarded from the Consulate to the National Visa Center and, finally, to the VSC.

212(e) Waivers

42. Would it be possible to begin issuing receipt notices for these applications to assist NCSC and the attorney in tracking these applications? If not, would it be possible to submit liaison inquiries within 30 days of the issuance of a waiver recommendation by the U.S. Department of State, instead of 60 days as is not required?

The current electronic 212(e) waiver process does not allow for issuance of receipt notices. In order to change the process, an Information Technology Service Request (ITSR) would have to be submitted to HQ for approval. ITSRs can take considerable time to be processed and approved, depending on the urgency and caseload.

Our current processing targets for this case load are actually at 6 months (180 days); while we cannot entertain inquiries within 30 days of issuance of the recommendation by DOS, we will accept inquiries after 60 days.

Transfer of File to Consulate via NVC

43. What are the steps to get an immediate relative case sent to the consulate via the National Visa Center when there is no VSC file number because the Form I-130 was approved by a District Office? Members have reported delays and conflicting information on how to proceed. District Office has advised that a Form I-824 is only for duplicate approval notices, not to move case to NVC, while VSC returns Form I-824 stating file is at District Office.

Response: Form I-824 is filed to request action on an approved petition. If a beneficiary wishes to apply for an immigrant visa abroad, after initially requesting adjustment of status under section 245 of the INA, the petitioner should file an Application for Action on an Approved Application or Petition (Form I-824). The Form I-824 has five uses; they are listed on page one and two of the form instructions. To request that USCIS forward an approved Petition for Alien Relative (Form I-130) to the National Visa Center, mark "D" in Part 2 of the form. Once a Form I-130 is received at the National Visa Center, it is assigned a number based on the Consulate where it will be forwarded. This becomes the DOS number which is a means of tracking the petition through the visa process.

The Form I-824 should be submitted to the USCIS office that approved the original petition or application.

If the beneficiary leaves the United States while the adjustment process is pending, then an I-824 would need to be filed to have the approved I-130 sent for consular processing abroad.

Other Questions:

44. How long would a check (payment of fees) need to be valid after the time of arrival at USCIS? Sometimes, university-issued checks are not valid for very long. If the department requests a check and then there are complications with the case that delays the filing, occasionally a university might submit a case where the check expires within 1-3 days after being delivered to USCIS by FedEx. Is that acceptable? What happens if the filing is received during a flood of filings and it takes USCIS some time to open the mail and process checks?

Response: Unless a fee remittance states otherwise, it is only acceptable for one year from date of issue. There are no exceptions to this rule. Customers may seek to validate the check for six months from date of issue. This will protect them in the event USCIS discovers a problem with the filing or USCIS experiences a backlog in processing cases.

45. Is VSC still transferring most of the I-539 cases to CSC? This has caused issues as CSC appears to have been denying all I-539 cases transferred as they are used to processing second requests for extension of stay.

Response: There are no immediate plans to transfer additional I-539 applications to CSC in the future.

46. What is the best way to get an approval notice corrected if VSC made an error and the case was not filed using Premium Processing? Making an inquiry through NCSC generates a response "We have requested your file. Please allow a minimum of 60 days for a response."

The first step should be to contact the USCIS National Customer Service Center at 1-800-375-5283 and request a referral be sent to the VSC as a "Service Error". If the referral does not result in a correction, an email to the NCSC Follow-up account (vsc.ncscfollowup@dhs.gov) is appropriate.

47. The changes in filing procedures for N-400s (i.e. no longer accepted/processed at Service Centers, except military) – now accepted at lockboxes and processed at NBC.

Response: Effective January 22, 2009, N-400 applications are filed at a designated lock box facility, either in Phoenix, AZ or Lewisville, TX, depending on geographic location. N-400 applications filed by members or certain veterans of the Armed Forces continue to be filed directly with the NSC.

48. Please clarify which applications/petitions are usually adjudicated at Service Centers vs. the types of applications adjudicated at Field Offices. (BUF)

Response: Please refer to the document titled "Summary of Direct File Mailing Locations for USCIS Form Types" appended to this document.

49. What are the expected processing times for various applications adjudicated at the Service Center? (BUF)

Response: Please refer to the processing times report on USCIS.gov. This report is updated monthly.

50. What are the customer service options for persons specifically inquiring about applications/petitions pending at Service Centers that may have gotten off track or are pending well past expected processing times? (BUF)

Response: Inquiries should be directed to the National Customer Service Center at 1-800-375-5283. If this does not result in a satisfactory resolution to the issue, the inquiry should be directed to the following email account: VSC.ncscfollowup@dhs.gov.

51. Please review the procedure for making a request for humanitarian reinstatement of I-130 petitions that have been revoked based on the death of the petitioner (Sec 205). (NEW)

Response: The process for requesting humanitarian reinstatement consideration begins with the notification to either the Service Center or the National Visa Center of the death of the petitioner. If the death certificate is accompanied by a letter indicating that the beneficiary wishes to be considered for humanitarian reinstatement, the Service Center will respond with a letter confirming that the petition has been automatically revoked (8 CFR 205.1(a)(3)(C)). The letter then provides a list of requirements that must be met to have the petition considered for humanitarian reinstatement under 8 CFR 205.1(a)(3)(C)(2).

In order for the reinstatement to be considered, the following documents must be provided:

- The request for reinstatement must be in writing by the beneficiary of the original petition or substitute sponsor if the beneficiary is a minor child.

- Provide as much available documentation to identify and document the humanitarian reason for reinstatement. Such documentation may include, but is not limited to:

a. Evidence of a long-time residence and any equity in the U.S.
b. Evidence of relationship to other family members with evidence of their immigration status in the U.S.
c. Evidence of health-related factors that would establish the need for the reinstatement of the petition.
d. Evidence of current political or religious conditions in the beneficiary's country of origin that would indicate that the beneficiary would suffer if not permitted to immigrate to the U.S.

Please note: Economic depression, as is found in many regions of the world, is not considered to be an example of a harsh result contrary to the goal of family reunification unless it is of such an extreme nature as to possibly cause physical harm to the beneficiary.

- The new sponsor is required to submit an original Form I-864, Affidavit of Support, to show that he or she has adequate means of financial support and that the beneficiary of the petition is not likely to become a public charge.

a. The substitute sponsor must complete the Form I-864, Affidavit of Support.
b. The Form I-864 must contain an original signature of the sponsor.
c. The new sponsor must be an immediate family member or a legal guardian of the beneficiary, such as a spouse, parent, mother-in-law, father-in-law, sibling, child, son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild child at least 18 years of age.
d. Submit evidence that will establish the new sponsor's immigration status or U.S. citizenship.

- Other documentation;

a. The petitioner's death certificate.
b. The initial approval notice.
c. Any correspondence received from the Department of State or the National Visa Center.
d. Evidence of the relationship between the new sponsor and the beneficiary.

- If the death certificate submitted indicates that the lawful permanent resident (LPR) petitioner died while outside of the United States, you must establish that it was not the intent of the petitioner to abandon his or her LPR status. See Matter of Abdoulin, 17 I & N Dec. 458 (BIA 1980) and Matter of Abdelhadi, 15 I & N Dec. 383 (BIA 1975).

Such evidence may include but is not limited to:

- Evidence of a plan for a return to the United States,
- Evidence of an un-relinquished domicile in the United States, or
- Evidence of continued ties to the United States.

If it is determined that a request for reinstatement does not meet the statutory and regulatory requirements, any subsequent request will require the filing of a formal motion for reconsideration accompanied by the appropriate motion fee.