

Questions for the  
National Benefits Center/Florida Bar Liaison Telephone Conference  
Wednesday, January 27, 2010

1. You advised us previously that prior to sending an application to the Field Office for interview, NBC requests all associated files during our front-end process from other Field Offices or Service Centers. You advised that NBC requests associated files on the 30<sup>th</sup>, 60<sup>th</sup> and 90<sup>th</sup> day from the date of the initial request and the application may be held until day 120, awaiting response, before NBC sends it to the Field Office. However, the local offices have advised members that a Service Center, specifically the California Service Center, will not transfer a file on a case that is still pending adjudication. For example, an applicant has an I-829 pending adjudication at CSC. The applicant's 21 year old USC child petitioned for him and his wife and they were interviewed on 5/26/2009 (MSC0904317692 and MSC0904317687). However this case cannot be approved because CSC will not transfer the I-829 file despite requests from the local office. Is there anything that can be done by NBC in cases like this?

NBC does everything possible to acquire an A file (alien's primary file), or associated file, from a USCIS office prior to sending a case to the Field Office for interview. In the event that an office will not release a file, NBC will forward the case to the Field Office with jurisdiction in a T file (temporary file) rather than have the case remain at NBC. Once the T file leaves NBC, the Field Office will continue to request the file so that when it is released the interview and adjudication can occur.

NBC's records indicate that, in the majority of cases, A files are obtained and sent to Field Offices on a timely basis. Records show that over a monthly period, only four percent of the files sent to the field with I-485 applications were in T files in comparison to those shipped in A files. Additionally, only five percent of all files sent to the field were sent in T files rather than A files during this same period.

Once the A file, or T file, leaves NBC for the Field Office, inquiries or requests regarding the case should be addressed to the Field Office of jurisdiction. If you need assistance with a point of contact for a specific office, you may contact NBC's Attorney Liaison email box for assistance.

The situation described above with the I-829 has been resolved. The requested file is at the Kendall office.

2. Interfiling has become increasingly important given the retrogression in the EB-3 category. Since interfiling is a non-standard activity at any Service Center, there is no reporting mechanism on how successful the Service Centers are being in honoring interfiling requests. Is NBC accommodating requests for interfiling and if so, can you advise about the operating procedures in place for interfiling at NBC? For example, how can interfiling be accomplished between a long-pending EB-3 adjustment case that is pending at TSC or NSC, and an approved I-130 petition with a current priority date or a new I-130 filing which is current? Does a new adjustment of status application have to be filed on the I-130 or can we request that the pending employment based I-485 be interfiled with the I-130. If so, to which Service Center should the request for interfiling be addressed: NBC where the Family Based I-485 would be filed? or to TSC or NBC (where the current I-485 is pending)?

NBC will honor a request to transfer the basis of an Employment-based application at the TSC or NSC to a family-based adjustment of status basis. If the written request is received at NBC, we will request the file(s) and process the application through NBC's front-end process.

Please refer to the Adjudicators Field Manual (AFM), Section 23.2(I), Transferring an Adjustment of Status Application from One Underlying Basis to Another. You may find

the AFM using the USCIS website, click “Laws”, and then click on the title “Immigration Handbooks, Manuals, and Policy Guidance.” The redacted AFM will be found near the bottom of the next page.

The Guidelines at Section 23.2(l)(2) describe the process regarding transferring adjustment applications from one basis to another. Specifically,

- A new application to adjust status under a different eligibility is not required.
- The request for conversion from one eligibility to a different eligibility must be made in writing.
- The applicant must be eligible for the change from one basis to another, and
- There must be no break in the continuity of the underlying eligibility for adjustment prior to the submission of the conversion request.

3. I-90 applications filed online to correct errors on permanent resident cards are taking longer than the posted processing times. How long is it currently taking for these applications to be adjudicated? Is there anything that stops the clock on these cases? i.e. MSC0980154708

The case mentioned above, MSC0980154708, was filed as an I-90 “E” (My name or other biographic information has changed) not as an I-90 “D” (My card was issued with incorrect information). It was delayed because NBC had to request a manual search for the A file and documentation to verify the applicant’s status. The application was received on 7/8/09, and biometrics were captured on 7/9/09. The application was approved on 1/19/10.

NBC’s processing time for I-90 “D” applications is 90 days or less for the majority of cases.

There are a number of reasons why the processing time of an I-90 application may be longer than 90 days in some cases. The more common reasons are:

- The A file is requested from a Field Offices or USCIS Storage facility to verify applicant status.
- USCIS electronic systems do not reflect data on the applicant and a manual search of archived records is required.
- An RFE is sent requesting evidence.
- Background and identity checks.

An RFE on an I-90 will stop the clock until the RFE response is received at NBC.

If an I-90 application is outside normal processing times, please contact NBC by utilizing the National Customer Service Center or the Attorney Liaison email box for assistance.

On 1/11/10, the USCIS I-90 workload transitioned from NBC to the Nebraska Service Center (NSC). If an I-90 receipt number begins with LIN, please contact NSC for assistance. If the receipt number begins with MSC, please contact NBC.

4. Members have reported cases for Court where new biometrics are required and TSC has forwarded these to NBC. Is NBC now handling scheduling the biometrics for these cases with the Application Support Centers? Our instructions are to file with TSC with a notice of the Court date and a letter.

No, NBC is not scheduling biometrics for I-485 applications filed with the TSC per the Pre-Order Instructions for submitting certain applications in Immigration Court. TSC will

produce the I-797 Receipt Notice as well as schedule the applicant for biometrics and send the ASC Appointment Notice. NBC is not involved in this process.

There are instances, however, when NBC will generate an ASC Appointment Notice for an I-485 employment-based case from TSC. NBC receives employment-based applications from the TSC for interview scheduling by the Field Offices. Before placing these cases in NBC's interview scheduling queue, NBC conducts electronic sweeps to determine if FBI fingerprint results are present. If fingerprints have not been captured, NBC will schedule the applicant for biometrics and fingerprints at the ASC. Employment-based applicants/representatives will then receive an ASC Appointment Notice from NBC.

5. The 1 800 number recording reminds callers to file AR-11s when they move, and also to call in address changes on pending cases. Lately, however, when the 1 800 officers answer they are refusing to take information on address changes where the applicants have filed their AR-11s on-line. Instead, officers are advising that callers must wait 45 days from the date the AR-11s were filed before telephonic reports of changes of address can be accepted. Is this correct?

The following response was provided by Headquarters, Customer Service Directorate:

Yes, although NCSC can take a follow-up Change of Address request (SRMT referral) after 30 days, 15 additional days were added to allow for mailing the Change of Address request to the office of jurisdiction. This increased the wait time for submitting a follow-up request to 45 days. However, we will take this concern under consideration to change to a 30-day waiting period.

Before calling the NCSC to check on the status of an address change request, it would be helpful if the applicant/representative would check Case Status On-line on the USCIS website to determine if the address change has been made. If Case Status On-line does not indicate that the address change has been made after 30 days, the applicant/representative may call the NCSC or go on-line to complete the address change request.

6. Does NBC issue RFEs on N-400s with regard to additional information/documentation? A member recently filed an N-400 with a N-648 (Medical Certification for Disability Exceptions) for a child that is autistic and has mental retardation. At the time of the interview the officer requested a separate Written Evaluation from the doctor. Is this something that would normally be handled with an RFE prior to the interview?

NBC's does not issue RFE's for N-400 cases. NBC conducts a complete file review (CFR) and sends a notice to the applicant notifying them of information that was missing from their file. We believe this process provides the applicant with as much time as possible to prepare for the interview and reduces the continuance of cases in the Field. The CFR notice does not delay the processing of the N-400 application, unlike an RFE.

NBC's complete file review of N-400 applications was designed to be comprehensive in most instances; however, the CFR process does not include validation of N-648's. An officer in the Field may, at his/her discretion, request additional evidence on an N-400 case at the time of interview per 8 CFR, Sec. 335.3, Determination on application; continuance of examination.

7. Is NBC amenable to granting extensions of time to respond to RFEs and if so, what would be the procedure - particularly in "87" day responses to RFEs for I-864 issues. For example, sometimes petitioners have requested extensions to file tax returns and they aren't available by the time the response is due.

Applicants, or their representatives, should only file when all evidence requirements, including I-864 documentation, can be submitted with the application. Failure to provide initial evidence will delay the processing of an application and if the petitioner, sponsor or applicant is unable to provide the requested evidence within the 87-day allotted period of time, the application may be denied.

Per 8 CFR 103.2(b)(8)(iv) additional time to respond to a request for evidence or notice of intent to deny may not be granted.

When a sponsor has requested an extension to file their tax return with IRS, NBC will accept the following evidence in lieu of the previous year's tax return and supporting documents:

- A copy of the extension request (IRS Form 4868),
- Current W-2,
- The previous year's federal income tax return showing the sponsor meets the 125% of the Poverty Guideline for the current year and household size.

When the sponsor was not required to file federal income tax returns the previous year, the sponsor should submit:

- A copy of the extension (IRS Form 4868) request filed with the IRS,
- Evidence of current income including:
  - Paycheck stubs for the last 6 months or
  - A letter written on company letterhead, from the employer, which indicates:
    - the sponsor's job title,
    - salary (hourly or annual),
    - whether they were part-time, full-time, or seasonally employed,
    - how long they have been employed,
    - and the prospect of future employment with the company.

If the sponsor was self-employed, they would need to show the previous year's federal income tax return with the current extension request submitted to the IRS.

8. If a family based petition is denied is NBC automatically issuing an NTA if the alien is out of status?

No, NBC does not issue an NTA automatically for certain cases including a family-based petition. Issuing an NTA is a matter of administrative discretion per INA 242(g).

9. Do you have any issues or advice that you would like to be addressed to our members?

I-90's:

On 1/11/10, the new I-90 workload was transitioned from NBC to the Nebraska Service Center (NSC). All new I-90 applications, as of this date, will receive LIN receipt numbers and be processed by NSC. NBC is currently working on a small I-90 workload which remains pending. NBC will complete the processing of these cases within the next few weeks.

### I-600's and I-600A's

On 4/1/10, the centralization of this workload began at NBC for date forward filings. The applications will be processed by NBC similarly to the Hague adoption applications. The processing goal of these applications is 30 days.