

Minutes of Texas Service Center Liaison/Florida Bar Liaison Meeting
May 15, 2006

Attending on behalf of Florida Bar:

Larry S. Rifkin, Esq.
Natalia Poliakova, Esq.
Elaine Weiss, Esq.

Attending on behalf of the Texas Service Center:

Rosie Reyna	Assistant Center Director, Adjustment and Business Immigrant Divisions
Wyvette Covington	Assistant Center Director, Family Division
Jack Pittman	Assistant Center Director, Naturalization Division
Morris Whitacre	Assistant Center Director, COTR and Records
Jume Puripongs	Supervisory Center Adjudications Officer
Kelly Ann Anderson	Supervisory Center Adjudications Officer
Bob Meyer	Supervisory Center Adjudications Officer
Janice Hood	Supervisory Center Adjudications Officer
Kelly Botting	Supervisory Immigration Information Officer
Kathy Vaughan	Acting Assistant Center Director, Business Non-immigrant Division
Monica Carroll	Supervisory Center Adjudications Officer

Bi-Specialization

1. Can you provide us with an updated list of which ACDs will now be responsible for what products at TSC?

Rosie Reyna is currently in charge of both the Adjustment (Employment-based Form I-485s) and Business Immigrant Divisions (I-140, I-360, Legalization, and Cuban I-485s). Nancy Moser is currently acting for Lisa Kehl as the Associate Center Director for Operations while Lisa Kehl is detailed to Headquarters. Lastly, Kathy Vaughan is currently acting as the Assistant Center Director for the Business Non-immigrant Division while Ninfa Luna is also detailed to Headquarters. There are no other changes at this time.

2. How far into the bi-specialization process do you think it will take for TSC and Nebraska Service Center to address uniformity in adjudications? When can we expect announcements regarding the first uniform changes in the process? i.e. Nebraska and TSC differ in treatment of G-28s for attorney contact purposes, ability to pay issues for I-140s and acceptance of copies of letters evidencing prior professional experience, to name just a few.

TSC and NSC have been discussing and finalizing templates for RFE and denial letters. Please provide specifics regarding the differences referred to.

3. We understand that 14,000 concurrently filed I-140/I-485 petitions were transferred to TSC from Vermont Service Center. Will you be receiving more cases from the other Service Centers? How many I-140s and concurrently filed I-140/I-485 petitions do you anticipate receiving in total from other Service Centers. How will this affect your processing times?

At this time, TSC has received approximately 4500 stand alone I-140s from VSC. We do expect to receive concurrently filed I-140/I-485s shortly. TSC has received approximately 19,000 I-140 and I-485 filings from CSC. TSC expects to maintain the six month processing time for the I-140s.

4. Will we continue to file adjustment portability cases with the Service Center who issue the initial I-485 filing receipt? Or is there a new procedure for these cases?

With regard to the Form I-485s that are transferred to another Service Center, a transfer notice will be sent/mailed. Correspondence related to the Form I-485 should be sent to the Service Center where the Form I-485 has been transferred. If no transfer notice has been received, correspondence should be sent to the Service Center that issued the initial receipt.

5. How long do you think it will take you to process all the I-129 petitions you have in the pipeline? Or will these be transferred to Vermont or California?

TSC expects to complete review of all pending Form I-129s by the end of May 2006. Any cases that require an RFE will be worked as the response to the RFE is received. TSC will not transfer any Form I-129s that were pending as of April 1, 2006.

6. If two I-140s are filed for the same beneficiary i.e. a national interest waiver and an extraordinary ability petition and one case goes to TSC and the other to Nebraska where would the I-485 be filed assuming the I-140 has not yet been approved?

If the two (2) Form I-140s are filed at the same time, they will be processed by the same Service Center. If they are filed separately, then they may be processed by different Service Centers. The concurrent Form I-485 should be filed at the Service Center holding the pending I-140 that falls within the definition of concurrent filing.

7. Where do we file I-765s for spouses of L and E visa holders? Are these subject to bi-specialization?

Concurrently filed I-129/I-765s are to be filed with the Vermont Service Center. Stand alone Form I-765s are to be filed with TSC, if it is within our jurisdiction.

I-129 issues

8. Will TSC approve a seventh year or more extension for a beneficiary who is currently outside the United States?

Generally speaking, the TSC will approve a seventh year or more extension under AC21 providing that the beneficiary has maintained H-1B non immigrant status. In addition, the applicant must be in the United States at the time of filing prior to the H-1B expiring.

N-400s

9. When a naturalization case is filed, the receipt issued and the case is past normal processing times but the local office claims the case cannot be scheduled for interview because the file is still at TSC what procedure should we follow to make sure the case is transferred?
- Local offices can request any file with a pending N-400 from a Service Center.
 - On its own volition, TSC cannot send a pending N-400 file to a local office. The local office must request the file or authorize the sending of the file.
 - At this time, N-400s can be taken all the way through the interview process with “pending” processing issues.

I-90s

10. We now have two e-mail addresses for non-receipt of I-551s or EADs. These are: tsc.ponds@dhs.gov and cardpush.tsc@dhs.gov. Which is the correct e-mail address to use?

The correct address is tsc.cardpush@dhs.gov.

11. What is the normal processing time to inquire on non-receipt of green card and/or to file an I-90? A recent client received a Welcome Notice on 3/23/2006 and called NCSC on 4/24/2006 as she had not received the green card. She was told to file an I-90 as more than 30 days had passed. Is this correct procedure?

If a client has received a “Welcome Notice” and thirty (30) days have passed with no receipt of the green card, the NCSC should not be advising the client to file an I-90. NCSC should route the phone call as a non-delivery inquiry and forward it to the appropriate Service Center for resolution.

12. We continue to experience problems with card production. Generally, those who fail to receive their card were approved by TSC directly (without a local interview), and generally, it seems that the reason that TSC doesn't produce the cards is that the applicants do not have biometrics on file. The applicants are not aware, however,

that they need to go for biometrics until 3-6 months pass and they don't get their card. Is there a way that applicants without biometrics on file can receive instructions to go to biometrics with the approval notices? Currently, the approval notices instruct approved applicants NOT to schedule biometrics or do anything further. Should we start to send approved applicants to biometrics automatically?

This was an internal problem which has been corrected. Please provide examples and dates these were done.

13. When an applicant files an I-90 and TSC returns the I-90 with instructions to obtain the I-89 (biometrics) at the local office, should the applicant re-file the I-90 after going for biometrics, or do the local offices automatically notify TSC that biometrics are now on file?

No. The applicant does not re-file the I-90. When they go to the District Office for the I-89 it is a manual process and the District Office will send the completed I-89 to us for processing.

I-140/I-485s

14. We continue to see denials on I-140s where the L-1A petitions have been approved. In some of these cases the companies are stronger with more employees than when the L-1A was approved and the I-140 is still denied. Is this a training issue?

Each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof and each petition must stand on its own individual merits. The approval of a nonimmigrant petition does not guarantee that the CIS will approve an immigrant petition filed on behalf of the same beneficiary. The AAO has addressed this issue in several decisions that have upheld the original denial of the I-140 petition by the Texas Service Center. The AAO has stated that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity, however, the question of overall eligibility requires a comprehensive review of all the provisions.

The AAO also notes that there are significant differences between the nonimmigrant visa classification and an immigrant visa petition. In general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by the CIS than nonimmigrant classifications.

15. We know that you have a system in place to identify when an immigrant visa becomes available to EB-3 and EB-2 applicants to adjust status. However, members have reported that there are some applications pending at TSC that have had current priority dates since March 1, 2006, and no communication has been received from TSC regarding these applications. If these cases are pending background clearances is there a way to be notified or to identify these cases? Should we make inquiries through NCSC?

While a case may have a current priority date, it may not be ready to adjudicate to completion due to pending security checks. For cases pending security checks, it is normal that you do not receive any communication from the TSC. Additionally, be advised that the TSC does have an internal system to identify cases pending various security checks. Information from this system is not available to the public and the Service does not share information on the nature of any investigation with applicants or their representatives. For case status inquiries, please contact the NCSC.

16. When a case is on appeal and we have requested additional time to submit evidence (i.e. 60 days) in appeal (SRC-06-112-53704) do we:
- a) wait for decision on request
 - b) Count 60 days from date of receipt notice and submit evidence
 - c) Wait for TSC to issue RFE?
 - d) none of the above (something else)

Appeals filed at the TSC are reviewed. If at time of the review they do not overcome the grounds of denial, they are forwarded to the AAO. No RFE will be issued. Nor will the TSC hold a case to wait for additional information. The party submitting the appeal has 30 days from the date signing the appeal to submit any evidence/brief. Additional time can only be granted if good cause exists. AAO would decide if additional time can be granted.

Practice Points:

1. If an applicant has multiple A files – list all A numbers on applications.
2. Make sure that the I-485 is signed and **all** questions answered.
3. For Schedule A filings – if the principal and derivatives are filed separately please annotate on derivative filing “DERIVATIVE OF SCHEDULE A PRINCIPAL”
4. If an alien is eligible to be grandfathered under Section 245(i) clearly annotate the application “ELIGIBLE FOR 245(i) GRANDFATHERING” and include relevant documentation evidencing the eligibility for grandfathering.
5. If the alien is a labor certification substitution annotate application “245(a) ELIGIBLE”.
6. If the alien has been arrested the submission of a certified court disposition will help with background checks.
7. Make sure that when you respond to RFEs that you respond to the Service Center that issued the RFE.