

Minutes of  
Texas Service Center Liaison/Florida Bar Liaison Meeting  
March 19, 2007

Attending for TSC:

Lisa Kehl, Deputy Director

Rosie Reyna, Assistant Director (Employment Based I-485s, I-140/I-485 Concurrent filings)

Maritza Aviles, Supervisory Adjudications Officer (I-140 regular and premium, I-612, I-90 category "D", I-129)

Wyvette Covington, Assistant Director (I-539s, Cuban I-485s, Legalization)

Nancy Moser, Assistant Director (Asylum I-485s, I-829s, I-526s, and non-religious worker I-360s)

Kristy Sheive, Acting Assistant Director (I-102s, I-824s, Customer Service & Inquiries, Congressional)

For Florida Bar:

Larry Rifkin, Miami

Elke Rolff, Miami

Natalia Poliakova, Aventura

Elaine Weiss, Coral Gables

H-1B petitions

1. The March 5, 2007 update regarding Direct Filing Instructions for Forms I-129 and I-539 states that effective April 2, 2007 all Forms I-129 and I-539 are to be filed directly with the California Service Center or the Vermont Service Center, whichever is applicable. Based on last year's deluge of H-1B filings does TSC anticipate that cases will be transferred to TSC for adjudication and if so, when would that begin?

*Answer: TSC is standing by to assist as needed and requested.*

2. 12/5/06 Aytes memo from CO. Mr. Aytes' 12/5/06 memorandum made a number of major changes in policies associated with H-1B beneficiaries. Even though TSC is not presently adjudicating new H-1B petitions will your officers be fully briefed on these changes?

*Answer: TSC is fully aware of it, and will follow it in making adjudications as needed.*

3. If an alien applies for the "remainder" of his six years in H-1B status and has a labor certification pending for more than a year or an approved I-140 can that additional year or three years be requested in addition to the time remaining?

*Answer: Yes. H-1B beneficiaries may be granted extensions of stay for the period remaining on their initial six years' of status, as well as the*

*AC21 year or more extension. Note, however, that no H-1B extension will be granted for more than three years at a time.*

#### I-140s

4. Will TSC consider for EB-2 purposes a foreign medical degree or law degree that was earned without an underlying Bachelor's degree but has been evaluated by a standard credentials evaluator as being equivalent to a U.S. medical doctor or lawyer degree?

*Answer: Yes.*

5. Has TSC received any indication that the EB-2 category may retrogress in the near future?

*Answer: This is a matter for discussion with the Department of State.*

6. An I-140 is denied for failure to respond to the RFE. However, several weeks prior to the RFE response deadline date, a letter was sent to TSC by Certified Mail Return Receipt withdrawing the application. In a situation such as this what would be the procedure, if any, to request TSC to administratively re-open the case to reflect a withdrawal rather than a denial?

*Answer: In such a situation, the petitioner should submit a request for TSC to re-open and allow withdrawal, along with evidence supporting the request. The TSC will entertain the request.*

7. This issue has been addressed in a previous meeting however members are still not clear. A Motion to Reopen/Reconsider a denied I-140 (Multi-national manager) was filed. The case was fee'd in as an I-290B Notice of Appeal to the Commissioner. Subsequently, a denial of the Motion was received with no mention of the case being forwarded to the commissioner. Is it still TSC policy that a case is only treated as a Motion to Reopen/Reconsider unless it is specifically stated Motion to Reopen/Reconsider **and/or Appeal?**

*Answer: Appeals and motions are filed on I-290B. The form must indicate: motion, appeal, or motion with appeal in the alternative (only three choices). We also look at the brief to see if there is any indication. If it indicates an "Appeal" or "Appeal in the Alternative", these cases are sent to the AAO for processing, if it is timely filed. The petitioner has to be clear in their request for "Motion", "Appeal", or "Motion with Appeal in the Alternative".*

#### I-485s

8. Some adjustment cases are being held up for lengthy time period pending FBI name checks. We understand that this is just as frustrating for you as it

is for us and our clients. However some of these have been pending for two or more years and there is an obvious concern that these may have fallen between the cracks. For example, an employment based adjustment for university psychology professor based on a special handling labor certification (EB2). Is it possible to establish a policy where it is reasonable to make an inquiry on these cases after a set time, i.e. 12 months?

*Answer: As name checks are conducted by the FBI, TSC is unable to provide any information in regard to name check operational procedures.*

9. Has TSC been able to keep within the 6 months processing times for I-485 with the exception of FBI name check issues?

*Answer: Yes, insofar as employment based cases. TSC is not yet at the six month processing time for asylum based adjustment cases, but is getting there. Note that the commitment is to get applicants some response within six months—e.g. an approval, a denial, or a request for evidence.*

I-765

10. Where are the interim EADs issued? What is the average processing time for issuance of an interim EAD from the time of application?

*Answer: They are manufactured in Kentucky. They are requested at InfoPass appointments; InfoPass personnel pass the information on to the TSC; and TSC forwards the EAD production order to Kentucky. A reasonable estimate for the time required from application until receipt of the card is three weeks.*

I-131

11. In some cases I-512 advance paroles are sent in triplicate. Is there a reason for this? Also members have reported that I-512s are sometimes sent directly to the applicant even when there is a G-28 on file. Has there been a change in policy as normally all I-512s were sent to the attorney if a G-28 submitted?

*Answer: TSC is unaware of any I-512s issued in triplicate. Please provide the TSC with receipt numbers for such occurrences so the cases can be investigated.*

*As to I-512s being sent directly to applicants despite the fact that the underlying I-131s were filed with G-28s, all I-512s are sent directly to the applicants. On occasion, where there is a specific request that the I-512 be delivered to the attorney, TSC will comply with the request.*

I-751

12. Should a derivative of an I-751 principal be included on the principal's I-751 application when the derivative's conditional residence does not expire at the same time? Or does the derivative have to file separately within their 90 day window?

*Answer: If the derivative was adjusted within 90 days of the date of adjustment of the principal, he/she can be included in the principal's I-751. Otherwise, a separate I-751 must be filed. Practice pointer: if you file an I-751 including one or more derivatives, separate biometric fees must be included for derivatives.*

13. Omitted

#### Bi-specialization

14. In previous meetings you mentioned that a new stage of the bi-specialization program would be implemented in coming months. Besides the direct filing for I-129s can you tell us what's happening with next stage(s) of bi-specialization?

*Answer: The March 5, 2007 update on bi-specialization issued by Headquarters is the most authoritative and recent update on this.*

15. Does TSC anticipate that there will be direct filings for I-140/I-485 in the near future?

*Answer: Over the course of the next year, direct filing to each service center of all bi-specialization products is likely to be introduced.*

#### Certifications to the AAO

16. Can you describe the process of legal review that a TSC-initiated certification to the AAO goes through at the TSC to ensure that the matter merits AAO review?

*Answer: TSC complies with the regulations in deciding to initiate certification of a decision to the AAO. Only novel, unusually complex issues of law and/or fact are certified by the TSC to the AAO.*

#### NCSC

17. Members are advising us that some cases the letters confirming the 1-800 inquiry are still taking 2-3 months to receive and then no action is being taken by the Service Center. Can you advise us on the interaction and accountability between the agents who staff the 1-800 inquiry telephone line

and the TSC insofar as moving problem cases? i.e. how long does it take for the inquiry to be forwarded to TSC?

*Answer: Every telephone call into the 1-800 number is documented in the Service Request Management Tool (SRMT) system which includes information on the inquiry and a tracking number. This documentation is released daily to the appropriate service center. TSC responds to these inquiries within 30 days of receiving them.*

#### Response due dates

18. Members have indicated some confusion about due dates. If TSC states that a response must be received within 12 weeks or 84 days and the request was sent by mail does TSC allow an additional 3 days for mailing (as is allowed with Motions to Reopen and/or Appeals)?

*Answer: TSC advises to adhere to the 12-weeks/84-days.*

19. This question is only relevant if the 3 day mailing time is allowed. If the RFE specifically states a date to submit the response (Vermont and California RFEs state specific dates) will the 3 days be allowed and if so what happens if the date falls on a weekend or federal holiday? Will the due date carry over to the next business day as with Motions and Appeals?

*Answer: TSC advises respondents to ensure that responses reach it on or before the stated time period expires.*

#### General

20. Will TSC forward approval notices by overnight courier if a pre-paid airbill is included with the filing? If so, are there specific overnight couriers, i.e. Federal Express, DHL that can only be used?

*Answer: Only on premium processing and the courier is DHL.*

21. Have there been any major changes in management or supervisory personnel at TSC?

*Answer: See attached TSC For Type/Workload by Division chart.*