

Minutes of the National Benefits Center/Florida Bar Liaison Meeting
Wednesday, September 24, 2008

On behalf of National Benefits Center:

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1. Since we believe NBC now adjudicates the I-864s to streamline the adjustment process, can the USCIS Officer at the interview request updated financial information re: the Affidavit of Support? Members have been to interviews both where the USCIS Officer ignores the I-864 and others where the Officer requests updated taxes or pay stubs.

At the time of filing, the I-864 should be submitted with the most current financial information. This documentation is used by the NBC to review and verify the sufficiency of the I-864, prior to the case being sent for interview. However, there are a few circumstances under which an Officer in the Field Office may request updated financial information regarding the Affidavit of Support.

The Redacted Adjudicator's Field Manual contains specific guidance on when updated I-864 information should be requested by USCIS officers.

The citations which give this authority to Field Offices are found at:

- Redacted AFM 20.5(e)(1)
- Redacted AFM 20.5(e)(2)

The Redacted Adjudicator's Field Manual contains specific guidance on when updated I-864 information should be requested by USCIS officers. The passage of time alone is not sufficient reason to request updated financial information. See the citations below.

The Redacted Adjudicator's Field Manual, Chapter 20.5 contains the following information:

Redacted AFM 20.5(e)(1)

...If the Form I-864 was sufficient at the time it was filed with the Form I-485, USCIS should not request any further documentation (e.g., more recent evidence of employment or income) unless more than one year has elapsed since the Form I-864 was submitted and there is a specific reason (other than the passage of time) to question whether the evidence of income is no longer reliable.

Redacted AFM 20.5(e)(2) Requesting updated information. There are two limited, specific situations in which the general rule stated in section 20.5(e)(1) will not apply:

- The first exception applies if both of the following criteria are met:

- The most recent income tax return, the anticipated household income listed for the year the sponsor signed the Form I-864, and the evidence for the income for the year of filing all show an income that is less than 125% (or 100% as applicable) of the governing Poverty Guideline for the year the Form I-864 was filed, and
 - A joint sponsor has not filed a sufficient Form I-864.
 - The second exception applies if at least one year has elapsed since the Form I-864 was submitted, and the facts in the case, as supported by the evidence in the record, provide a specific reason (other than simply the passage of time) to believe that the sponsor's income is no longer sufficient.
2. Recently, in the context of a family based fourth preference case where the petitioner was unmarried and living alone, a member was advised by a local CIS office that the petitioner's assets could only be used toward satisfying her support obligation *if the beneficiary lived with the petitioner*; failing that, the local CIS office advised, a co-sponsor was required. Does the NBC adhere to the same rule?

In reviewing Form I-864 for sufficiency, NBC relies on the following documents:

- Title 8, Code of Federal Regulations, 213a (final rule in effect July 21, 2006)
- Adjudicator's Field Manual (Chapter 20.5; last updated to reflect final rule)
- Related policy and procedural memorandum issued by USCIS

The Redacted Adjudicator's Field Manual contains specific information on when the intending immigrant's income or assets can be combined with the sponsor's to meet the income requirements. Also, the definition for "household income" provided in 8 CFR 213a.1 clearly states the intending immigrant must be either the sponsor's spouse or share the same principal residence as the sponsor for the intending immigrant's income [or assets] to be included in the sponsor's household income. See the citations below.

Redacted AFM 20.5(d)(4) Use of Intending Immigrant's Income. If the sponsor does not meet the income requirement on the basis of his or her own income and/or assets, the sponsor may also count the intending immigrant's income if (1)(a) the intending immigrant is either the sponsor's spouse or (b) has the same principal residence as the sponsor, and (2) the preponderance of the evidence shows that the intending immigrant's income results from the intending immigrant's lawful employment in the United States or from some other lawful source that will continue to be available to the intending immigrant after he or she acquires permanent resident status...

Note: The revised definition of "household income" [8 CFR 213a.1] retains the requirement that, unless the intending immigrant is the sponsor's spouse, the intending immigrant must have the same principal residence as the sponsor in order for the sponsor to rely on the sponsored immigrant's income. It is no longer required, however, that the intending immigrant must have had the same principal residence as the sponsor for at least 6 months.

3. What is the proper procedure if an I-130/I-485 first interview appointment for immediate relative of a USC (spouse) is scheduled and then cancelled by USCIS for “unforeseen circumstances” and then not re-scheduled for several months? How long should the attorney wait before sending an inquiry? What would be the best way to inquire (contact District Office, contact NBC through attorney liaison, call National Customer Service)?

Any interview scheduling requests from an applicant or an attorney must be made to the Field Office.

The NBC only deschedules appointments for extreme circumstances, and in the event that an appointment needs to be cancelled, a Deschedule Notice is issued to the applicant. Once the circumstance is resolved, the NBC will make the interview-ready case available again to the Field Office for scheduling. All actual scheduling and file requests are made by the Field Office according to their own unique office profiles (i.e. current caseloads, number of officers available, etc.)

4. Do you anticipate the direct filing of N-400 cases and, if so, when do you expect this to happen.

USCIS is implementing a lockbox intake process, similar to what is used for family-based I-485 cases and other case types, for the N-400 form type. The transfer of N-400 cases from the Service Centers (SCs) to the NBC is a two-step process. During the first phase, N-400s filed at the SCs with correct fee are receipted at the SC and then forwarded to the NBC for processing. The NBC currently does not have the ability to receipt cases and accept filing fees. On June 9, 2008, the first SC began transitioning N-400 case work to the NBC, followed by the remaining three. The last SC workload transitioned to the NBC on September 7.

The next step will be for the public to begin filing their applications directly with a lockbox facility instead of with the SCs. With this change, the NBC will become the centralize location for all preprocessing of N-400s. The N-400 lockbox process was expected to be operational on October 14, 2008; however, this was rescinded by a Public Notice and a Federal Register Notice. When HQ’s determines a new date for filing with a lockbox, this will be announced via Public Notice, Federal Register Notice and by USCIS website updates.

Military naturalization applicants filing under the provisions of section 328 or 329, regardless of geographic location or jurisdiction, will continue to file at the Nebraska Service Center.

5. We’ve seen TSC hold up EAD and I-131 cases due to an applicant's pending security checks. Does NBC do this as well?

All applicants for U.S. immigration benefits are subject to criminal and national security background checks to ensure they are eligible for such benefits. The NBC performs these checks on every applicant as part of our normal pre-processing function. The NBC’s goal is to process all I-765 and I-131 applications within 90 days from receipt of the application. Normally, a delay in processing an I-765 and I-

131 will only occur when there is a request for evidence on the application or principal application.

Must applicants wait 90 days from last submission date of RFE for EAD and travel doc? Sample case: Case filed on 12/24/07. RFE issued for medical exam, responded to on 3/13/08. More than 3 months pass and no issuance of EAD or travel doc. Inquiry sent to NBC Congressional Unit in July and we receive response that new RFE issued as to incomplete medical exam on 7/15/08. Response sent on 8/4/08.

If an I-765 or I-131 application remains un-adjudicated and 90 days have expired since the submission of an application that didn't require initial evidence or after the NBC has received a response to an RFE for initial evidence, you may contact the NBC using your AILA representative, via the local field office or through the National Customer Service Center.

When the NBC issues an initial RFE on an I-485 application, the NBC suspends the adjudication of the I-485 and any associated I-765's and I-131's until the response to the RFE is received at the NBC. When the response is received, the processing time clock resets to day 1. This process is consistent with Title 8, Code of Federal Regulations §103.2 (b)(10)(i) and (ii).

Effect on processing. The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If an application or petition is missing required initial evidence, or an applicant, petitioner, sponsor, beneficiary, or other individual who requires fingerprinting requests that the fingerprinting appointment or interview be rescheduled, any time period imposed on Service processing will start over from the date of receipt of the required initial evidence or request for fingerprint or interview rescheduling. If the Service requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on the Service for processing will be suspended as of the date of request. It will resume at the same point where it stopped when the Service receives the requested evidence or response, or a request for a decision based on the evidence. (Paragraph (b)(10) heading and (b)(10)(i) revised effective 3/29/98; 63 FR 12979)

Effect on interim benefits. Interim benefits will not be granted based on an application or petition held in suspense for the submission of requested initial evidence, except that the applicant or beneficiary will normally be allowed to remain while an application or petition to extend or obtain status while in the United States is pending. The Service may choose to pursue other actions to seek removal of a person notwithstanding the pending application. Employment authorization previously accorded based on the same status and employment as that requested in the current application or petition may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) during the suspense period.

The NBC strives to complete its review of Form I-485 and supporting documents as accurately as possible. Additionally, while the regulations cited above state that "any time period imposed on Service processing will start over from the date of receipt of the required initial evidence," the NBC strives to adjudicate all I-765 applications

within 90 days from receipt, regardless of whether or not it requests missing initial evidence from the applicant. This obviously depends on the timeliness of response from the applicant/representative.

Upon receipt of the requested initial evidence, the NBC locates the associated ancillary applications (I-765 and/or I-131) and, depending on the receipt date of the application(s), either immediately adjudicates them, or places them with ancillary applications of the same receipt date.

6. NTA: In what circumstances, if any, is the NBC issuing (or referring for issuance of) NTA's to foreign nationals appearing on the forms filed at the NBC?

The NBC refers Egregious Public Safety (EPS) and Non-Egregious Public Safety (NEPS) criminal cases that may fall under 212 or 237 removal charges to ICE for issuance of the NTA. We initiate the issuance of NTA's for the following types of cases:

- I-817 Denials
- I-90 non-criminal subject to 237 charges
- I-485 denials.

7. What other plans for growth are being considered for NBC?

The following products lines are transitioning or have recently transitioned to the NBC for adjudication or preprocessing:

- Hague Adoption Convention processing – as of 4/1/08
- I-90's – migrate adjudication of all I-90's in FY 2009
- N400's – migrate all preprocessing of N400's in FY 2009