

Questions for National Benefits Center Liaison/Florida Bar Liaison Meeting
Monday, January 29, 2006

1. **When NBC issues RFE on an I-485 FB case (on Affidavit of Support, e.g.), what is the processing time for the EADs and I-131s? Do the 90 days (EADs) and the 60 days (I-131s) start to count again from date of receipt of response? If earlier, is there an approximation how much longer those applications will take once the response is received?**

Thank you for bringing the 60 day processing time found on I-131 receipt notice to our attention. The 60 day processing time listed is erroneous. We are working to have the notice corrected. The NBC attempts to adjudicate I-765 and I-131 applications in 90 days, and, per your question, is not aware of any regulatory requirement to adjudicate the I-131 in a specified period of time. Please refer to the USCIS website for current application processing times.

When the NBC issues an RFE on an I-485 application, the NBC suspends the adjudication of any associated I-765's and I-131's until the response to the RFE is received at the NBC. Regarding the I-765, if the RFE is a request for "initial" evidence, the clock resets to day 1 once the NBC receives the response to the RFE. A request for "initial" evidence occurs as a result of the NBC's first review of the application and supporting documentation when the file is received from the lockbox. Since the instructions on Form I-485 clearly and specifically require the submission of the I-864 as "initial" evidence, the NBC also considers basic evidence supporting the I-864 as initial evidence. When the RFE is for "additional" evidence (e.g., resulting from officer review during an interview), the 90-day clock resumes at the same point where it was stopped for the requested information. For example, if an RFE for additional evidence was sent on Day 25, the date the response to the RFE is received becomes Day 26.

The regulatory cite relating to this process is:

Title 8, Code of Federal Regulations §103.2 (b)(10)(i) and (ii)

(10) Effect of a request for initial or additional evidence or for interview rescheduling.

(i) 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)

(ii) 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.

- 2. The current posted processing times for EADs with NBC is September 28, 2006 and for I-131s September 14, 2006. This is almost 120 days. Is NBC working to get these within the processing times listed on the receipts (60-90 days for EADs and 30-60 days for I-131s). As the local office will no longer issue interim EADs it has become very difficult for aliens to maintain valid employment authorization due to the lengthy processing times.**

Yes. The NBC's desired timeframe for processing I-765 and I-131 applications is 90 days. As of January 17, 2007, the processing date for I-765's as posted on the USCIS website was October 30, 2006, or 79 days. The processing time listed on the website for I-131's is October 12, 2006, or 97 days. Subsequent to the publication of the January 17, 2007 report on the web, the NBC has successfully reduced that processing time to less than 90 days.

- 3. When the NBC receives a request through an applicant at an InfoPass appointment to produce an EAD or advance parole on an immediate basis because the applications for these documents have been pending beyond the promised times, how long does it take for the documents to be prepared and forwarded to the applicant?**

When the NBC receives a request from a field office to expedite the processing of an I-765 or I-131 application, it is generally adjudicated within 48 hours.

Regarding the I-765, if the case is approved by the NBC, the applicant should receive the EAD within 10 to 14 days, depending on the delivery of the postal service. Please note that this assumes that the applicant has had his/her biometrics captured, as USCIS cannot produce an EAD without the associated biometrics.

Once the NBC approves an I-131, it produces and mails the Travel Document, I-512, within 48 hours. The applicant should receive the I-512 within 10-14 days from the date of approval, depending on the delivery of the postal service. If the applicant or representative provides an account number for an express delivery service, the NBC will send the I-512 via express mail.

Please note that express mail service is not available for EAD cards that are produced in and mailed from the USCIS card production facility in Corbin, KY.

- 4. Please clarify what exact documents are needed for Affidavit of Support? After an I-485 is filed with the NBC, it seems that the NBC mails out requests for submission of taxes routinely--even in cases where fully satisfactory taxes and all other required financial information has already been filed with the I-485. Does an officer review the file to ensure that only necessary requests for evidence are issued? Is there a way the NBC would like the financial information organized or highlighted to avoid the added burden on the NBC of this mailing?**

The NBC is responsible for preparing I-485 cases for interview, and to obtain as much evidence as possible to help ensure that the case can be completed at the time of interview at the Field Office. This now includes a review of the I-864 Affidavit of Support and the evidence needed to support the sponsor's claim of a sufficient income level.

The NBC bases its review of the I-864 strictly on the form instructions and the Adjudicator's Field Manual. Each version of the I-864 has its own set of instructions and required documentation. The I-864EZ and I-864 versions of the form also contain checklists of documentation that must accompany each version. For the I-864EZ, the checklist is contained on page 7 of the instructions. For the I-864, the checklist is contained on page 11 of the instructions.

NBC contract staff conducts the review of an I-485 application package to determine if the applicant or his/her representative has submitted the required initial evidence and supporting documentation. Due to the complex nature of the I-864 Form and the Regulations surrounding its evaluation, our initial evidence review cannot account for all situations, i.e., such as a petitioning sponsor who did not submit a tax return last year or a sponsor claiming foreign income. We have designed our initial evidence review process to efficiently evaluate Affidavits of Support and the associated documentation for the majority of sponsors whose financial situations do include a past year's tax returns and W2's.

We are constantly evaluating our initial evidence review process and the corresponding Request for Evidence (RFE) language provided to applicants, based on feedback from customers and USCIS Field Offices. We attempt to strike a balance between efficiently moving cases forward for interview, while requesting sufficient supporting documentation to allow the interviewing officer the best opportunity to complete the case at the applicant's appointment.

If you would like to forward us some specific examples of cases that will help us to improve our process, please send them to the NBC Attorney Liaison Mailbox at NBCattorney.liaison@DHS.gov and a brief explanation of the evidence requested in error.

However, if you do receive an RFE for a Form I-864, or for information to support an I-864, it is important that you respond in some manner, even if you believe the RFE to be in error. You must respond with a copy of the requested information or with an explanation of why you are not providing the requested information according to the directions on the RFE. This will help to ensure that your case is not denied for abandonment for failure to respond to the notice. Please do not respond to an RFE via the NBCattorney.liaison@DHS.gov email box.

As for the order of submission of I-864 supporting documentation, the NBC is most concerned that applicants and/or their representatives submit the required documentation per the form instructions. NBC staff reviews the entire file when determining if all the necessary I-864 supporting initial evidence is present.

- 5. On the Affidavit of Support issue - what if person is self-employed? What if assets are being used to qualify the person? How many months of bank statements? For properties, do we need appraisals, warranty deeds, and evidence of current debt? For example we had a case where the alien was victim of Hurricane Katrina and their home was destroyed and their income taxes showed losses because of the property damage. In this case what additional evidence would you require? Please note that an affidavit from the alien and his wife and a statement from their accountant were not considered sufficient as an RFE was issued.**

If a person is self-employed, they are still required to file a Federal income tax return; the tax return from the most current tax year should be submitted, along with a written statement verifying their self-employment. An employment verification letter from an outside source is not necessary, though additional documentary evidence, such as a business license, is helpful in determining the legitimacy of the self-employment. If the

current year shows a loss, past tax returns could be submitted in order to show a pattern of income sufficient to support the intending immigrant. A written statement from the sponsor explaining the reason for the current loss would be helpful in evaluating the sponsor's ability to support the intending immigrant.

Per the I-864 form instructions, assets may supplement income if the monetary value of the asset could reasonably be made available to support the sponsored immigrant and converted to cash within one year without undue harm to the sponsor or his or her family members. "Only assets that can be converted into cash within one year and without considerable hardship or financial loss to the owner may be included. The owner of the asset must include a description of the asset, proof of ownership, and the basis for the owner's claim of its net cash value."

For example, a sponsor "may include the net value of [his/her] home as an asset. The net value of the home is the appraised value of the home, minus the sum of any and all loans secured by a mortgage, trust deed, or other lien on the home. If [a sponsor] wish[es] to include the net value of [his/her] home, this, [he/she] must include documentation demonstrating that [he/she] own[s] it, a recent appraisal by a licensed appraiser, and evidence of the amount of any and all loans secured by a mortgage, trust deed, or other lien on the home." In the checklist section of for I-864, the instructions state further that the sponsor must provide "Documentation of assets establishing location, ownership, date of acquisition and value... and Evidence of any liens or liabilities against these assets."

The NBC will address cases in which there are extraordinary circumstances, such as those that face Hurricane Katrina victims, on a case-by-case basis. In these situations, however, it is reasonable to expect that an RFE will be sent to clarify the situation if the applicant has not submitted such documentation. It is always helpful for the sponsor to submit a written explanation of the situation and as much information as possible to sufficiently document the situation and his or her ability to support the intending immigrant. Additionally, in situations such as this, a joint sponsor could be obtained in order to show that the intending immigrant has sufficient financial support.

If you would like to forward us some specific examples of cases that will help to improve NBC processes, please send them to the NBC Attorney Liaison Mailbox at NBCattorney.liaison@DHS.gov and a brief explanation of the evidence requested in error.

6. Members have reported instances where interviews are scheduled in Miami but, when they appear for the interview, the Miami office advises them that the file has not been transferred to the local office and new appointments will be scheduled for another time. Is there anything we, as attorneys, can do to avoid this issue/delay?

It is the NBC's standard process to ship cases that have been scheduled for interview at least 19 days prior to the interview in order that they arrive in the field office 14 days prior to the interview date. If one of your members becomes aware of the case where a file has not arrived for the interview, and the interview had not been previously de-scheduled, the NBC wants to hear about it in order to take corrective action. Please send your concerns to the NBC Attorney Liaison Mailbox at NBCattorney.liaison@DHS.gov with the specifics surrounding the case.

If the NBC de-schedules a case, it sends an email to the District Office informing it of the cancellation. A de-scheduling notice is generated by the system and sent to the applicant and attorney (if represented). If the de-scheduling action takes place 14 days or less from the date of interview, the NBC will make every effort to also contact the applicant/attorney by telephone to let them know of the cancellation. When a case is de-

scheduled, the District may manually reschedule the interview or the case may be placed back in the system to be scheduled in the future.

7. Does NBC still accept I-90 applications on Family Based cases? Example, on the last two filed by our office, we have been sent instructions to re-file the I-90 at TSC.

The NBC accepts I-90s for the following two reasons:

- B: My authorized card was never received
- D: My card was issued with incorrect information because of a USCIS administrative error

If an applicant is filing a B or D, the base application fee of \$190 is not required and the biometrics fee of \$70 is not required.

Applicants filing Form I-90's filed for reasons other than b. or d. should file them at the Los Angeles Lockbox following the instructions provided on the application.

The following information is contained in the Form I-90 instructions at the following link:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=b3f7ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>

If you are filing because your card was never received

- If USCIS mailed you a Permanent Residence card more than 30 days ago and you:

- Have not received it; and
- It has not been returned to USCIS by the Post Office as undeliverable; and
- You have not moved from the address you provided to USCIS during the application or immigrant visa process that led to the creation of the card not received

If the case fits all of these criteria, please mail a new I-90 application with supporting documentation to the USCIS Service Center or National Benefits Center (NBC) that produced the card which was not received. To identify which Service Center produced the original card, please review the Form I-797, Notice of Action, for the receipt number. The first three letters of the receipt number will indicate what office created processed the application or immigrant visa.

- WAC = California Service Center
- LIN = Nebraska Service Center
- EAC = Vermont Service Center
- SRC = Texas Service Center
- MSC = National Benefits Center.

Once you determine the correct Service Center to which you should mail your Form I-90, mail it to the address below that relates to that Service Center.

California Service Center
Attn: I-90 "b" or "d"
P.O. Box 10090
Laguna Niguel, CA 92607-1009

Nebraska Service Center
Attn: I-90 "b" or "d"
PO Box 87090 75
Lincoln, NE 68501-7090

Texas Service Center
Attn: I-90 "b" or "d"
P.O. Box 851983
Mesquite, TX 75185-1983

Vermont Service Center
Attn: I-90 "b" or "d"
75 Lower Welden Street
St. Albans, VT 05479-0001

National Benefits Center
Attn: I-551 Corrections
705B SE Melody Lane, Box 2000
Lee's Summit, MO 64063

If your card was issued with incorrect data due to USCIS administrative error, you must mail a new I-90 application using Application Reason "d" "My card was issued with incorrect information because of a USCIS administrative error", and any supporting documentation, to the USCIS Service Center/National Benefits Center (NBC) that processed the application/form from which the incorrect card was created. Check the envelope that your I-551 permanent resident card came in to find the mailing address of the Service Center/NBC that mailed you the card. The Service Center/NBC address can also be found on the I-797 "Notice of Action" issued for the application from which the incorrect card was created. In addition to the new I-90 application, applicants are required to send the original I-551 card containing incorrect information, plus the supporting documentation for the requested correction. A replacement application based on a USCIS administrative error must also include an explanation. There is no fee required.

- 8. On a different I-90 case filed at NBC there was no receipt notice issued and, after making an inquiry we were advised that the case was transferred to California. The applicant is a LPR and she submitted her original alien card as there was an error on the card so we cannot schedule an Infopass appointment to get her an I-551 stamp without a receipt as she has no evidence of her status.**

If the I-551 card was issued by the California Service Center (CSC), the I-90 D application (My card was issued with incorrect information because of USCIS administrative error) should be sent to the CSC for correction. Occasionally, the NBC receives I-90 D applications for cards that were produced by another service center. When this occurs, the NBC will mail the application to the appropriate service center for processing. I-90 B and I-90 D applications do not receive receipt numbers, therefore, a receipt notice is not sent to the applicant or representative.

If the applicant has sent their card to a service center for correction, the District Office should be able to verify the applicant's status without the applicant's I-551 card by using USCIS systems.

Also, the NBC would be happy to research the situation if the attorney representing this applicant provides the specifics of the case to the NBC Attorney Liaison Mailbox at NBCattorney.liaison@DHS.gov.

9. Is there any likely change that you're aware of as to issuing work authorizations or travel documents for two years instead of one?

The NBC is not aware of any plans to modify the validity period on EAD's.

10. Do you have any preferred order for the various papers comprising an I-130/I-485 filing? This used to be posted on the web-site but it is difficult to locate now.

Please note that an application will be processed regardless of the order of the documents submitted.

If you choose to order the documents, we suggest the following order to facilitate Lockbox processing:

1. Fee paper clipped (or stapled) to front left of uppermost document
2. G-28, if applicable (with original signatures of both the representative and the applicant)
3. Primary application/petition (with original signature of applicant/petitioner)
4. Supporting documentation

For example, the following are the types of documents that would support the submission of a family-based I-485:

- I-797 Receipt or Approval Notice for I-130 Petition for Alien Relative
- Any documents that establish basic eligibility:
 - Visa Eligibility: The applicant is eligible to receive an immigrant visa under the category in which he or she has applied.
 - Entry: The applicant was inspected, admitted, or paroled into the U.S., or has filed under section 245(i).
 - Visa Availability: An immigrant visa is immediately available to the applicant at the time of filing.
- Other supplementary documents

These guidelines apply to both individual applicant packages as well as family packages.

Family Package Guidelines

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|---|---|
| Remittance for father's I-485 Father's G-28 Father's I-485 Father's I-485 supporting documentation Remittance for father's I-765 Father's I-765 Father's I-765 supporting documentation | Remittance for mother's I-485 Mother's G-28 Mother's I-485 Mother's I-485 supporting documentation Remittance for mother's I-131 Mother's I-131 Mother's I-131 supporting documentation |
| Remittance for child #1's I-485 Child #1's G-28 Child #1's I-485 Child #1's I-485 supporting documentation Remittance for child #1's I-131 Child #1's I-131 Child #1's I-131 supporting documentation | Remittance for child #2's I-485 Child #2's G-28 Child #2's I-485 Child #2's I-485 supporting documentation Remittance for child #2's I-131 Child #2's I-131 Child #2's I-131 supporting documentation |

These instructions are not on the current website, but we are coordinating with USCIS/HQ to replace them.

11. How does the I-485 scheduling process work insofar as the NBC is involved? Have there been any changes now that you are keeping to the six month goal?

The NBC serves as a pre-interview processing hub for I-485 applications that require an interview. The NBC performs an "Initial Evidence Review" for basic required documents (birth certificate, proof of legal entry, I-693, I-864, etc). When the NBC completes pre-interview processing steps and determines a case to be interview ready, it places the application in the scheduling queue. USCIS Field Offices then schedule these cases for interview, which in turn alerts the NBC to prepare them for shipment to the Field Office. Per the answer to #6, it is the NBC's standard process to ship cases that have been scheduled for interview at least 19 days prior to the interview in order that it arrives in the Field Office 14 days prior to the interview date.

12. Members have reported that a few I-130/I-485 petitions filed by USCs on behalf of their parent have been transferred to CSC (to expedite the case) without notice to the attorney or petitioner. An example is I-485 - MSC0527333121/I-130 - MSC0527333123 . When the on-line case status is viewed the status is still pending but there is no transfer date. This example case was initially filed 6/26/2005 which is outside the 6 months processing goals.

When I-485/I-130 applications are transferred to the CSC for processing, the applicant and attorney should receive transfer notices for both the I-485 and any pending I-130 (if the I-130 was concurrently filed at the Lockbox). The above referenced applications were transferred to the CSC on 10/21/05. The last action in our systems shows the I-485 application is under review and still pending at the CSC. If the attorney representative is not notified when a case is transferred, he/she should contact the NBC at the NBCattorney.liaison@DHS.gov

13. This isn't a question. It's a thank you: We really appreciate the quick approvals of most cases for elderly parents of U.S. citizens. You've really given some older family members comfort through this.

Thanks for the positive feedback.