



# Question & Answer

May 27, 2008

## USCIS NATIONAL STAKEHOLDER MEETING

### *Answers to National Stakeholder Questions*

**Note:** The next stakeholder meeting will be held on June 24, 2008 at 2:00 pm.

1. **Question:** Have individuals who applied for Naturalization during the surge last summer begun the FBI name check process and does the proposed schedule for reducing the name check backlog published on April 2, 2008 take into account the surge of requests that USCIS will be sending to the FBI?

**Response:** Yes, the FBI name checks have been initiated for individuals who applied for naturalization last summer, and the proposed schedule for reducing the name-check backlog published on April 2, 2008 takes into account the surge of applications.

2. **Question:** Is it possible to provide statistics on the number of N-648s filed with USCIS, and the approval rates for them?

**Response:** In FY 2006, total receipts for Medical Certification for Disability Exceptions, N-648, were 24,578 with a 47% approval rate and in FY 2007 receipts were 14,913 with a 44% approval rate. However, these numbers may not include all N-648s submitted as there are occasions when they are submitted during time of interview and not timely or completely entered into the agency's case tracking system.

3. **Question:** INA § 203(h)(3) (Child Status Protection Act § 3) states: "RETENTION OF PRIORITY DATE-- If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d), the alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition." The legislative history and an unpublished BIA decision both support the following reading of § 203(h)(3): If an adjudicator determines that a derivative child has aged out and cannot accompany the parent, "the alien's petition shall automatically be converted to the appropriate [F2B] category and the alien shall retain the original priority date issued upon receipt of the original petition" filed on behalf of the alien's parent. Based on the Board's interpretation and the evidence of Congressional intent, would USCIS issue a policy memorandum or regulation clarifying that the benefits of INA § 203(h)(3) to include conversion to the F2B category with retention of the original priority date if a derivative ages out, provided that he or she remains unmarried?

**Response:** In regards to F2A preference cases, current Service policy follows 8 CFR 204.2(a)(4). Essentially, when the child reaches the age of twenty-one prior to the issuance of a visa to the principal alien parent, a separate petition will be required. In such a case, the original priority date will be retained if the subsequent petition is filed by the same petitioner. Such retention of priority date will be accorded only to a son or daughter previously eligible as a derivative beneficiary under a second preference spousal petition. The ability to retain priority dates has not been extended to derivatives of the first, third, fourth preference categories, or even derivatives of a child/son/daughter of a legal permanent resident in the



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second preference category. However, OP&S is currently considering issuance of new guidance directly addressing CSPA and “Priority Date Retention” in the near future.

4. **Question:** During a recent meeting, USCIS stated that it hoped this summer to introduce multi-year EADs for I-485 applicants whose cases were backlogged. Please provide more information about the types of applicants that would be eligible for such EADs?

**Response:** A proposal is currently under review by USCIS program offices to issue a multi-year employment authorization document to those applicants affected by visa retrogression. If this proposal is adopted, it will apply to adjustment of status applicants.

- a. Please explain what USCIS means in this context by the term “backlogged” – does it refer only to cases pending more than a certain number of months where applicants are filing for renewal EADs?

**Response:** USCIS is considering issuing multi-year EADs to those applicants affected by visa retrogression. Further information will be provided once a final decision is made.

- b. Will I-485 applicants receive an initial EAD that is valid for more than one year? Does this apply to all I-485 applicants (family-based and employment-based)?

**Response:** Further information will be provided once a final decision is made.

5. **Question:** If an LPR is outside the United States and notices an error on their green card, is it ok for the LPR to wait until they return to the United States to file an I-90 to correct the category or must they file it prior to returning to the US?

**Response:** The LPR should wait until they return to the U.S. to file the I-90 because they will receive an appointment to appear at an ASC for fingerprint collection. If the error on the green card is significant, such as the wrong photo, and an airline refuses to board an LPR, they may go to the nearest embassy or consulate and request a boarding letter. For information on the inspectional process at a U.S. port of entry, please refer to Customs and Border Protection.

6. **Question:** On the USCIS website there is a page entitled “Asylee or Refugee Seeking Lawful Permanent Resident (LPR) Status.” On this page, under the heading “Refugees Filing for Permanent Resident Status” the fingerprint fee is listed as an item that refugee I-485 applicants must submit. It contradicts the information listed in Form G-1055 that states there is no biometric fee for refugee I-485 applicants. As you are aware, refugee I-485 applicants no longer need to submit the biometric fee. Could USCIS please update the information on this page to ensure accuracy?

**Response:** Thank you for the feedback. This update has been made and can be found at: <http://www.uscis.gov/asyleeadjustment>.

7. **Question:** Does an applicant who is under 14 at the time an application is filed have to undergo fingerprints if s/he turns 14 while the case is pending?



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**Response:** If an applicant turns 14 years old while his/her application is pending and the fingerprint requirement is not waived, a notice will be mailed to the applicant with a date and time to report to have his/her fingerprints taken. A biometric fee may be required.

8. **Question:** It is not clear from the USCIS website how much documentation is required for refugee adjustment applications. For example, does USCIS still want to receive birth certificates if they are available and if not available, what are other steps could be taken?

**Response:** In order to adjust, the refugee must submit the following:

- 1) A properly completed and signed I-485, *Application to Register Permanent Residence or Adjust Status*;
- 2) If the applicant has attained the age of 14 at the time of submission, include a completed Form G-325;
- 3) A Form I-693, Report of Medical Examination and Vaccination Record. If the exam was conducted prior to May 31, 2008, you may submit an old version of the form with the vaccination supplement. If the exam was conducted after May 31, 2008 you must submit the new Form I-693 and complete Part 1, which identifies the applicant, Part 2.5, which is the vaccination record and Part 5 or 6, which requires the physician's signature (the complete medical exam is required if there's a Class A medical condition identified abroad); and
- 4) A copy of the applicant's I-94 may be helpful, if available.

It's not necessary to submit a photo if the applicant has previously provided biometrics including a photo, fingerprints and a signature.

- a. Does USCIS verify identity and establish birth dates during overseas processing?

**Response:** USCIS officers do verify identity and birth dates during refugee processing overseas. All applicants are asked to provide names and dates of birth during the refugee status interview. Refugee applicants are requested to submit any documents, which may support the refugee application. Depending on the country of origin, the country of asylum, and the applicant's particular circumstances, the applicant may or may not have supporting documentation (i.e., passports, birth certificates, marriage certificates, affidavits). In the absence of documentation, the applicant's oral testimony is the basis of the name that is recorded on the I-590, Registration for Classification as Refugee.

- b. Is the "ADIT" sheet necessary to be filed with these applications, (i.e. Atlanta Field Office requires the sheet, although this does not seem to be required universally at other offices)?

**Response:** The Atlanta Field Office is not currently using an "ADIT" sheet and has not used such documents for refugee processing. For a complete list of the required documents for an asylee and refugee adjustment, consult [www.uscis.gov/asyleeadjustment](http://www.uscis.gov/asyleeadjustment).

9. **Question:** Thank you for the clarification to the fee waiver rule for jointly filed I-485s and I-765s (in Question 7 of the April 2008 CBO minutes). Does this policy also apply to refugees who categorically do not need to pay for an I-485?



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- a. Could a refugee (who does not pay for the I-485) receive a free employment authorization document under category c(9) and travel document if s/he has proof of having filed the I-485 (or is filing the forms concurrently)?

**Response:** No, in order to receive an EAD without fee, the applicant must have paid for the I-485 according to the fee structure in place on 7/30/2007. Thus, a refugee applicant for employment must either submit the proper fee for the I-765 or request a fee waiver and meet USCIS standards for qualification.

10. **Question:** We understand that individuals who are approved for Iraqi/Afghan Special Immigrant Visa (SIV) status overseas will receive their green cards in the mail shortly after arrival. Please indicate at what point they are providing addresses for these cards to be sent to and what is the triggering process for the cards being sent?

**Response:** Iraqi/Afghan Special Immigrant Visa (SIV) applicants approved by the consular officer overseas will be issued an Immigrant Visa packet at post and instructed to present the packet to the CBP officer upon arrival at the United States port-of-entry. As with all other aliens seeking admission with immigrant visas, the CBP officer will review the visa packet as part of the inspection process. If the alien is admitted, the admission itself will trigger card production with card production facilities of USCIS. Questions as to address verification procedures at the port of entry should be addressed to Customs and Border Protection.

11. **Question:** We have concerns about employers who are interested in hiring foreign-born workers authorized for employment but feel caught in the middle between unintentionally hiring undocumented workers and discriminating against employment authorized foreign-born workers. Our local immigration and refugee resettlement offices end up spending a lot of time trying to educate employers on employment eligibility issues as E-Verify expands and ICE activities continue. What information is available to our offices that we may provide to our clients and employers?

**Response:** The USCIS Verification Division can provide presentations for employers and interested CBOs on the E-Verify program as well as brochures, FAQs, and other materials on the program for distribution to clients and employers. Contact the Verification Division at [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov) to schedule a presentation or request materials. Employers who are registered for the system may access a variety of information through the system in the Online Resources section. The E-Verify website, [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify) has basic information on the program as well as a resource page for employees that is available in Spanish, Chinese, Creole, French, Korean, Russian, Tagalog, and Vietnamese. Finally, the Verification Division has recently updated the Handbook for Employers (form M-274) which explains the Form I-9 process and has answers to numerous employment eligibility questions. We direct you to the "For Employers" section of the [www.uscis.gov](http://www.uscis.gov) website (then click on the "About Form I-9 and E-Verify" link) for the M-274 handbook and answers to related questions.

- a. Please clarify what steps recent refugees and other documented immigrants (who are employment authorized) and their employers can take to minimize the likelihood a documented worker will be detained?

**Response:** A legal worker who possesses proper documentation should not be subject to detention. Legal workers should use care when filling out the Form I-9, which would also help ensure that there is no question about their work authorization status. Refugees can



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provide their departure portion of the Form I-94 with an unexpired refugee admission stamp, which is a receipt for either a Form I-766 or a combination of a List B document and an unrestricted Social Security card. The employee must present, within 90 days from date of hire, either the actual Form I-766 or a List B document and an unrestricted Social Security card.

- b. If the EAD card has not arrived or has been stolen, what other evidence is sufficient proof that an individual is authorized employment?

**Response:** The following documents would serve as proof that an individual is authorized for employment for Form I-9 purposes:

- 1) A receipt (Form I-797) for a replacement EAD (good for 90 days only) in the case of a stolen, lost or damaged EAD;
- 2) An unrestricted Social Security card with a valid list B document; or
- 3) (a) a Form I-94 with an asylee admission stamp (by stating "asylum", "asylee" or appropriate provision of law), or (b) other documentation issued by DHS (or the former Immigration and Naturalization Service (INS)) that identifies the holder as an asylee or refugee (except for the Form I-94 identifying the holder as a refugee, which is considered a receipt so only good for 90 days).

If the employee initially only presented a receipt, they must present acceptable documentation to "complete" the I-9 Form within 90 days after the date of hire.

- c. When it comes to completing the I-9 form and having exactly the right information in the personnel files, employers are often confused. If there is a difference in spelling or number of names included on the documents between the Social Security card, EAD card, I-94 and/or any other official document that contradicts SAVE, what does the individual or business have to do to correct this?

**Response:** As a small point of clarification, the SAVE program does not verify information on the Form I-9. E-Verify is the program that provides work authorization verification for employers by electronically verifying the Form I-9 information provided by both citizen and non-citizen new hires against SSA (in all cases) and DHS databases (in the case of non-citizens).

The E-Verify system is built to handle different name combinations and some misspellings because it uses advanced data matching techniques to help ensure that such errors do not prevent a newly hired employee from being verified as employment authorized. For non-citizens who present a Permanent Resident Card (commonly referred to as the Green Card) or unexpired Employment Authorization Document for the purpose of Form I-9 employment verification, E-Verify now queries USCIS records by card number (EAD or Permanent Resident Card), and only alien number or I-94 number if the card number is not found or the employee presented a document without USCIS issued card number. This change in our query process has reduced mismatches occurring due to errors in the Alien or I-94 number and increased the amount of noncitizens gaining immediate verification of their work authorization status.





For E-Verify purposes, the employer should only use the data that the employee submits for the Form I-9 to query the E-Verify system. If an individual notices an error in his or her name or other biographical information on his or her USCIS-issued documents, they should call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283. Some issues can be resolved over the phone, for those that cannot, the NCSC representative will issue a referral to the applicable field office or Service Center, which will research the issue and contact the caller with the outcome of the review. In some rare situations individuals might need to make an appointment with the local USCIS office to update their records. Errors in I-94s issued by CBP inspectors must be corrected at the port-of-entry where the I-94 was issued. E-Verify will notify employers when records provided by the employee do not correlate to information within SSA or USCIS systems. In this situation the employer will receive a “tentative non-confirmation” (or mismatch) from the system. The employer must notify the employee of this mismatch and provide a letter instructing the employee to correct the discrepancy with either SSA or DHS. During this period of time, the employer is not permitted to terminate employment.

- d. How does USCIS, SSA, ICE and/or the Department of Justice’s Office of Special Counsel disseminate information to employers and which agency is responsible for what specific information?

**Response:** USCIS provides information to E-Verify employers about the program’s policies and procedures through a Memorandum of Understanding that all employers must sign. Additionally, all E-Verify employers are required to complete an on-line tutorial on how to use the program, and employers are given access to an E-Verify user manual, and online resources that answer immigration-related questions. The E-Verify program also conducts outreach events to employers and employer associations across the country.

E-Verify requires all participating employers to post a Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) “Employee Rights” poster in their hiring area.. This poster provides employees information on their employment related rights and how to contact OSC if they feel that they have suffered discrimination arising out of the employment eligibility verification process. Further, the online resources page, accessible to participating E-Verify employers, includes information from OSC, such as employer posters and hotline information, and information on how to contest an E-Verify data mismatch. Additionally, all employee mismatch letters provide OSC contact information that can be utilized should the employee feel that discrimination has occurred.

ICE does not manage the E-Verify program. However, ICE does provide general information on the I-9 process and E-Verify to employers interested in joining the ICE IMAGE program.

- e. How does the USCIS Verification Division coordinate with SSA and with the Office of Special Counsel on E-Verify issues?

**Response:** USCIS and SSA are committed to working together and continuing to improve the E-Verify program. Towards this end SSA and USCIS hold monthly meetings to provide



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updates and discuss implementation of system improvements. Improvements include automating aspects of the verification process and instituting an enhancement allowing employees to contact USCIS directly to resolve naturalization-related mismatches, thereby decreasing the workload in SSA field offices.

The USCIS Verification Division is working with the Department of Justice, Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) on a memorandum of agreement regarding E-Verify referrals. Currently, USCIS does refer certain cases to OSC when necessary or requested by OSC. Employers and employees are provided with OSC's contact information in their referral letter and instructed to contact OSC should they feel that discrimination has occurred.

The USCIS Verification Division also works closely with the Department of Homeland Security's Office for Civil Rights and Civil Liberties (CRCL) to ensure that the rights of U.S. citizens and work authorized non-citizens are protected in the design and implementation of E-Verify and the Form I-9 verification process. USCIS Verification Division and CRCL are also developing outreach materials such as multimedia aids to assist employers and employees understand their E-Verify related rights and responsibilities.

- f. Who is the POC and/or what is the contact number for these agencies to whom we can refer clients and employers for specific answers (not just an automated phone tree or scripts)?

**Response:** For questions regarding the E-Verify program, clients, employers and employees may call the E-Verify Hotline at 1-888-464-4218 or visit [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify).

For the questions directed to the Office of Special Counsel for Immigration Related Unfair Employment Practices, callers can speak to an attorney or legal assistance via the following numbers:

- Main Number: (202) 616-5594
- Worker Hotline: 1-800-255-7688, (202) 616-5525 or 1-800-237-2515 (TDD for hearing impaired)
- Employer Hotline: 1-800-255-8155, 1-800-237-2515 (TDD for hearing impaired)

The Social Security Administration can be contacted by visiting an employer or employee's local field office or calling SSA at 1-800-772-1213 or 1-800-325-0778 (TDD) for the hearing impaired.

To comment on the Form I-9 and/or the employment eligibility verification process, write to U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, NW, 3<sup>rd</sup> Floor, Suite 3008, Washington, DC 20529.