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Questions & Answers from CIS Ombudsman's Teleconferences

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The following are questions and answers discussed during this teleconference. We will post answers received from USCIS as soon as we have them. We also plan to post any additional questions received by email. At the beginning of the call, USCIS Division Chief for Information and Customer Service provided the latest information on the frontlog and answered a few questions submitted to the Ombudsman prior to the call.

Q&As Discussed by CIS Ombudsman Based on E-mails Received

1. FIFO Policy? - Is USCIS following the "First In First Out" policy in receipting applications? Many people have commented that their application arrived at USCIS specifically on July 2 or 3, but that they still do not have a receipt notice. Can you please explain why that may be? How can someone know if his case was not lost?

- **Response:** We understand that USCIS' policy still is to work cases on a first in first out basis. However, they use the first in first out policy by application type. For example, all of the I-485s are grouped together.

2. Posted Receipting Times – USCIS posts processing dates for which applications are now being receipted. However, these seem to be incorrect because customers who filed well before these dates still do not have receipts. Moreover, applications received after the posted dates have been sent receipt notices. Can you explain why?

- **Response:** We understand USCIS is receipting the majority of cases according to the weekly "Receipting Update," found at www.uscis.gov. If you have not received your receipt by the date indicated on the "Receipting Update," please send an email to the Ombudsman at cisombudsman.publicaffairs@dhs.gov. Note that if you send an email on this or any issue to the Ombudsman, please be aware that we do not adjudicate cases. You will still need to follow USCIS instructions to address your case. In addition, if you want the Ombudsman to research your particular situation, please submit a case problem by using Form 7001, available at www.dhs.gov/cisombudsman.

3. EADs – What should an applicant do when it has been more than 90 days from filing and he or she has not received an EAD receipt notice or the EAD itself? How will USCIS be able to issue all of these EADs when it is delayed in issuing the receipts?

- **Response:** We understand from USCIS that they intend to finish receipting and issuing all EADs by the end of October, if not before. If it has already been 90 days and you have not received the EAD, please call USCIS customer service (1-800-375-5283) and email our office at cisombudsman.publicaffairs@dhs.gov.

4. Travel – Can I travel without an I-485 receipt notice and no advance parole? Can I travel with a valid H-1 visa if my I-485 has not yet been receipted?

- **Response:** USCIS provides two answers on travel and advance parole on their website's "frequently asked questions" page, www.uscis.gov. However, this page only provides information for emergency travel. USCIS still needs to provide practical information on non-emergency travel. The website also says advance paroles (I-131s) should be sent receipts by the end of this month, but they still need to be processed.

5. Wait Times - How long should someone wait to receive a receipt for an application filed this summer before inquiring about it? Should an application be re-filed?

- **Response:** We suggest that you review the weekly "Receipting Update" posted on www.uscis.gov, which has the receipting dates for each application type. If your application was filed before the date posted, go ahead and call USCIS customer service (1-800-375-5283) and email our office at cisombudsman.publicaffairs@dhs.gov.

6. Receipt Date on Notice – USCIS has indicated that the date of the receipt notice will be the date USCIS received the application in the mailroom. However, some receipt notices received indicate a later date. Can you please explain why this might be happening? What should an applicant do if there is this error?

- **Response:** On USCIS' website it says the agency will honor the actual date that an application was received in the mailroom. These are questions for USCIS and we will post their answers here when we have them. In the meantime, if you have specific examples, please email them to us at cisombudsman.publicaffairs@dhs.gov.

7. Errors on Notices – Many of the receipt notices have typographical errors, for example, in the applicant's name. How should this or other errors be addressed? Due to the receipting delays, applicants are receiving different A-numbers on receipt notices for different applications. What should an applicant do in this case? A number of receipt notices have the notation "unknown" in the box "Notice Type." What should an applicant do if this notation is provided?

- **Response:** This is important for us to know and needs to be addressed. USCIS is striving to be customer service focused and wants to know about these kinds of issues. These are questions for USCIS and we will post their answers here when we have them. In the meantime, if you have specific examples, please email them to us at cisombudsman.publicaffairs@dhs.gov. Again, if you want us to research your specific case, please submit Form 7001, available at www.dhs.gov/cisombudsman.

8. Earlier Filed Applications – What happens to applications that were filed well before the influx of the summer? Will those applications be delayed in processing?

- **Response:** These are questions for USCIS and we will post their answers here when we have them. As you might imagine, those applications will be subject to the regular application process, which may delays for security checks, etc. Last October USCIS met their processing times, but currently processing times are exceeding the time posted.

9. Processing – In what order will applications be adjudicated? Application date or receipt date?

- **Response:** Usually it would be the receipt date. USCIS also says on their website that they will honor the actual date the application was received in the mailroom.

10. Call Centers – Are the call centers being kept informed about the receipting difficulties? Someone mentioned that the call center just indicated that the application was not in the system and that he should call back in 30 days. Another person said that USCIS indicated they should re-contact the agency in 90 days.

- **Response:** This is an important issue for the agency. In this time of enormous delays and great anxiety for many customers, it is imperative that USCIS ensures that the call centers are well informed and can pass accurate and timely information to callers.

11. Matching - USCIS has said that the EAD and advance parole applications could be filed with the FEDEX receipt of the I-485. However, some of these are being rejected because the agency says it cannot find the I-485. What should an applicant do under these circumstances? Also, how will USCIS correlate those applications with the previously filed I-485?

- **Response:** This sounds like a service error. However, these are questions for USCIS and we will post their answers here when we have them. In the meantime, if you have specific examples, please email them to us at cisombudsman.publicaffairs@dhs.gov. If you want us to research your specific case, please submit Form 7001, available at www.dhs.gov/cisombudsman.

12. Filed in One Service Center, Receipted in Another — What does it mean if I filed my application in one service center and it was receipted by another? Will I retain the date my application was first received by USCIS?

- **Response:** To use its resources, USCIS has transferred cases in between the service centers to issue receipts. USCIS should be using the date your application was first received by the agency, not the date it was received by the second service center. We understand that the agency plans to put a “frequently asked question” discussion on this issue on www.uscis.gov, particularly regarding processing of transferred applications.

13. For the Future - What preventative measures has USCIS taken to ensure that receipt and case backlogs do not happen again in the future, or are they seen as an inevitable part of the current system?

- **Response:** That is a great question. It is our perspective that USCIS had advanced notice for the current frontlog and receipting dilemma because both the increased fees and influx of employment based visa applications were both anticipated. We encourage USCIS to take this question seriously and consider how to avoid this system-wide problem going forward.

14. Applications Received? – One caller asked in writing whether the Texas Service Center has an estimate of how many I-485, advance parole, and employment authorization applications were received in July and August and what impact this will have on processing times for ancillary benefits?

- **Response:** After the teleconference, the Ombudsman received for the first time an inventory on how many applications each service center has which still need receipts. We understand that USCIS intends to receipt all EADs and advance parole I-131s by the end of October.

15. Overall Processing Projections? - Are there any predictions on how the receipting delay will affect overall processing dates?

- **Response:** We do not have any predictions about how the receipting delay will affect overall processing. However, as you might imagine, due to the large influx of cases, the local offices will also be receiving the same thousands of applications to eventually process. At the same time, we hope

USCIS will be able to maintain their stated processing time goals. We also hope that USCIS will continue to shift resources as necessary to improve some of these times.

16. Bounced Checks – Due to the long delays my check written to USCIS bounced. What can USCIS do to help with this?

- **Response:** If a check bounces because there are no longer funds available during the frontlog period, we understand that USCIS will give the applicant 14 days to send in a new check and pay a nominal penalty. The applicant is supposed to keep the same date in the processing line. See the “frequently asked questions” at www.uscis.gov for more information.

17. Expired Checks – What if my check has expired since sending in my application?

- **Response:** We understand that USCIS is not rejecting checks if the check has expired for frontlogged cases. There is additional information on USCIS’ “frequently asked questions” at www.uscis.gov on this issue. However, the website does not provide information on whether it would be possible to still cash the expired check. We ask USCIS to provide additional guidance on that question. If you have had a problem on this issue, go ahead and call the USCIS customer service line at (1-800-375-5283) and also email our office at cisombudsman.publicaffairs@dhs.gov. Again, if you want us to research your specific case, please submit Form 7001, available at www.dhs.gov/cisombudsman.

18. Change of Address – How can I change my address when I don’t have a receipt number?

- **Response:** Unfortunately, the “frequently asked question” USCIS has on its website for this question does not answer it. The website indicates that an applicant should look for the receipt number on the back of the returned check. However, many people still have not received a return check or receipt notice. We ask that USCIS revisit this question again and provide clearer instructions on how customers can make these changes.

Questions Received after CIS Ombudsman's Teleconference: "USCIS Receipting Delay - How Does This Affect You?," on October 12, 2007

The following are questions we received after the teleconference. We will post answers from USCIS when they are available.

1. Suggestion for an FAQ Regarding EADs and Advance Paroles – One writer noted that due to the influx of applications this summer, there are now thousands of applicants who have suddenly found themselves eligible for use of interim benefits, EAD and advance parole. However, many of them do not understand how these benefits would affect their ongoing nonimmigrant H visa status. It would be helpful for USCIS to issue a “frequently asked question” that would address questions such as: (a) If an I-485 applicant uses an EAD or advance parole, is the H visa invalid? (b) Can an applicant work a part-time job using an EAD? If yes, does that invalidate the H visa for a full time job?

2. Call Center Responses/Information – We continue to receive emails that the call centers are providing incorrect information to applicants and are telling other applicants to wait and call back. Here are a few more examples: (1) the representative told the applicant that the receipt date could not be changed even though it was incorrect; (2) applicants are told to call the call center if they filed before the posted receipting dates and have no receipt, but the call center representatives do not know what to do and ask for a receipt number; and (3) the representative could only indicate that the application is not in the system.

3. Error in Initial Application – We have received emails in which the applicant omitted a required element of the employment based I-485 application. USCIS rejected the application and the rejection notice was received after the August 17 deadline to submit such applications with current priority dates. What can the

applicant do? Is there a way for the applicant to still be within the August 17 deadline?

4. Cases Returned for Incorrect Fees – We continue to receive inquiries about cases returned for incorrect fees. What should an applicant do if the correct fee was submitted?

5. I-130 Receipt Needed for K-3 Visa – We received emails from some concerned applicants that they need the I-130 receipt to file the K-3 visa. This is having an impact on family unification. What can an applicant do to file the K-3 until having the I-130 receipt?

6. Switching Employers –What date should begin the 180 day period for the I-485 applicant to be able to switch employers – received date, receipt date (same for frontlogged applications), or notice date?

7. Additional Travel Question – One writer asked if USCIS is considering a temporary revision to 8 CFR 245.2 (a), which requires that original receipt notices be presented when returning to the United States after foreign travel if returning in H or L nonimmigrant status. The writer noted that the receipting delays are restricting travel for those otherwise entitled to return to the United States with valid H or L visas.

8. Cases Returned for “No Priority Date” – A writer notified us that cases are being incorrectly returned for no priority date. The writer noted that USCIS advised to use a cover sheet to indicate pending but unreceipted I-140. What should the applicant do?

9. Expired Checks – Where to Resend? – An application was rejected because the check was void after 60 days and it was deposited after that time. The applicant was given an Illinois address to mail the new checks, but these got returned. Where should updated checks be sent?

10. Duplicate? – Another applicant requested a duplicate receipt notice but was refused by USCIS. People traveling on nonimmigrant visas during the I-485 process are required to carry the original I-485 receipt notice; do you have any suggestions on how to remedy this?

11. Family Receipt Notices – In another example, some members of the family have received receipt notices while others have not; does this mean that the applications were lost for the ones who have not yet received their receipt notices? What should customers do in such circumstances?

12. Form I-129 Delays – Because of the delays in receipts for Form I-129, the writer indicates they have authorized employment and completed I-9s for porting and continuing H-1Bs, for whom a timely extension of stay has been filed, based on: (1) a copy of the cashed check notated on the back with the receipt number; (2) a copy of the screen from USCIS Case Status Online reflecting that receipt number; and (3) the stub of the check connecting the beneficiary to that check. Once the receipt notice and/or the approval notice is received, the writer said they will replace the previous alternative documentation with the I-797 documentation. Is this approach acceptable?

Questions Received from CIS Ombudsman's Teleconference: "USCIS Receipting Delay II- How Does This Affect You?" on November 2, 2007

The following are questions discussed during this teleconference. We will post answers received from USCIS as soon as we have them.

1. Priority of Applications: The caller asked why I-485 applications are given priority over N-400s, which is the path to U.S. citizenship.

2. Fees: The participant asked if it is better to combine the fees into one check or to make separate payments for each application.

3. Returned July 2 – August 17 Applications Due to Applicant Error: One caller noted that he applied on July 2, but his application had an error. Due to the USCIS receipting delay and lack of a timely receipt, he was unable to correct the error in time to qualify for the lower fee and/or the August 17 deadline to file employment based I-485s. How does USCIS plan to help applicants who applied during the frontlog period but whose applications are rejected due to applicant error, for example, the applicant forgot to sign the form or check?

4. Lawyers Not Receiving Receipt Notice: One participant stated that she filed numerous cases at the Texas Service Center which were transferred to the Vermont Service Center and then back to Texas Service Center. Only her clients received the receipt notice but the attorney of record did not. Can you please explain

why this may be happening and how an applicant or attorney of record can fix this problem?

USCIS Refunds: How is the Process Working for You?: Questions from CIS Ombudsman's Teleconference on January 31, 2008

The following are questions discussed during the January 31, 2008 teleconference. We will post answers received from USCIS as soon as we have them. In the meantime, please email us at cisombudsman.publicaffairs@dhs.gov, if you have additional comments on this issue.

1. Adjudicator's Field Manual – Another caller mentioned that the Adjudicator's Field Manual, which is posted on the internet, indicates that a petitioner or applicant should complete a Form G-266 to request a refund. This form is not currently available to the public. Does USCIS plan to post this form to allow applicants and petitioners to apply for refunds?

2. Requests for Refunds, No Follow-up – Several callers mentioned requesting refunds for regular and premium processed cases where they either heard nothing back from USCIS or were assured that something would happen and it did not. In addition, callers mentioned the lack of procedure on how to follow-up on these refund requests, particularly for regularly processed cases. How can a petitioner or applicant follow-up on a refund request?

3. Applicant Submitted Two Applications – The caller sent in a Form I-129, but forgot to check one of the required boxes on the form to indicate a master's degree. Realizing the error, the caller submitted a second Form I-129 with an accompanying letter asking USCIS not to cash the second set of checks and pointing out the error. USCIS cashed all the checks and both I-129s were approved. Can the applicant obtain a refund and, if so, how?

4. Premium Processing Refunds – (1) A caller filed a case for premium processing, but it was not processed within the required 15 days. The fees were not returned. (2) Another caller submitted an E-2 case at the Vermont Service Center for premium processing. The Service Center said it would not accept the case because it was at the wrong center and would be rejected. The caller e-filed a second E-2 at the California Service Center under premium processing. Both were approved. The caller requested a refund, but at the time of the teleconference had been waiting over two months. How can an applicant request a premium processing refund? How can the premium processing applicant follow-up on a refund request?

5. Sent Fee, But Fee Not Required – A caller filed the Form I-129 fee plus the fraud fees for the same petitioner but different company. The fraud fee was not required, but the caller sent it just in case. USCIS cashed the checks. The caller wrote to the Service Center director, but never heard back. How can a customer file for a refund of a regularly processed case and follow-up on that request?

6. EAD Application, Green Card – A caller filed for a replacement work authorization card. The next month the caller received a green card approval letter. The work authorization application was never adjudicated, but USCIS did not return the fee. How can this applicant get a refund?

7. Substantial Time Required to Obtain Refund – One caller mentioned that the time (sometimes months) it takes to request and follow-up on refund requests ends up costing clients who are represented by attorneys more than the actual refund itself.

The K3 Visa Family Unification Process: How Is It Working for You? Questions from CIS Ombudsman's Teleconference on January 31, 2008

The following are questions discussed during the January 31, 2008 teleconference. We will post answers received from USCIS as soon as we have them. In the meantime, please email us at cisombudsman.publicaffairs@dhs.gov, if you have additional comments on this issue.

1. Administrative Closures of I-129Fs? – One caller noted that USCIS' National Customer Service Center is providing different information on the I-130/I-129F process. One customer service representative stated that the I-129F is administratively closed after the I-130 is approved. Another representative stated that I-129Fs are not closed and USCIS is continuing to process the I-129F. Is USCIS administratively closing the I-129F application if the I-130 has been approved? Can USCIS provide clarification on this process?

2. Cancellation of I-129Fs? – One caller asked if the California Service Center is canceling I-129Fs since

there is not a fee for this form and the forms are sent to the same service center as the underlying Form I-130. The caller noted a case where California cancelled the I-129F before the I-130 was approved. Has USCIS changed its policy regarding I-129Fs? Are the California and Vermont Service Center following the same procedure?

3. I-129F Processing Times Not Posted – – A caller mentioned that it is difficult to know which process is more efficient, Form I-130 or Form I-129F, because USCIS does not post Form I-129F processing times. Does USCIS plan to post processing times for the I-129F?

4. I-129F or I-130 Receipt Date for Processing Times? – Callers mentioned that it is unclear whether USCIS uses the receipt date on the I-129F or I-130 to begin processing the case. Does the I-129F receipt date control the processing time? Does the I-129F receipt date control the processing time even when USCIS administratively closed that case when the I-130 was approved?

5. Permanent Resident to U.S. Citizen – – One caller explained that he filed an I-130 petition for his non-citizen spouse as a permanent resident in 2005, but is now a U.S. citizen. Is it beneficial to now file an I-129F for his spouse to join him more quickly?

6. Transfers to Department of State's National Visa Center – One caller explained that her I-129F petition was approved in September 2007, but as of January 2008 the National Visa Center (NVC) did not have the petition. USCIS' National Customer Service Center representative told her to call back in one month. The caller recommended that USCIS send a notice to the applicant when a file is transferred to the NVC to better inform the applicant of case status.

7. Streamlining the Process – One caller suggested a new procedure where applicants could send the I-130 receipt notice directly to the appropriate consulate or embassy to eliminate duplicative filings and effort.

8. Transparency – One caller stated that the adjudication and processing of I-129Fs and I-130s is unclear. Case status on-line is not frequently updated and does not provide accurate information. Callers noted that they go to unofficial websites because USCIS does not provide accurate or timely information. Can USCIS provide a breakdown of the number of I-130s for spouses adjudicated at the California and Vermont Service Centers and provide the actual processing times for these applications?

9. I-130 Filed Before New Fee Rule– I-129F Filed After Fee Rule – Effective July 30, 2007, USCIS now charges no fee for a K-3 spouse who is the beneficiary of an I-130 immigration petition filed by a U.S. citizen spouse. One caller asked if there was an I-129F fee due if the I-130 was filed before July 30 and the I-129F after July 30. Does USCIS require applicants to pay the additional fee for the I-129F under these circumstances?

10. Working with Department of State – One caller said that some consulates are more efficient at processing the I-129F, which may negatively affect applicants whose I-129F petition was administratively closed by USCIS with the I-130 approval. Does USCIS notify the Department of State if the agency administratively closes the I-129F? How else do USCIS and the Department of State work together on the issues of reuniting foreign national and U.S. citizen spouses?

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