

AILA - SCOPS Q & A February 20, 2008

(Service Center Operations at USCIS Headquarters has provided the following informal answers to AILA questions.)

Q1. We are grateful for the February 4, 2008, security check memo from Michael Aytes. It is our understanding through local liaison that USCIS Headquarters is compiling information on pending adjustments that may be approved based on this memo.

Note: USCIS had previously asked the public to wait until 4-30-08 before sending inquiries on adjustments affected by this memo. That has since been changed to 3-30-08. AILA will notify its members.

a. Does USCIS have an approximate count of the number of cases at the Service Centers and the local offices that may be affected? We understand that this number will change constantly so we are only asking for an approximate count.

ANSWER: At the Service Centers, there are approximately 10,000 I-485 applications that are awaiting name checks only. We estimate that over the next 3 months an additional 15,000 cases will fit into this category as well.

b. In the past, fingerprints "expired" after 15 months. Many of the cases that will be affected by the new background check procedures have been pending longer than 15 months. Will those applicants have to be re-fingerprinted?

ANSWER: Yes, if the fingerprint results have expired, the applicant will need to have new fingerprints taken. Those new fingerprints usually clear within a week or so. USCIS will check with the ASCs to make sure that there is an efficient process and that significant delays do not occur with scheduling these applicants for new biometrics. USCIS will get back to AILA with the approximate number of I-485 applications (of the combined 25,000 mentioned above) where the fingerprint results have expired. Also, note that as of July of 2007, the biometrics are stored under a new system and those fingerprints will be able to be "refreshed" so that new ones don't need to be taken in the future.

Q2. An F-1 student's OPT expires prior to April 1, 2008 and the applicant files a change of status from F-1 to H-4 status. On April 1, 2008, an H-1B petition is filed for the individual seeking a change of status effective October 1, 2008. If there is a receipt notice for the pending I-539, will USCIS match the H-1B case to the pending I-539 and adjudicate both so there is proof that the individual will be in status as of September 30, 2008? What should the procedure be if the I-539 Receipt Notice has not been received at the time the H-1B petition is filed?

ANSWER: If the I-539 is pending when the I-129 is filed, include the I-539 receipt notice and a cover letter asking USCIS to match the two applications. If there is no I-539 receipt when the I-129 is filed, provide a cover letter explaining what you are trying to do

and then include any information that you have regarding the I-539 application, such as cancelled checks, FedEx/courier receipt notice, copy of application, etc.

Q3. An H-1B worker is planning to leave her job on May 1, 2008. The individual is eligible for an H-4 classification and files an I-539 on March 1, 2008, requesting a change of status from H-1 to H-4. The individual does not want the COS to be effective before May 1, 2008, but also does not want to wait until the last minute to file the I-539. There is no place to list an effective date on the I-539. What is the best way to address this when filing the I-539?

ANSWER: USCIS is reviewing this question and will provide an answer on a future SCOPS call.

Q4. An F-1 student's OPT expires after April 1, 2008 and the individual is eligible to file a change of status from F-1 to H-4 status. The individual would like to complete the full period of Optional Practical Training (OPT) authorization before the change of status goes into effect. Should the individual simultaneously file the I-539 with the I-129 H-1B petition on April 1, 2008, requesting first adjudication of the I-539 to take effect at the expiration of the OPT and then adjudication of the I-129 so there is proof that the individual will be in status as of September 30, 2008?

ANSWER: The I-539 and the I-129 can be filed together if there is a clear cover letter explaining what you are asking USCIS to do. This is important so that if the files are separated, the officers can tell that the other application was filed. [AILA note - the filings should also be disclosed on the I-129 where it asks if another application is being filed at the same time.]

Q5. For the H-1B filing in April 2007, the Service Centers were initially opening, data entering and receipting H-1B cap cases. This procedure then changed to "Slit and Peek", just opening the envelopes to confirm that the cases were related to the H-1B cap. Will the Service Centers be using the "Slit and Peek" process for cap cases this year?

ANSWER: The processes for this year's cap filing are still under review. USCIS will provide information to AILA as it becomes available.

Follow-ups from prior SCOPS calls:

6. In our last call, we discussed the SEVIS system, and asked which agency would make changes if there is an error regarding the effective date of an H approval. Has USCIS been able to address this issue further with ICE?

ANSWER: The USCIS will contact the SEVIS help desk if it is determined that the error in SEVIS was due to a USCIS error. You should make your inquiry through the usual Service Center inquiry system.

7. In our last call, we discussed the issue of AAO appeals and Motions to Reopen. Has USCIS been able to review this issue further with regards to actual timelines?

ANSWER: [This issue is still under review.](#)