

Questions for National Benefits Center Liaison/Florida Bar Liaison Meeting  
July 27, 2007

1. Members report that they have had some family-based I-485 interviews (where the I-130 was previously filed and we submit the I-130 receipt notice) transferred to the District office where the Officer has advised at the time of the interview that he/she cannot adjudicate the case because the I-130 file is still in Texas or the Officer only has a T-file. For example, I-485 MSC 07 067 22529 Interview on 3/27/07, Officer stated she only had T-file.
  - a) Whose responsibility is it to transfer the I-130 file from TSC (District office, NBC, or the Service Center) and
  - b) What can we do as attorneys, if anything, to avoid delays like this at the time of the interview?

Our research indicates that the A file for this applicant and T file, containing the I-130, were both at the District Office at the time of the interview. System records show the A file was located in the Miami District office on 1/2/03. The National File Tracking System shows that the T file was in the Miami District office on 3/8/07, and was never located in Texas.

It is the NBC's standard process to request the related I-130 application if it is located at another USCIS office. If the I-130, by chance, is not received before the I-485 needs to go out for interview, the NBC will forward the I-130, upon receipt, to the interviewing office. It is also 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.

2. The following was an item on a recent South Florida AILA – Miami CIS liaison agenda. The answer was provided by the Miami District Office as this was an issue raised at a South Florida AILA Liaison meeting with the District office. We do not have specific examples.

Question: Failure to transfer files from NBC: cases scheduled in Miami have been cancelled due to the fact that local office does not have file from NBC. Can we find out if this is a district problem or an NBC problem?

Answer: We apologize for any inconvenience this may have caused. Not only does the client suffer, but our office ends up wasting precious interview slots. This problem originates with the NBC. We have advised supervisory personnel at the NBC of these difficulties and they are working to resolve the issue.

Can you update us on this situation?

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. When an A file or T file is located at an office other than the NBC or the interviewing office, the NBC will request the file.

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.

The NBC has not been made aware by the Miami District Office of interviews that have been cancelled due to the District not having files from the NBC at the time of interview. Please provide us with specific examples of cases with this issue.

In the future, if an interview is cancelled because a file has not arrived at the District, please send your concern to the Florida Bar Liaison.

3. A recent Nebraska Service Center case for which the I-140 was approved and the I-485 remains pending (since July 2006) was just handled as follows:

“On May 21, 2007, we transferred this I485 APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS to our NATIONAL BENEFITS CENTER location for processing and sent you a notice explaining this action. Please follow any instructions on this notice. You will be notified by mail when a decision is made, or if the office needs something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when this case will be done. This case has been sent to our NATIONAL BENEFITS CENTER location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.”

Can you advise:

- 1) Is this a short term fix for backlogs? Or should we expect transfers from the Service Centers to the NBC for the indefinite future?
- 2) How will the employment based I-485s be fit in with standard NBC adjudicating duties?
- 3) Since I-485s don't appear on your aging report, how do we gauge the relative process of an I-485 transferred to your office?

The NBC is receiving employment based I-485 applications from the four Service Centers which they deem require an interview. This process was implemented May 1, 2007. Once at the NBC, the cases are processed similarly to a family-based adjustment of status I-485 application.

The NBC serves as a pre-interview processing hub for I-485 applications. When the NBC completes the 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. 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 at the field office 14 days prior to the interview date.

The I-485 application does not appear on the NBC's processing time report because the interview and adjudication of these cases occurs in the USCIS field office. Check the USCIS website for the processing times of I-485 applications at each field office at <https://egov.uscis.gov/cris/jsps/ptimes.jsp>.

4. Lately, there has been a change of policy (i.e. we have been receiving RFEs) that the intending immigrant's income can no longer considered as a household member if he/she was not authorized to work during the previous fiscal year. This was never the case

before, as the intending immigrant's income could supplement the sponsor's income if he/she was a household member. I-485 MSC0720621877; I-485 MSC0717925088 new Affidavit of Support requirement that only lawful income from household member will be accepted.

- a) When did this policy go into effect?
- b) What is the legal authority for this?
- c) Why was no notice given?

On June 21, 2006, US Citizenship and Immigration Services published the Affidavit of Support on Behalf of Immigrants final rule in the Federal Register. The final rule is found in Volume 71, Number 119, pages 35731-35757 of the Federal Register.

The final rule made many changes to Title 8, Code of Federal Regulations, 213a. The definitions found in 8 CFR 213a.1 include the following definition of "household income".

Household income means the income used to determine whether the sponsor meets the minimum income requirements under sections 213A(f)(1)(E), 213A(f)(3), or 213A(f)(5) of the Act. It includes the income of the sponsor, and of the sponsor's spouse and any other person included in determining the sponsor's household size, if the spouse or other person is at least 18 years old and has signed a U.S. Citizenship and Immigration Services (USCIS) Form I-864A, Affidavit of Support Contract Between Sponsor and Household Member, on behalf of the sponsor and intending immigrants. The "household income" may not, however, include the income of an intending immigrant, unless the intending immigrant is either the sponsor's spouse or has the same principal residence as the sponsor and 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. The prospect of employment in the United States that has not yet actually begun will not be sufficient to meet this requirement.

On June 27, 2006, US Citizenship and Immigration Services also released the updated redacted Adjudicator's Field Manual that incorporated the changes to the Affidavit of Support. This portion of the Adjudicator's Field Manual is available to the public through uscis.gov. AFM 20.5(d)(4) contains the following note.

**Note:** The interim rule did not directly address the ability of a sponsor to rely on an intending immigrant's income from unauthorized employment in meeting the Poverty Guidelines threshold for the sponsor's household income. In response to a specific comment relating to the issue of the sponsor's reliance on an intending immigrant's income, the revised definition of "household income" now makes it clear that income from an intending immigrant's unauthorized employment may not be considered in determining whether the sponsor's anticipated household income meets the applicable Poverty Guidelines threshold. The basis for this clarification is the clear public policy, as stated in sections **245(c)(2)** and **274A** of the Act, 8 USC 1255(c)(2) and 1324a, against unauthorized employment. Unauthorized employment, admittedly, is not always a bar to adjustment of status. Nevertheless, sections **212(a)(4)(C)** and **213A** of the Act clearly assume that it is primarily the sponsor himself or herself who must meet the income threshold for the Form I-864. This principle is gravely undermined by permitting the sponsor to rely on the intending immigrant's income, if it is derived from unlawful employment.

5. According to the USCIS website, the current Processing times for EADs are greater than 90 days. Current processing times for I-131s are greater than 110 days. When can we expect a return to 90 day processing times

The processing times have been updated on June 18 and now showing March 15 as processing dates for both I-765 and I-131 applications (which is still just over 90 days). I am trying to get examples to send.

On June 18, 2007, the National Benefits Center reported processing dates of March 29, 2007 for Form I-765 and March 15, 2007 for Form I-131 (as posted on [uscis.gov](http://uscis.gov)).

If you are seeing dates outside the posted timeframe, please consider the following:

- Verify status of the case using Case Status Online on the USCIS website.
- Ensure that biometrics are present in USCIS systems for the I-485 and I-765 applications. A card will not be produced if they are not present in the systems.
- Case processing will be delayed if we must request more evidence or information. If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.

Title 8, Code of Federal Regulations, 103.2(b)(10):

(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 NBC does not waive the requirement to process I-765 applications within 90 days. If you encounter cases that fall outside of the 90 day period, please work with your local field office or the AILA committee member.

6. What is the preferred order of documents when filing an I-485/I-130 packet?

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

Remittance for father's I-485  
 Father's G-28  
 Father's I-485  
 Father's I-485 supporting documentation

Remittance for mother's I-485  
 Mother's G-28  
 Mother's I-485  
 Mother'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-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 #2's I-485  
 Child #2's G-28  
 Child #2's I-485  
 Child #2'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-131  
 Child #2's I-131  
 Child #2's I-131 supporting documentation

7. Does USCIS prefer that names are written on the back of photos.

The name of the applicant or petitioner should be written on the back of each photo which is submitted to USCIS. It is also helpful to write "petitioner" or "applicant" on the back of each photo as well as the A number if it is available.

8. Does USCIS and the NBC prefer colored paper for the G-28 and G-325A forms which are submitted?

The blue colored paper is preferred for the G-28. Colored paper is not necessary for the G-325A forms.