

**AMERICAN IMMIGRATION LAWYERS ASSOCIATION  
USCIS CHICAGO FIELD OFFICE  
QUESTIONS FOR DECEMBER 8, 2015 MEETING  
101 W. CONGRESS PARKWAY  
CHICAGO, IL 60605**

**1. Petitioner's Appearance at I-485 Interviews**

- a. For a non-marriage-based I-485 application, is the petitioner's in-person appearance at the I-485 interview required for adjudication of the application?

**In general, we interview the petitioner in-person.**

If a petitioner would prefer not to attend but still wishes the interview to proceed as scheduled in his or her absence, how should the applicant communicate this wish on the part of the petitioner?

**If the petitioner elects to not attend they should send a letter to that effect to our office.**

- b. For a marriage-based I-485 application where the petitioner is unable to attend the interview due to compelling or emergent circumstances, such as extended illness, military service, or incarceration, can the applicant's interview proceed in the petitioner's absence upon a showing of proof of the special circumstances?

**Yes.**

**2. Attorney Note Taking Policy During Interviews**

At the June 24, 2015 AILA DD Liaison meeting, the Chicago Field Office confirmed that attorneys are permitted to take notes during interviews, including during the examination portion of an N-400 interview. It appears that this continues to be an issue, however, as an attorney recently reported that she was prevented from taking notes during the examination portion of a client's N-400 interview and that the officer reported to her that this was "office policy". Such a restriction would seem to violate the applicant's right to representation, since the attorney's contemporaneous notes about the questions and answers given during the examination may be needed to protect the applicant's rights if a dispute later arises over whether the applicant satisfactorily answered the examination questions or not. As AFM Chapter 12.4 notes, representatives are allowed to be present during interviews before DHS to "ensure that the rights of the individuals he or she represents are protected". Please clarify the Chicago District Office's policy regarding note-taking by attorneys and representatives during interviews, including N-400 interviews.

**We will remind the staff that note-taking is permissible during interviews.**

### 3. Local Requests for I-693 Medical Exams

Members have been receiving letters from the Chicago office on pending I-485 cases, stating that the medical exam has expired and requesting that an updated medical be submitted. The letters do not provide a deadline, and applicants are instructed to send in the new medical to Chicago Field Office "Attn: Adjudications Unit." Where the applicants who have received the letters still have not been scheduled for an interview, would it be best for them to bring the new medical to the interview, or should they follow the instructions in the letter and send in or drop off the medical to the Adjudications Unit pre-interview?

Either is acceptable, along with a copy of the letter.

If they are dropping off the medical exam, where should it be delivered: to Window 19 of the InfoPass Section on the first floor, directly to the receptionist on the second floor, or to some other location?

You may deliver it to the receptionist on the second floor with a copy of the letter. If a receptionist is not available, please deliver to the first floor, Window 19. Applicants are also encouraged to mail the new medical. In all circumstances, please include a copy of the letter sent by USCIS.

### 4. I-751 Applications

- a. Under the USCIS memo issued June 24, 2005 by Associate Director of Operations, William Yates regarding Interview Waiver Criteria for Form I-751s, interviews should only be considered for I-751 Applications when:
  1. Evidence purporting to establish the bona fides of the marriage has been submitted yet such evidence does not satisfy the Director that the marriage was not entered into for the purposes of evading the immigration laws of the United States; and/or
  2. In waiver cases, the Director has determined that the evidence submitted to establish eligibility for the requested waiver leads to an inconclusive result and that an assessment from a live interview seems appropriate.

What guidance, if any, is given to officers regarding how to conduct an I-751 interview? Members report interviews for I-751 waiver cases in which very few questions are asked and then later receiving extremely detailed NOIDs even though the applicant was not presented with the opportunity to address any concerns about their evidence, such as potential inconsistencies or lack of certain types of evidence?

Officers conduct Form I-751 interviews in a manner similar to Form I-130 interviews.

- b. What guidance is given to officers regarding the burden of proof in I-751 waiver cases?

Officers are aware that the proper burden of proof required is preponderance of the evidence.

- c. Is the NOID issued by the same officer that conducts the interview?

The interviewing officer frequently issues the NOID, but this is not always the case.

- d. Does a supervisor review the case before issuance of the NOID? Before issuance of the denial?

Yes, a supervisor reviews NOIDs and denials before issuance.

- e. Under 8 C.F.R. §216.5(d)(2), USCIS is directed to issue a NTA upon denial of an I-751. How long does the Chicago office take to issue the NTA? Does the filing of a second I-751 (on the same or different basis) have any effect on the timing of the NTA issuance? Is the procedure and decision for filing of the NTA with the Immigration Court left entirely to ICE?

We try to issue the NTA as soon as possible. A subsequent Form I-751 may affect the timing of the NTA issuance. We send these NTAs to ICE's Office of the Chief Counsel for ICE to file with the Immigration Court.

- f. What rights does a permanent resident whose I-751 has been denied have as far as obtaining proof of his/her status? Will the office issue an I-551 stamp given that a Conditional Resident has the right to review their case before the Immigration Court?

Yes, an I-551 stamp will be provided as proof of status until such time as the Immigration Judge orders the applicant removed.

## 5. Adjudication of I-485s with I-130s at the National Visa Center

According to officers' statements at recent interviews, they are unable to process I-485s before requesting the entire file of an already approved I-130 that was sent to the NVC rather than accepting the approval notice as proof of approval. What is the mechanism for doing this and how long should the process take?

The ISO requests that the Form I-130 visa packet be returned from the National Visa Center. The response time varies, from a few weeks to a few months. Please allow 120

days from the date of interview to inquire as to the status of the Form I-485 if no final decision has been made.

## 6. N-470 Applications

- a. At what point in the adjudication are N-470 applications transferred to the District Office?

If the Service Center wants more information and/or determines an interview is needed they will transfer the N-470 application to the District Office..

- b. What is the processing time for N-470 applications at the Chicago District Office?

Currently, the Chicago Field Office does not have any pending N-470s.

## 7. Oath Ceremonies under INA §324(d)

Under INA section 324(d), a former citizen, who was a citizen at birth and lost such citizenship for failure to meet previous physical presence requirements under former section 301(b) (as in effect before October 10, 1978) may reclaim citizenship upon the taking of the oath of allegiance under INA section 337 without filing an application for naturalization. What is the Chicago Field Office's procedure for scheduling oath ceremonies under INA section 324(d)? Is there a specific form used for this process?

Such an applicant must file a form N-600 with fee following the normal filing procedures. Attaching a cover letter explaining that the applicant qualifies for citizenship under section 324(d)(1) is suggested. Upon approval of the application the applicant will be scheduled for an oath ceremony. The certificate will indicate that they acquired citizenship at birth, with the effective date being the date they take the oath of allegiance.

