

**AMERICAN IMMIGRATION LAWYERS ASSOCIATION
USCIS CHICAGO FIELD OFFICE
QUESTIONS FOR April 19, 2016 MEETING
101 W. CONGRESS PARKWAY
CHICAGO, IL 60605**

1. CSPA Opt Out

Under the Child Status Protection Act (CSPA), a Beneficiary of an immigrant visa may choose to retain F2B status even after their Petitioner naturalizes. INA §204(k)(2)

What is the procedure for requesting an Opt Out pursuant to the CSPA when the case is pending at the National Visa Center (NVC)? Is there a way to accomplish this without waiting for the NVC to transfer the file back to your office?

The Department of State and USCIS met on this topic in mid-March and we are awaiting further guidance. Currently, when NVC is informed about a petitioner's naturalization they send the applicant a letter telling him/her that his/her new visa category is F1, but they can request an opt-out through USCIS. After that, if the applicant contacts NVC to say they are going to pursue an opt-out, the NVC will process the case in the original F2B category and put a note in their system indicating that they are pursuing opt-out.

2. Proof of Paternity

Pursuant to 750 ILCS 46/203, a person is presumed to be the parent of a child if the person and the mother of the child have entered into a marriage...or substantially similar legal relationship and the child is born to the mother during that legal relationship. This presumption is only rebutted with clear and convincing evidence. 750 ILCS 46/206.

Does USCIS recognize and follow Illinois law in reviewing birth certificates submitted with a marriage-based application? In what circumstances would USCIS not recognize & follow Illinois law?

A true and correct copy of a birth certificate issued by the proper authority based on a timely registration of the birth with that authority is, ordinarily, persuasive evidence of parentage. In a given case, however, USCIS may have a reasonable basis to believe that the facts reported to the authority may have been false.

3. RFE/Criminal Issues

Part 1. Based on the vacated decision in Matter of Silva-Trevino, what criminal records are applicants with criminal arrests required to submit to establish admissibility.

Part 2. Some Members are reporting receiving RFEs for criminal arrests that appear to be overbroad and general in nature requesting police records, pre-sentencing reports, charging documents, sentencing orders, plea agreements or plea colloquy and certified dispositions. Please confirm what documents are required for the following types of criminal arrests:

- a. Criminal charges that have been dismissed, Nolle Prose or SOL
- b. Convictions that are CIMTs based on clear BIA precedent
- c. Convictions that are not CIMTs based on clear BIA precedent

The burden of proof is on the applicant to establish eligibility for the benefit sought. For many applications, the applicant must demonstrate that he or she is admissible to the United States and is not inadmissible. Even if there are criminal matters that do not render the applicant inadmissible, they may be relevant to the exercise of discretion. The instructions for each application list the documents required for initial submission for an applicant with a criminal history. In order to assess the applicant's inadmissibility or whether to grant an application as a matter of discretion, an ISO may request, if needed, any/all of the documents noted in Part 2 of your question. However, the request should be tailored to the specific case. If a request for evidence appears to be overly broad, you may contact the Branch Chief of the respective unit.

4. Officer Conduct During Interviews

Members have reported receiving culturally inappropriate questions during interviews.

For example during an interview an officer asked whether a Muslim client is Shia or Sunni. When questioned as to why this is relevant, the officer has stated that certain Muslims are more prone to multiple marriages and at times may marry for convenience.

If an attorney believes that an officer is asking inappropriate questions during an interview, what action should an attorney take?

Since this question refers to a specific incident that occurred we will address this outside of the meeting with the particular attorney who raised this issue.

5. Attorney Placement During Interviews

Recently we have heard reports that newer offices are asking attorneys to take a seat behind their clients during interviews with the local office. This is likely a training issue and is contrary to well-settled policy laid out USCIS in recent guidance on this issue:

Under a December 21, 2011 Policy Memorandum, USCIS provided guidance on the role of private attorneys during interviews. With regard to where attorneys may sit during the interview, the memorandum states:

Sufficient seating for the officer and applicant, attorney or other representative and family members should be provided. The attorney or other representative should be seated directly next to the person being interviewed to facilitate appropriate participation unless the physical layout of the interview space cannot accommodate it. If the officer has a concern that the seating arrangements may be inhibiting or negatively impacting the interview process, he or she should contact a supervisor for guidance.

Adjudicator's Field Manual (AFM) Chapters 12 and 15; AFM Update AD11-42/ PM-602-0055

Thank you for raising this matter. Several factors may impact the placement of attorneys in an interview. These may include the number of parties present in the office, the space/shape of an individual office and the placement of USCIS electronic equipment, particularly with dual monitors, which may impede sightlines between the ISO and the parties.

6. I-551 Stamp with Pending N-400 Application

Members have reported that they have been denied a stamp based on statements that an I-90 must be filed in order to obtain an I-551 stamp. Please confirm that lawful permanent resident aliens with expired I-551 cards but pending N-400 applications can obtain an I-551 stamp for proof of their status, employment, and travel benefits.

This question was recently raised to USCIS Headquarters. The guidance that we received as a result indicates that applying for naturalization does not remove the need to file an I-90 if an I-551 card has expired. As a result, our office will not provide stamps to N-400 applicants with expired I-551 cards unless an I-90 is also filed.

7. Adjustment while in TPS Status

Pursuant to INA §244(f)(4), an individual granted TPS status is considered as being in and maintaining status as a non-immigrant. This has been confirmed in recent court opinions. *Flores v. U.S. Citizenship and Immigration Serv.*, 718 F.3d 548,553 (6th Cir. 2013); *Bonilla v. Johnson*, Civ. No. 14-4962 (BKT) (D.C. Minn. Mar. 2, 2016). ; *Medina v. Beers*, 2014 U.S. Dist. LEXIS 156526, 65 F. Supp. 3d 419 (E.D. Pa. 2014); *Ramirez v. Dougherty*, 23 F.

Supp. 3d 1322, 2014 U.S. Dist. LEXIS 74380 (W.D. Wash. 2014) Given the plain language of the statute, will USCIS consider an alien, who originally entered EWI but has been granted TPS, eligible for AOS under section 245(a) as someone who has been inspected and admitted or paroled?

We are awaiting additional guidance on the type of TPS cases described, for cases not governed by Sixth Circuit law.

8. SAVE Database Corrections

Is the local office able to correct an error in the SAVE database when another government agency (ex. SSA or DMV) tells a benefit applicant that an error exists in the database? What is the procedure to request a correction?

We do have the ability to make corrections to the computer systems that are used by the SAVE program. If a correction is needed, the applicant should make an InfoPass appointment to notify us of the error. The applicant should be prepared to provide documentation that shows the correct information.

9. Emergency Advanced Parole

A. Please confirm that no additional payment is required for an Emergency Advanced Parole requested at the District Office where an applicant has an Advanced Parole Document pending at the service center?

Yes – This is correct.

B. Is this also the case where the applicant has already paid the I-485 packet fee but has not previously filed an I-131 application?

We are awaiting further guidance.

C. Is it required to present a newly completed I-131 form when one has already been filed?

Yes – A newly-completed I-131 must be submitted.