

**AMERICAN IMMIGRATION LAWYERS ASSOCIATION  
USCIS CHICAGO FIELD OFFICE  
QUESTIONS FOR August 16, 2016 MEETING  
101 W. CONGRESS PARKWAY  
CHICAGO, IL 60605**

**1. Unlawful Voting**

At the December 2014 DD Liaison meeting, the USCIS Chicago Office informed us that it expected to receive further guidance on the 2002 Yates Memo and N-400 applicants who have engaged in unlawful voting. See attached question #3 from 12/2014 meeting (originally scheduled for 11/25/2014). We followed up with the DD on this matter at the June 24, 2015, meeting. They replied that “There is no updated guidance to report.”

- a. Is there now updated guidance?

**No, there is no updated guidance.**

- b. Does an N-400 adjudicating officer have any discretionary authority to avoid sending an unlawful voting case to the NTA review panel and instead proceed with adjudicating the N-400 on the merits of the case?

**If the officer determines that the unlawful voting occurred in the statutory period and constitutes an unlawful act demonstrating that the applicant lacks good moral character, the officer may deny the case. If the unlawful voting renders the applicant removable but not ineligible for naturalization, then the case must go to the NTA panel.**

**2. I Visa Change of Employers**

8 CFR 214.2(i) states “(i) Representatives of information media. The admission of an alien of the class defined in section 101(a)(15)(I) of the Act constitutes an agreement by the alien not to change the information medium or his or her employer until he or she obtains permission to do so from the **district director having jurisdiction over his or her residence**. An alien classified as an information media nonimmigrant (I) may be authorized admission for the duration of employment.”

How does an individual on an I visa change employers with the District office?

**If an individual currently holds I status and wishes to request a change of employer or information medium, he or she must file Form I-539, Application to Extend/Change Nonimmigrant Status in accordance with the form filing instructions and with the proper fees. The application should be accompanied by evidence of the applicant’s current status and a letter from the employing foreign media organization describing the employment and**

establishing the fact that the applicant is a representative of that media organization. Please refer to the Form I-539 instructions for further information.

### 3. N-400 Habitual Drunkard Determination

In March 2016, the Ninth Circuit Court of Appeals issued a precedent decision, *Ledezma-Cosino v. Lynch*, which held that INA 101(f)(1) is unconstitutional. The Court opined that the statute violated the Equal Protection Clause of the U.S. Constitution because the government lacked a rational basis to find that a person suffering from alcoholism, a medical condition, lacked good moral character.

- a. Will the local office continue to apply the “habitual drunkard” ground of “good moral character” in naturalization cases?

The local office will continue to consider all factors when determining eligibility for naturalization.

- b. How does the local office make a finding that an applicant is a “habitual drunkard”

Certain documents may reveal habitual drunkenness, to include divorce decrees, employment records, and arrest records. In addition, termination of employment, unexplained periods of unemployment, and arrests or multiple convictions for public intoxication or driving under the influence may be indicators that the applicant is or was a habitual drunkard. <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter5.html>

- c. Is a medical diagnosis of alcoholism necessary?

No.

### 4. Attorney’s Right to a Copy of Sworn Statement Taking During an Interview

Members report that officers are not always willing to provide a copy of the written Q and A. Are officers required to provide a copy of the signed Q and A?

Officers will be reminded to provide a copy of the sworn statement when requested at the time of the interview if possible, or soon thereafter.

### 5. R-1 Site Visits

An I-129 based R-1 petitioner may apply for premium processing through form I-907 if there has already been an on-site visit of the location where the beneficiary will be employed.

Who should be contacted in order to facilitate an expedited site visit?

The field offices do not adjudicate R-1 visas. These cases are handled by the California Service Center. The CSC adjudicates the applications and then forwards the cases that require a site visit to the local FDNS office. As such it would be best that AILA contact the CSC directly for more information.

## **6. I-130 Expedite Requests**

USCIS has previously agreed to give expedite treatment to schedule interviews for Form I-130s when the Beneficiary is in proceedings. However, members report being told that because the next court date for a Beneficiary was in the distant future there was no rush to expedite their case.

As Beneficiaries may be able to terminate proceedings to adjust or seek consular processing after obtaining an approved I-130, will USCIS consider expediting all I-130s, regardless of when the next court date is, if someone is in proceedings?

USCIS aims to expedite scheduling an interview for a Form I-130 when the beneficiary has an upcoming court date before an Immigration Judge in order to minimize delays to the Immigration Court calendar caused by Form I-130 adjudication. We will continue to schedule those cases with earlier court dates first.

## **7. Lockbox Hours**

Can the DD confirm the delivery hours for filings at the Chicago lockbox facility at 131 S Dearborn, 3<sup>rd</sup> Floor, Chicago, IL 60603?

The District Director cannot confirm the delivery hours for the Chicago Lockbox.

## **8. Naturalization and Name Change**

In general, a married person is able to take the last name of his or her spouse.

- a. Is this considered a legal name for naturalization purposes or does an actual name change through the N-400 need to be requested?

The answer to this question may vary by state. For instance in Illinois a person who has recently married may change his/her name without formally petitioning the courts; the marriage certificate from the state is proof of the name change.

- b. Does it matter whether the person has already obtained a foreign passport, social security, driver's license or other identity documents under the married name?

This would corroborate the fact that the person has already taken the name of his/her spouse.

- c. What authority are officers instructed to rely upon when determining whether a name change has occurred?

Name changes are governed by state law.

## 9. Issues with RFE/NOIDs in general

Members have recently received confusing and/or seemingly incorrect RFEs and NOIDs. One attorney reports receiving a NOID and then three days before the NOID was due, she received an RFE for the same case, with a due date nearly three months later. In another case, an attorney received an RFE and about one month later, before the response to the first RFE had been filed, the attorney received a second RFE but this new RFE did not acknowledge the previously sent RFE. In yet another case, an RFE was issued and before a timely response could be filed, the case was granted.

What steps can attorneys take to request that the district office rescind seemingly incorrect RFEs and/or NOIDs?

Please contact the Branch Chief of the respective section to discuss the RFE. If appropriate, we will issue a corrected RFE or take other action.

## 10. Issues with RFEs/NOIDs specific to SIJS

Members report receiving NOIDs that reference statements made by young children upon their apprehension at the border as a basis for disputing the child's eligibility for SIJS, despite USCIS's own policy guidance that officers should limit reliance on border statements made by children because they lack reliability.

As well, RFEs in these cases consistently request hearing transcripts related to guardianship and custody (allocation of parental responsibility) orders. However, these proceedings rarely – if ever – utilize a court reporter and result in a hearing transcript.

AILA attorneys raised many of these issues about two years ago and were pleased to be able to work with USCIS to resolve them. We are now concerned that the same issues appear to be occurring again. Can USCIS clarify whether the rise in these issues is tied to staffing changes or whether new guidance regarding the adjudication of SIJS petitions has been issued?

We have not received any new guidance concerning the processing of these cases. However, there have been some staffing changes. We will bring your concerns to the attention of the

Officers adjudicating these cases. If you receive such RFEs in the future, please bring notify Stacey Summers, Customer Service Branch Chief.

## **11. Typographical Errors**

When there is a typographical error in an applicant or petitioner's name made by the lockbox, what step(s) must your office go through to correct the record prior to making a decision? In other words, if the error is brought up at the interview, will there be any delay in adjudication?

Most errors may be corrected in the computer system. If the error is brought to our attention at the time of the interview, there should not be a delay in adjudicating the case.