AMERICAN IMMIGRATION LAWYERS ASSOCIATION
USCIS CHICAGO FIELD OFFICE
QUESTIONS FOR SEPTEMBER 27, 2016 MEETING
101 W. CONGRESS PARKWAY
CHICAGO, IL 60605

1. Deferred Action vs. Humanitarian Parole-in-place

Under the regulations and policy memorandum, USCIS is permitted to grant both deferred action and humanitarian parole-in-place.

a. Is there a different discretionary determination for either form of relief?

Both deferred action and humanitarian parole-in-place are discretionary determinations. USCIS considers any exercise of discretion within the same ordinary context of weighing equities and adverse factors, both individually and cumulatively. But while the basic factors are the same, whether to exercise discretion favorably is made according to the facts and circumstances of each case.

Parole does have one additional statutory requirement. The applicant must show that "urgent humanitarian reasons" or the "public interest" warrants parole. For this reason, USCIS generally will not grant parole or give an advance parole document to an alien present without inspection, if the chief reason for the request is to allow the alien to meet the "admitted or paroled" requirement for adjustment of status.

If an alien is not eligible for adjustment under INA § 245(i), a grant of parole or of an advance parole document *after* a Form I-485 is filed does not permit USCIS to approve the Form I-485, since eligibility did not exist at the time of filing. 8 CFR § 103.2(b)(1). Denial for this reason does not bar the alien from filing a *new* Form I-485, with all required fees.

b. How do you make such a request?

Both deferred action requests and non-military parole-in-place requests may be made in writing and signed by the requestor. There is no form for either of these request types.

c. Do you track these cases and if so how many do you receive of each annually? How many of those are approved?

We do not formally track these requests.

2. SAVE System Edits

During the April 2016 Liaison meeting, AILA was informed that edits could be made in the SAVE system at an Infopass appointment if proof was presented that the information in the

system was incorrect. Recently members have reported being told at the Infopass office that this answer is incorrect and that they are unable to make corrections in the SAVE system at an Infopass appointment. This is true even when presented with a copy of the minutes.

a. Please provide clarification as to whether a correction can be made to incorrect information present in the SAVE database at an Infopass appointment.

SAVE is not a database, but is instead, a system that accesses information in government records. SAVE responses are based on government records. USCIS can correct information in an individual's immigration record that may be accessed by SAVE. An individual can request a correction of an error in records maintained by USCIS by scheduling an InfoPass appointment. More information on correcting records can be found on the SAVE website at https://www.uscis.gov/sites/default/files/USCIS/Verification/SAVE/SAVE_Native_Documents/SAVE_FACT_SHEET_for_Benefit_Applicants.pdf

b. Please clarify the method to correct information in the SAVE system when an individual has been notified by another agency that the information in the system is incorrect.

Individuals may request a correction of records maintained by USCIS at an InfoPass appointment. If USCIS is made aware of an error, it will work to correct the error and will provide the customer with information about the correction if possible. More information on correcting records can be found on the SAVE website at https://www.uscis.gov/sites/default/files/USCIS/Verification/SAVE/SAVE_Native_Documents/SAVE_FACT_SHEET_for_Benefit_Applicants.pdf

c. Are you also able to correct errors which were initially made by Customs and Border Patrol?

An individual can request to correct an error in records maintained by USCIS by scheduling an InfoPass appointment; however, USCIS may not have authority or the ability to make changes to records owned or maintained by Immigration and Customs Enforcement or Customs and Border Patrol. More information on correcting ICE or CBP records can be found on the SAVE website at https://www.uscis.gov/sites/default/files/USCIS/Verification/SAVE/SAVE_Native_Documents/SAVE_FACT_SHEET_for_Benefit_Applicants.pdf

3. USCIS Interfiling

Often times events occur after the I-485 interview and retrogression that may necessitate additional filings. What is the recommended process to match the additional filings with the long-pending AOS physical file for each the following scenarios?

a. For a family-based case, the petitioner changes status from LPR to USC, and the beneficiary wishes to "upgrade" their category to Immediate Relative. This scenario presumes that the same relationship exists between the petitioner and the beneficiary that existed at the time of filing.
Assuming the AOS interview has already occurred, please provide this request to the Field Office in writing, together with documentation of the petitioner's naturalization.

b. For an employment-based case, after the applicant has been interviewed and their priority date retrogresses, the applicant is married. When the original applicant's priority date becomes current again, the new spouse wishes to inter-file their own I-485 with the original applicant's pending I-485 so that the family can be adjudicated together.

If the derivative spouse files an I485, please send the request in writing to USCIS to match up the derivative's A file with the principal's A file.
Please note that once a priority date has regressed in an employment based case, the Field Office sends the file for final adjudication to the Texas Service Center.

c. For an employment-based case, after the applicant has been interviewed and their priority date retrogresses, their employer files a new PERM labor certification and I-140 petition to "upgrade" their preference category from EB3 to EB2. The applicant's new "upgraded" priority date is now current, and the applicant is seeking a final adjudication of their I-485.

Prior to adjudication of an adjustment application, USCIS may allow the applicant to transfer a pending adjustment application to a different petition or basis regardless of whether the petition that forms the new basis for the pending adjustment application has already been approved or is pending, if allowable by law or regulation and provided certain requirements are made. All requests should be made in writing to USCIS. USCIS Policy Manual, Volume 7, Part A, Chapter 7 governs the policy and procedures for a transfer request. https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartA-Chapter7.html

Please note that once the priority date has regressed in an employment based case, the Field Office sends the file for final adjudication to the Texas Service Center.

d. An applicant files a family-based I-485. Later, the applicant's employer files a PERM labor certification and an I-140 petition on the applicant's behalf. The

employment-based priority date is more favorable than the family-based priority date. The applicant wishes to effectuate an updated petitioner and preference category for their long-pending AOS application.

Please refer to response above concerning transfer requests.

4. Policy Regarding I-130 Interviews for People with Removal Orders

The USCIS Regulations were recently updated to allow Beneficiaries with removal orders to file I-601A and I-212 applications while remaining in the United States. If those Beneficiaries are scheduled for an interview on the underlying I-130 petition does USCIS have a policy in place as to whether ICE will be informed that the person still remains in the United States?

The pendency of a removal proceeding or the entry of an administratively final order has no effect on whether a Form I-130 can be adjudicated. However, filing an immigrant visa petition does not stay execution of the removal order.

If an individual with an administratively final removal order appears before USCIS for interview, USCIS will adjudicate the Form I-130 on the merits as appropriate. But USCIS will contact ICE if the applicant is subject to a removal order. Whether and when to execute the order is a matter for ICE to decide.

5. NOID Responses

Chapter members have reported receiving NOIDs on adjustment cases requesting documents from other government agencies that are not possible to produce within the allotted time. For example, a NOIF requested IRS tax transcripts from 2010 - present. IRS tax transcripts are only available for the last three (3) tax years. Documents can be obtained for additional tax years by filing form IRS form 4506-T and paying for those documents. The IRS regularly posts notices on its website that that receipt of those documents takes 6 - 8 weeks.

What would be the best way to handle a request for evidence that cannot be obtained within the period of time allotted to respond?

If documents requested in the request for evidence are unavailable, the individual should respond to the request for evidence providing a written, detailed response as to the reason for their unavailability and their efforts to obtain the documents. A request for evidence cannot be extended past 84 days. Unavailability of records is further detailed in the USCIS Policy manual in Volume 7, Part A, Chapter 4 at https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartA-Chapter4.html

6. Right to Review Derogatory Information

Pursuant to 8 C.F.R. §103.2(b)(16)(i):

"If the decision will be adverse to the applicant or petition and is based on derogatory information considered by the Service and of which the applicant or petition is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered...Any explanation, rebuttal, or information presented by or in behalf of the applicant or petition shall be included in the record of proceeding."

To what extent does an applicant have a right to review derogatory information? For example, members report receiving denials that refer to witness statements without identifying the witness.

a. Is the applicant able to review the complete statement or know the identity of the witness?

USCIS will, pursuant to the regulations, provide detailed notice of any derogatory information that will be adverse to the applicant or petitioner. In the case of a statement or letter containing adverse information, USCIS will provide the applicant or petitioner a summary of the nature and content of the statement. *See Ghaly v. INS*, 48 F.3d 1426, 1434-35 (7th Cir. 1995) . The applicant or counsel of record may examine the record, through the filing of a FOIA request. See 8 CFR § 292.4(b)

b. How can an applicant rebut such a statement without further information?

Please see the above response from part a.

7. I-9 Requests for Evidence

Members have reported receiving RFEs which require the applicant to provide copies of their previous or current Forms I-9. As you know, the Form I-9 is an employer document. Per USCIS's I-9 FAQs (see "Storing Form I-9" at https://www.uscis.gov/i-9-central/i-9-central-questions-answers/questions-and-answers) employers are not obligated to provide employees with a copy of their completed Form I-9. Moreover, employers are only required to retain a former employee's Form I-9 for either three years after the date of hire, or one year after the date employment is terminated, whichever is later (see page 27 of the M-274, I-9 Handbook for Employers, at https://www.uscis.gov/sites/default/files/files/form/m-274.pdf). Accordingly, most employers purge their files of old Forms I-9 as soon as these time requirements are met. As such, for most applicants, it will be impossible to obtain their Forms I-9 from their employers. Could officers please be reminded of these I-9 documentation requirements?

USCIS may, in certain situations, request a copy of the I-9. As with all RFEs, it is expected that applicants make best efforts to obtain the requested information or documentation. If the requested information or documentation is unavailable applicants may explain. USCIS will remind our staff of the above mentioned reference material.