

**CONFIDENTIAL**

**QUESTIONS FOR USCIS/AILA LIAISON MEETING**  
**03/10/2016 at 10 AM**

1. Can USCIS please explain what "extended review" means with respect to cases?

Extended review is a term used to describe cases that are pending security and background checks.

2. Does USCIS do enforcement priority reviews?

Yes. An NTA Review Panel reviews all NTA cases and the DHS Enforcement Priorities are taken into consideration by the panel. Enforcement Priorities are also taken into consideration when the Field Office encounters a customer with an outstanding Immigration Warrant.

- a. How often does this office call ICE to report an applicant who is an ICE priority?  
We do not track this type of data.

- b. How many times since February 2015 have such calls resulted in arrests made in this office?  
We do not track this type of data.

3. Where a case is administratively closed by USCIS to allow for time for the Immigration Court to terminate proceedings against an applicant, what is the best route for re-opening the matter for adjudication by the local field office? I have a VAWA client who was interviewed in June 2015, her proceedings were terminated in August 2015, and there has still been no action to adjudicate her I-485.

There are two courses of action to ensure that court cases which have been terminated are sent to the Field Office for re-opening: an email request or an in-person request through InfoPass appointment.

If opting to send an email request, the following process should be followed: no less than 30 days after the termination has been issued, send an email to the AILA mailbox with the subject line: TERMINATION, A-XXX-XXX-XXX. The termination order must be attached to the email.

If opting to schedule an InfoPass appointment, please bring a copy of the termination order with you no less than 30 days after the termination has been issued.

4. How frequently is the SIJS email box reviewed? I have not received replies to emails sent there for a few months now. When I received termination orders for kids with approved I-360 applications and pending adjustments, I was able to email the IJ order to the SIJS email box and the file was then requested and the adjustment adjudicated. I have several such cases where I've emailed the SIJS email box (often multiple times) and have not received adjudication or even a reply to my email.

The SIJ mailbox is monitored regularly by the SIJ Supervisor and although you may not have received an email response all SIJ cases are reviewed as timely as possible and necessary steps

taken to move the case to completion. We will be implementing an auto-response to future email to provide proof of receipt of the inquiry.

5. I have a client who was served with an NTA when he entered the US, but that NTA was never filed with EOIR. He has an approved I-360 and a pending adjustment application. He was interviewed on his I-485 in June 2015. I had been told previously in this situation, the adjudicating officer can cancel the NTA. I asked that at the interview, and in follow-up emails to the SIIS email box, but there still has been no decision on the I-485. This child has had to renew his EAD because his adjustment has been pending over 1 year, and his NTA still has never been filed with EOIR (so he isn't in proceedings and USCIS has jurisdiction over his case).

USCIS Supervisors have the authorization to cancel any notice to appear prior to jurisdiction vesting with the immigration judge. In other words, prior to the NTA being filed with EOIR, USCIS may cancel the notice to appear. See, 8 C.F.R. §239.2. As this question is case-specific and it is not clear if this is warranted in this particular case, this response is not provided as guidance in the instant matter.

6. We have had a 485 denied on the grounds that our client, who had been a CR, still retained some rights and privileges that only and IF could take away and therefore she remained a CR (despite the support strong language in the USCIS 751 denial and termination of her CR status) and so could not readjust. What is the legal basis for this position? We can find none, thus it appears to us to be a policy decision. We believe this policy only results in inefficiencies and increased costs to both the applicant and the government (I would be happy to elaborate if necessary at the appropriate time). Therefore, we believe this policy should be reconsidered.

INA § 216(c)(3)(C) provides that USCIS shall terminate the conditional resident ("CR") status of an individual whose Form I-751 is denied "as of the date of the determination." However, USCIS's termination of CR status is explicitly conditioned upon review of the termination in removal proceedings. Specifically, INA § 216(c)(3)(D) provides that any individual whose CR status is terminated by USCIS upon the denial of Form I-751 "may request a review of such determination in a proceeding to deport the alien." See also 8 C.F.R. § 216.4(d)(2). DHS regulations also extend the right to request a review of the determination in removal proceedings to those individuals whose CR status is terminated due to a finding of fraud during the two-year conditional period, due to failure to file Form I-751, or after the denial of an I-751 waiver petition. See 8 C.F.R. §§ 216.3(a), 216.4(a)(6), 216.5(f). In all of these cases, final termination of an individual's CR status is subject to review of USCIS's decision in removal proceedings. Until an Immigration Judge terminates an individual's CR status, or until he or she loses CR status in some other way (such as abandonment), he or she is barred from "readjusting" under INA § 245(d) and 8 C.F.R. § 245.1(c)(5).

The Board of Immigration Appeals ("BIA") decision in *Matter of Stockwell*, 20 I&N Dec. 309 (BIA 1991), is not contrary to USCIS's interpretation of the law and regulations. In *Stockwell*, the BIA held that "section 245(d) does not prohibit an alien whose conditional permanent resident status has been terminated from adjusting his status under section 245(a) of the Act." 20 I&N Dec. at 311-12. However, in that case, the BIA was considering the applicability of INA § 245(d) to an individual whose CR status termination had already been reviewed and affirmed by an Immigration Judge.

- a. Even if the above policy is not reconsidered in all cases, we believe there is one particular scenario that is even more deserving of a different treatment: denied joint 751's where the same spouses are attempting to readjust. In our case, the 751 was denied for failure to respond to an RFE. Couple waited a long time before trying to correct the problem. Rather than seeking an informal reopening (290B would be untimely), they seek adjustment anew. There is no basis for a policy to deny this application and refer them to the II. See issue (1).

This question relates to a specific case, and this is not the appropriate forum for discussing case-specific inquiries.

7. Not to knock the liaison process, but it seems a response to submitted inquiries are coming a little slower than normal – is this due to training issues? Is there an update on that?

A Supervisory Immigration Services Officer has recently been assigned to assist with monitoring the AILA mailbox to ensure that responses are provided in a timely manner.

8. Has the centralized adjudication of SIJS cases begun? If not, when do you expect it to begin? What will be the procedure going forward?

The centralization of SIJs has not yet resulted in shipping cases to a centralized location, but processes and protocols are under development. We do not have a timeline for when SIJs will be centralized. In the meantime, SIJ processing will continue at the Field Office as it has in the past.

9. Why is it taking so long to schedule interviews for I-130's where the beneficiary is/was in proceedings? Is this an issue on Atlanta's end or from Nebraska? In some cases, it has taken a year.

The Field Office continues to conduct I-130 interviews on designated days and plans to schedule more standalone I-130 interviews in April.

10. Does CIS have a plan for the overwhelming amount of I-751 that have been pending for more than one year?

The Field Office has an aggressive I-751 plan for March in which I-751 work has been scheduled every day for the entire month.

11. If a married couple fails to timely file an I-751, years later, while still married and living together, may they simply file a new marriage-based I-130/I-485 case without first filing an I-751 application and awaiting its denial?

Please see the response to question 6, above. Final termination of the foreign national spouse's conditional residence likely has not yet occurred, so the bar to adjustment at INA § 245(d) continues to apply. Please note that Form I-751 may be filed late "if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I-751 within the required time period." 8 C.F.R. § 216.4(a)(6).

- a. If a married couple fails to timely file an I-751, and years later the foreign national spouse becomes married to a different U.S. Citizen, may that married couple simply file a new marriage-based I-130/I-485 case without first filing an I-751 application and awaiting its denial?

Please see the response to question 11, above.

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AILA USCIS Liaison Meeting, March 10th

Present: *USCIS* - Brett Reinhart, Jaclyn Williams - Branch Manager, Cheryl Johnson - Branch Manager, Toni Head - Customer Service Unit Manager. *AILA* - Zainab, Lino, Valentin, Beryl, Anna, Tracie, Peter

• **Intro Notes:**

- USCIS is working on a system where customers and or counsel will have a **physical document** to take away from each InfoPass appointment.
- Ft. Benning getting staffed up with a former ATL officer, will be sending a clerk out to Stewart on occasion to get the A files

**\*\*IMPORTANT BIOMETRICS NOTICE\*\***

***USCIS Getting out of the non-detained biometrics processing business, as of January. ICE will have the responsibility now. If ICE knows that a hearing is coming up, they'll establish their protocols, if there's a IDIT hit, can re-request biometrics. It's on ICE to schedule this. If the person doesn't have a rap sheet, ICE should send in a spreadsheet, will then send in a request to have the biometrics run from a central location. Also, if biometrics have been run before, can request that that they are simply run again.***

• **Additional Information on Questions:**

- 1. Mandamus would the only way to get cases out of the rut
- 2. NTA Panel, includes counsel, works with looking at the priorities and deciding whether or not NTA will be issued. Two officers, one counsel.
- 3. AILA should follow-up with Renae Hansel to see what can be done.
- 4. SIJS inbox will have an autoresponder so you have a record
- 5. CRs who have been terminated by USCIS, but not an IJ are still entitled to an EAD, considered a TR6.
- 10. March has 320 I-751s being interviewed. By next meeting, would like to have a reasonable processing time.
- 11. NTA life of I-751s - once done at USCIS then it goes to OCC for them to decide to file with the court.

• **IMPORTANT Misc. Information**

- CIS has requested that attorneys do not contacted ISOs directly. All questions should go through AILA liaison. All contact with CIS will be through the Branch Chiefs – Jaclyn Williams or Cheryl Johnson.

- *Of course this does not apply to matters where an ISO has asked you to follow up on a matter, regarding a specific case, directly*
- FDU (Fraud Detection Unit) to get back in line for cases – gets back "as soon as they can" & Can sometimes have a second interview
- Interview waivers are, generally, decided at the service center
- 90 days for liaison inquiry, no longer 180
- **From Director Brett Rinehart:**
  - NO LAPTOPS allowed in interviews!
  - No forum shopping at InfoPass
  - Lobby/Security will be expanded, starting in April. Should take two weeks.