



LATEST FROM MR. AYTES AT USCIS

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by

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At the AILA-NY Chapter Conference on December 13, 2007, Michael Aytes, Associate Director Emeritus, Domestic Operations Directorate, USCIS, provided interesting perspectives of what USCIS has in store for us in the coming months. The other panel members were Sharon R. Mehlman, AILA SCOPS Liaison Committee Chair, and Shawn A. Orme, AILA USCIS Liaison Committee Chair.

At the outset, Mr. Aytes acknowledged that the USCIS was hit by the sudden surge in applications prior to the fee increase on June 30, 2008. He predicted an 18 month wait in naturalization applications. USCIS also slowed down in issuing fee receipts, but it will catch up by mid- January 2008.

Even though the retrogression in the Employment-based numbers continues, with the EB-2 cut-off date for India going back all the way to January 1, 2000 in the January 2008 Visa Bulletin, USCIS is looking to issue multi-year Employment Authorization Documents (EAD). The EAD will also contain an Advance Parole (travel authorization) feature, according to Mr. Aytes. Such an initiative would indeed be beneficial as it would obviate the need for an applicant to renew the EAD and Advance Parole separately each year over the lifetime of a pending I-485 application.

Gearing for the H-1B Cap

USCIS is taking for granted that the H-1B program will again be run as a lottery in 2008, since it anticipates that more petitions will be filed than the available allotment under the annual 65,000 cap plus the additional 20,000 cap for Master's H-1B visas. Mr. Aytes expressed concern that people might file

duplicate petitions in order to increase their chances under the randomized selection, and USCIS plans to issue a regulation to prevent such duplicative filings. If an employer filed another petition with a minor change in the salary or the worksite, it would be considered a duplicative petition. Mr. Aytes warned that both petitions would get rejected. On the other hand, two filings under the 65,000 and the 20,000 Master's cap may not be considered duplicative, according to Mr. Aytes.

USCIS also plans to also allow a web-based skeletal filing, but may not succeed before April 1, 2008. Mr. Aytes recognized that petitioners will spend a lot of time in preparing and filing detailed petitions only to find them rejected under the lottery.

Clearing Backlogs Because of FBI Name Checks

Mr. Aytes acknowledged the hiring of additional staff by the FBI to conduct the background name checks, but the increase in staff was not enough to clear the backlogs. Inventory was down by only 8% so far, and he felt that the FBI predictions to clear backlogs in 6 months optimistic. In the mean time, Mr. Aytes indicated that the USCIS case status check would include the history of the case and the reason for the hold up, such as the issuance of an RFE, name check, etc. Thus, people could get a more detailed status of their case without going through a gatekeeper.

Religious Worker Petitions

Mr. Aytes acknowledged the delay in the adjudication of I-360 Religious Worker petitions due to every case being subjected to a field investigation. He admitted that these investigations would ultimately allow USCIS to focus its resources more on cases suspected of fraud as opposed to every case. During the investigations, USCIS has heard of instances where the religious organization never even knew of a petition being filed on behalf of the beneficiary! When questioned about the fact that the R visa status ran out after five years, Mr. Aytes said that it was important to let USCIS know that the beneficiary's R visa would be expiring. While he did not explicitly state that USCIS would expedite the processing of such cases, he implied that letting the USCIS know about the underlying R visa status running out might lead to a speedier adjudication of the I-360 petition.

RFE Response Times

Mr. Aytes reiterated the change in response times allocated to Requests for Evidence after a petition or application is filed with the USCIS. There is no longer an automatic 84 day response time for every RFE. If the filing is lacking in initial evidence, USCIS will only allow a 30 day response time. I-539s will also result in a 30 day response time to an RFE because one can normally only ask for up to a six month extension of a B-2 visa. If the evidence requested is non-initial and is available in the US, then the response time to the RFE is 42 days. On the other hand, if the request for non-initial evidence has to be procured from overseas, the USCIS ought to give an 84 day response time.

In the event that the wrong time frame is allotted on an RFE, Mr. Aytes advised that the applicant contact the Service Center at the outset and not wait until the last minute.

PIMS (Petition Information Management System)

Under PIMS, every consul must see information of an I-129 petition on the system before issuing a visa. As background information, we reproduce the following from an advisory on AILA Infonet:

"Under PIMS, I-129 petitions requesting consular notification as the procedural benefit are sent to KCC (Kentucky Consular Center) after approval. KCC enters key data from the petition into PIMS and scans in key documents such as I-129 form, employer support letter, and identification documents of beneficiary. KCC also performs some database checks looking for evidence of fraud, violations, or other adverse history and records (including from SEVIS) and records its findings in PIMS. When a post is ready to grant a visa based on a petition (and apparently this includes derivatives), it must confirm the petition in PIMS before issuance. DOS knows that USCIS has not been sending change of status or extension of stay petitions to KCC at all, and we expect that interagency discussions are underway about changing that. We know also that even some consular notification petitions have not been sent to KCC. Any petition not sent to KCC will not show up in PIMS, and there may be other reasons why a petition sent to KCC does not show up in PIMS. When a post does not find a petition in PIMS, it must email to KCC, which unlike posts has direct access to USCIS' CLAIMS3 system where USCIS records petition approvals. KCC will record the fact of the petition approval and any other information it chooses, and when posts check PIMS they can find the information on which visa approval can be based. But until the post sees the petition in PIMS, the visa cannot be granted."

Mr. Aytes acknowledged that PIMS caught consuls by surprise. Every client must be warned of a wait of 2-4 working days before being issued a visa at an overseas consular post. It is likely that an I-129 petition filed as a change or extension of status will result in further delays as USCIS does not send information on those petitions to the KCC.

Miscellaneous Issues

When asked by a panel member about again reinstating premium processing for I-140 petitions, as the approval of an I-140 was essential for getting H-1B extension benefits under AC21, Mr. Aytes responded that he too desired to bring back premium processing to I-140s. However, it could not happen until USCIS was able to get a better control on its issuance of receipt notices.

Mr. Aytes also acknowledged the lack of premium processing for an E-3, which causes hardship as the filing of an E-3 extension does not allow the worker to continue working as it would when an H, L, E or O extension is filed and not yet approved for a period of 240 days.

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