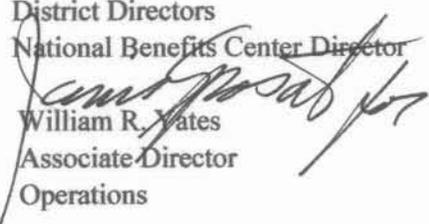




U.S. Citizenship
and Immigration
Services

Interoffice Memorandum

To: Regional Directors
Service Center Directors
District Directors
National Benefits Center Director

From: 
William R. Yates
Associate Director
Operations

Date: APR 22 2004

Re: Petitions for Alien Relative (Form I-130) Pending at Service Centers

Purpose

This memorandum provides field guidance for the acceptance of Applications to Register Permanent Residence or Adjust Status (Form I-485) when there is a pending Petition for Alien Relative (Form I-130) at a Service Center. This guidance is necessary due to the significant increase in Form I-130 filings at Service Centers immediately preceding the April 30, 2001 sunset date contained in Section 245(i) of the Immigration and Nationality Act (INA), 8 U.S.C. The measures outlined in this guidance will reduce duplicative efforts by the districts, Service Centers, and the National Benefits Center towards the adjudication of one or more petitions for the same individual. These steps will also lessen the probability that two different adjudicative decisions are rendered under identical circumstances for the same beneficiary.

Legal Background

8 CFR Section 245.1(a) states in pertinent part:

Any alien who is physically present in the United States, except for an alien who is ineligible to apply for adjustment of status under paragraph (b) or (c) of this section, may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application.

The regulations regarding filing of Form I-485 when a Form I-130 is still pending at a Service Center, changed significantly on July 31, 2002. 8 CFR 245.2(a)(2)(i) now states:

(2) Proper filing of application --

(i) Under section 245. (A) An immigrant visa must be immediately available in order for an alien to properly file an adjustment application under section 245 of the Act. See § 245.1(g)(1) to determine whether an immigrant visa is immediately available. (Paragraph (a)(2)(i) revised 7/31/02; 67 FR 49561)

(B) If, at the time of filing, approval of a visa petition filed for classification under section 201(b)(2)(A)(i), section 203(a) or section 203(b)(1), (2) or (3) of the Act would make a visa immediately available to the alien beneficiary, the alien beneficiary's adjustment application will be considered properly filed whether submitted concurrently with or subsequent to the visa petition, provided that it meets the filing requirements contained in parts 103 and 245. For any other classification, the alien beneficiary may file the adjustment application only after the Service has approved the visa petition.

Procedure

Where it is evident that a applicant for Form I-485 has a pending Form I-130 at a Service Center, the District Office and/or the National Benefits Center (NBC) must request the receipt file using the procedure outlined below. The Form I-130 request must be requested by the District Office or NBC via e-mail to the following service center mail boxes:

NSC: I130requestNSC@dhs.gov, or call Randy Frazier at (402) 323-2545

CSC: I130requestCSC@dhs.gov, or call Linda Bennett at (949) 389-3125

TSC: I130requestTSC@dhs.gov, or call Morris Whitacre at (214) 489-4002

VSC: I130requestVSC@dhs.gov, or call Stephen Smith at (802) 527-4700 x 5049

The District Office and/or the National Benefits Center may accept an Application for Travel Document (Form I-131) and an Application for Employment Authorization (Form I-765) in conjunction with, or subsequent to, the filing of the Form I-485 and proof of Form I-130 filing. These applications will be processed in the same manner as if they had been received with a Form I-485 and a Form I-130 or approval notice.

Upon receipt of the request for the visa petition, the Service Center, within 15 days, shall locate and send the petition to the requesting office via FedEx. The Service Center is not required to adjudicate the petition prior to shipment.

Any questions regarding this memorandum should be addressed, through channels, to Leah Torino in Field Service Operations or David Consbruck in Service Center Operations.