

Questions for Nebraska Service Center **Thursday, May 12, 2016** stakeholder teleconference

Business includes the following topics:

- * Premium Processing
 - * I-140
 - * I-360
 - * I-485 EB
- * I-765 riding with EB I-485
- * I-131 riding with EB I-485
- * I-824 as appropriate
- * Waivers as appropriate

I-140 Immigrant Petitions

1. **The following question arises in both EB-2 and EB-3 petitions, when the Beneficiary has a provisional university degree, which verifies completion of all degree requirements before the university's next-scheduled commencement ceremony, and then acquires experience that is necessary to meet the requirements set forth on the ETA Form 9089 Application for Alien Employment Certification. In these cases, does the calculation of the post-degree experience, e.g. five years of progressive, post-baccalaureate experience for an EB-2 petition, begin from the date the education is successfully completed, including all courses and examinations and the baccalaureate degree is earned, or does it begin from the artificial date of the next university commencement ceremony?**

Response: In an employment based immigrant petition, USCIS generally holds that the date of the academic degree is the date of its completion as stated on the official academic record. This is consistent with the EB-2 and EB-3 regulations at 8 CFR 204.5(k)(3) and (l)(3)(C), which state that the beneficiary must "hold" or "have" a degree. The petition must be accompanied by evidence that the alien has been awarded or conferred the degree, not merely be eligible to receive the award. As noted above, this is consistent with the regulations that state that the beneficiary must have the degree and cannot be merely qualified to receive the degree. The university's official academic record, such as a transcript or diploma, typically indicates the date the degree was awarded or conferred.

2. **I-140 EB-1-3 Multinational Executive/Manager case processing has reached approximately six months. Please advise on efforts to bring case processing back to the previous target of four months and when that might be expected to be achieved. Petitioners and beneficiaries are concerned about the increasing processing times because this category is not eligible for Premium Processing.**

Response: Due to a recent increase in receipts in this category, processing times have gone beyond normal. NSC has added resources and trained additional officers on this case type. Processing times are improving every month and NSC anticipates that processing times for this case type will be back in line with targets in the coming months.

3. **I recently filed a premium processing I-140 case, but it took a while for me to get an email confirming the case was receipted and the case number. In addition, when the case was approved, I didn't get an email about the change in case status. I use the CSC premium processing service more than I do the NSC, and with CSC Premium Processing, I always get an email about the receipt of the case, and an email about any changes in case status.**

Is this not also the SOP for premium processing cases at the NSC?

Response: This is the SOP for NSC as well. There is a separate automated system to send out emails. The system has been having some issues lately that has caused a delay in emails being sent out or sending out old emails. The NSC's IT staff is working on this issue and apologizes for any inconvenience. You can still check case status online.

I-485 Adjustment Applications

1. **There has been a substantial slowdown in the rate of employment-based I-485 Applications adjudications since last fall. The processing times appear to be beyond six months at this point. Please advise on factors which have affected I-485 processing times and efforts to bring case processing back to the previous target of four months.**

Response: Since last fall, processing times at NSC and USCIS as a whole have been impacted by significant increases in receipts. In addition, security check delays continue to impact USCIS processing times. NSC has shifted resources to address the increased workload and expects to see improvement in case processing times for I-485 applications over the course of the remainder of the fiscal year.

2. **In EB cases, when I-485 is filed concurrently with I-140, if I-140 is denied, would I-485 get immediately denied, as well?**

Response: Generally, yes. If the underlying I-140 that is the basis for filing the I-485 is denied, then it no longer serves as basis for I-485. The February 28, 2003 policy memo from William R. Yates, Deputy Executive Associate Commissioner, instructed Service adjudicators to deny I-485 applications after the underlying employment- or family-based petition has been denied. An I-485 that was filed based on one I-485 cannot be transferred to another basis after denial or revocation of the underlying I-140, per USCIS Policy Manual, Volume 7, Part A, Chapter 7. Moreover, the applicant is no longer entitled to 204(j) portability, per the December 27, 2005 Aytes memo and *Matter of Al Wazzan*. USCIS' concurrent filing policy published on February 28, 2003 advises that if an underlying and concurrently filed I-140 is denied, the I-485 should also be denied.

Or, I-485 remains open until the final adjudication of I-290B?

Response: By itself an I-290B filed for the I-140 has no effect on the I-485. I-140 remains denied or revoked until the motion is granted or the appeal is sustained and the I-140 is ordered to be reopened and approved.

Would USCIS wait the 33 days period for filing I-290B to pass to see whether or not the Petitioner files I-290B?

Response: No. However, if an I-290B is filed and I-140 is ordered reopened and approved, USCIS will reopen I-485s on its own motion

Or, attorney should immediately notify USCIS (where I-485 is being adjudicated) that Petitioner intends to file I-290B?

Response: Such a notice would serve no purpose. If an I-290B is granted for the I-140, applicants should receive notice that I-485 is being reopened. If not, they may notify service center by placing a service request.

In case I-485 gets denied immediately upon denial of I-140, is that possible to re-open I-485 and retain the initial priority date, if I-290B is sustained?

Response: Yes. If the I-140 is approved on motion or appeal, USCIS is responsible for re-opening I-485. The applicant will retain the priority date as well as the I-485 filing date.

Follow Up Questions

- **Follow up on I-140 Question 1 – Are you saying that NSC will only consider the date of the commencement ceremony?**
 - **Response:** Not necessarily. NSC will also consider an academic record showing date the baccalaureate degree was awarded. Typically, this is a transcript.
- **Follow up on I-140 Question 1 – Does "awarded" need to be in document or is "completed" sufficient?**
 - **Response:** Whatever their wording is. It's more than just finishing course requirements. It's something that happens formally. That's what we're looking for. It's a transaction between the degree-granting institution and the student.
- **Follow up on I-140 Question 1 – If the document indicates the degree has been "earned" is that not sufficient?**
 - **Response:** We're looking for official academic record. That's usually an academic transcript. It could also be the diploma.
- **Follow up on I-140 Question 1 – Does a provisional certificate from an Indian university suffice? We are seeing denials on these. That seems to be evidence that the degree has been earned. A document may not use the word "award" but does use a term like "earned" or "completed." Would that not suffice? Your decision seems to be turning on the nuances of those words.**
 - **Response:** These petitions are reviewed on a case by case basis.
- **Question: RFEs for updated medical exams for pending I-485s that are subject to backlog in priority dates. Is it essential to respond to RFE knowing that priority date will not be current**

for several more years knowing that the applicant will have to provide several more medical exams as they apply every year.

- **Response:** We are constantly working with DOS to work on forecasting visa availability. It is the general practice to only request that they expect to be visa available within one year. It is recommended that all requested evidence be submitted in response to an RFE. If an applicant or representative has a question about what is being requested, they may contact the NSC through appropriate channels.