



Congressional News From VSC

MAY 2001
BY Donna Kane



More on Premium Processing

It appears that the article in the April newsletter has caused some concerns about the normal processing of I-129 E1s, E2s, H2As, H2Bs, L1As, L1Bs, Os, Ps, & Qs. First of all let me put your mind to rest concerning expedites for non-profits, they will still be able to request an expedite using the current expedite criteria.

Second is the issue of exactly how long it is going to take to process an I-129 petition for one of the above classifications if they DON'T pay the premium, processing fee. As I stated last month, all of the classifications which begin premium processing on June 1, will now be worked in filing date order with all other I-129s. The processing goal for I-129s is 60 days. There will be times when it will take more than the sixty days but there will also be times when it takes less, depending on the work load.

One of the many comments that the newsletter garnered was that premium processing would be taking resources away from normal processing. In actuality the Service Center has been given an additional 40 positions to work these cases. The fact that all I-129s will be worked on a receipt date basis is simply an outcome of process changes and not a resource issue.

The process that allowed I-129 E1s, E2s, H2As, H2Bs, Os, Ps, & Qs to be worked out of date

order was a privilege and courtesy accorded by INS, there has never been a mandate to work those classifications more quickly than other I-129 classifications. In fact, many H1B petitioners felt that it was unfair that those classifications paid the same fee but were moved ahead of other petitions filed the same day. It should also be noted that working those cases out of order cost the Service a great deal of additional time, time which the Service simply can no longer absorb given our increased backlogs. Please note that Ls will continue to be worked in 30 days.

The whole purpose of a heads up is to make people aware of a change in a process or in circumstances surrounding a process. In this instance we believe that it is in the best interest of folks to know as far in advance as possible that I-129 E1s, E2s, H2As, H2Bs, Os, Ps, & Qs will now take longer to process. Expedites will be available for non-profit petitions which meet the current expedite criteria. All classifications filed prior to June 1, 2001 will be eligible for the current, expedite process.

I also want to take this opportunity to urge everyone to make their best effort to submit petitions that contain the required initial evidence. It is going to be in the best interest of all parties if the petitions that come in are quality filings. With our backlogs growing, it is going to

become more and more important for each of us to know and accept our role and responsibilities in the process. Working together we can make this a positive change.

Please note that the Vermont Service Center does not process E1 & E2 I-129s. They are processed at the Texas Service Center.

LIFE ACT JURISDICTIONS By Tina Nichols

1. Section 245 (i)—Vermont Service Center (regulations in place)
2. Late Legalization (Lulac and Zambrano)—Missouri Service Center
3. "V" visas (spouse and minor children of lawful permanent residents with I-130 petitions filed and pending for at least three years)—Missouri Service Center or at the American Consulate/Embassy abroad
4. "K3" and "K4" visas (spouse and minor children of United States citizens with I-130 petitions pending)—Missouri Service Center or at the American

Consulate/Embassy
abroad.

5. Family Reunification
817-A-255 expanded
for #2 above, late
legalization
applicants—Missouri
Service Center
6. NACARA—Texas
Service Center and
HRIFA—Northern
Service Center in
Lincoln, Nebraska

Please remember that
regulations have not yet been
completed for #2 thru #6—
therefore there are no policies
or procedures set for filings
for these benefits.

EXTENSION OF TPS FOR HONDURANS

By Tina Nichols

In accordance with the Federal
Register (Volume 66, No. 89)
dated Tuesday, May 08, 2001,
temporary protected status for
Hondurans has been extended
for twelve (12) months, until
July 5, 2002. Nationals of
Honduras (or aliens having no
nationality who last habitually
resided in Honduras) who are
eligible for late registration
may register for TPS during
the extension filing period.

Re-registration for those
already under TPS need to file
the form I-821 (support only—no
fee required) and I-765 along
with the proper fee of \$100
for the I-765 application, along
with two photographs for the
extension. The ninety (90) day
period for re-registration
begins on May 08, 2001 and will
remain in effect until August
06, 2001.

Please remember that this is an
extension of the TPS
designation for Hondurans, not

a re-designation for Hondurans
for TPS. An extension of TPS
does not change the required
dates of continuous residence,
and continuous physical
presence in the United States
and does not expand TPS
availability to include nationals
of Honduras who arrived in the
United States after the
required dates for continuous
physical presence, January 05,
1999, and continuous residence,
December 30, 1998.

Late registration is possible for
some persons from Honduras
under 8 CFR 244.2 (f) (2). To
apply for late initial
registration the applicant must:

1. be a national of
Honduras (or an alien
who has no nationality
and who last
habitually resided in
Honduras)
2. have been
continuously physically
present in the United
States since January
05, 1999
3. have continuously
resided in the United
States since
December 30, 1998
4. be admissible and not
ineligible under
Section 244 C of the
Act

Additionally, the applicant must
be able to demonstrate that
during the registration period
from January 05, 1999 through
July 05, 2000, he or she:

1. was a nonimmigrant or
had been granted
voluntary departure
status or any relief
from removal
2. had an application for
change of status,
adjustment of status,
asylum, voluntary
departure, or any
relief from removal

pending or subject to
further review or
appeal

3. was a parolee or had a
pending request for
reparole or
4. was the spouse or
child of an alien
currently eligible to
be a TPS registrant

An applicant for late initial
registration must register no
later than sixty (60) days from
the expiration or termination of
the conditions described above.

Amended H1-B petitions Need Not be Filed in Context of Certain Corporate Mergers

8 CFR Section 214.2(h)(2)(i)(e)
states that a petitioner must
file an amended petition to
reflect any material changes in
the terms and conditions of
employment or training or the
employee's eligibility as
specified in the original
approved petition. This has
consistently been interpreted
to mean that where a second
entity assumes essentially all of
the assets and liabilities of the
first entity, amended petitions
are NOT required.

A section of the recently
enacted "Visa Waiver
Permanent Program Act",
amended INA 214(c) by clearly
stating:

(10) An amended H1-B petition
shall not be required where the
petitioning employer is involved
in a corporate restructuring,
including, but not limited to a
merger, acquisition, or
consolidation, where a new
corporate entity succeeds to
the interests and obligations of
the original petitioning
employer and where the terms
and conditions of employment

remain the same, but for the identity of the employer.

Thereby reinforcing the interpretation of the INS.

It should be noted that until such time as an extension is filed for the beneficiary, the alien will not have documentation issued by the INS reflecting the current employment data. An alien contemplating travel abroad should consider having the amended petition filed in order to obtain an approval notice reflecting his true employment information.

Student Issues

Regulations at 8 CFR 103.2(b)(19) specifically states:

"...Documents produced after an approval notice is sent, such as an alien registration card, shall be mailed directly to the applicant or petitioner."

Headquarters has interpreted this to mean that the Service Center can no longer mail EAD cards to an "in care of," school address. We must have the student's personal address. The address supplied must be a valid address that the student will have for at least four months and the name of the student must be on the mailbox. If a student has submitted an I-765 with the school address, they should call our info line or send a written notice of address change to the Service Center.

It is the responsibility of the student to notify the Vermont Service Center in the event of an address change. An address change at the local post office does not forward government mail. Please know that if a

student moves subsequent to his/her filing the application and does not notify the Service Center, the card will be returned to the Center by the post office. It is up to the student to call us and make the address change.

Some interesting numbers

This is in the way of an FYI. The Service Center and all of INS has seen a tremendous jump in filings over the last month. We have had at least a 100% increase in filings for the month of April. This has led to backlogs in our mailroom and data entry. The bottom line for many aliens is that depending on the application or petition type, folks could wait as long as 30 days for a receipt notice.

Please advise your constituents of this and tell them to be patient. When we have a normal workflow in some instances we can find a case prior to it's being entered into the system. However, given the current magnitude of work, it is almost impossible to find a case that has come in during the last month. We are asking that unless there is a true emergency that folks not even try to expedite the process in order to generate a receipt notice. The truth is we probably won't find it.

Conference Update

As the date of the conference draws ever nearer, we hope that you have all given serious consideration to attending. We have put together some extensive training and handouts for you and we will cover all of those materials at the conference. We would ask that you let us know as soon as

possible so that we can have sufficient resources available for each and every one of you.

Because Stowe is some distance from the airport, we highly recommend that you try and pool together and rent cars. It will be much more cost effective in the long run. We have also found out that there is a taxi service in Stowe which will provide an airport shuttle. What folks need to do is call and tell them you are attending a conference at the Trapp Family Lodge and that you need a ride from the airport. The cost is dependent on the number of folks and the more folks the less the charge. The phone number for Stowe Taxi is 1-802-253-9490.

You will find attached a tentative agenda. The people and organizations participating is firm however, the times may change some to accommodate our presenters. We hope this will persuade you of the value of this conference.

We also want to let you know that all of the rooms have either a king sized bed or two doubles. So these rooms can easily be shared. All have a patio or balcony, and all have breathtaking mountain views.