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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

VSC Stakeholders Meeting Questions
August 20, 2009

H-1B petitions

1. H-1B cap cases

Can you provide an update on the processing of H-1B cases subject to the FY2010 cap?

Response: The VSC has completed approximately 34,800 FY10 cap cases. Approximately 4,000 cases are awaiting RFE responses and another 5,000 cases are pending. We are receiving between 1,200 and 1,600 cap cases a month.

2. 3rd Party Work Sites

Please provide clarification on what type of evidence should be submitted with an H-1B petition where the beneficiary will be working at a 3rd party work site. In the past, VSC has indicated that it would accept a letter from the end-user (at the 3rd party site) confirming that the duties of the position as a specialty occupation and the location where the beneficiary will be working would be acceptable. Is this still the case? If so, is it sufficient to send such a letter in response to an RFE requesting copies of contracts between the petitioner and the company where the petitioner will be stationed?

Response: A letter from the end user at a 3rd party worksite is sufficient to establish the work assignment. A letter can be submitted in lieu of a requested contract. VSC has recently eliminated contract requests from its RFEs. To establish an itinerary of work, a 3rd party worksite letter will be requested in the RFE.

3. Improper rejection by the mail room

We have had increasing reports of H-1B petitions being rejected by the mail room where the company headquarters are not located in the jurisdiction of the VSC, but the individual's work site is within the jurisdiction of VSC. This seems to be happening even when attorneys are making clear indications in the file, on transmittal sheets, and on the envelopes that the work site is within VSC jurisdiction (for example - EAC-09-XXX-XXXXX). What can attorneys do to ensure their cases can get accepted by the mail room? Has VSC done any additional training on this issue with mail room contractors?

Response: The contractor staff is instructed to look at the address listed in Part 1.2 of the I-129 petition as well as the address listed in Part 5.5, the location where the beneficiary will work. If the address listed in Part 5.5 is within VSC jurisdiction, the contractor is instructed to accept the filing. The example provided was initially rejected in error.

4. Incorrectly Issued Form I-94s

There appear to be problems with Form I-94s issued with change of status petitions. Specifically, the Form I-94 is listing the beneficiary's country of birth rather than the country of citizenship, even though the forms clearly indicate the country of citizenship and a copy of the informational page of the passport has been included with the filing (for example - EAC-09-XXX-XXXXX and EAC-09-XXX-XXXXX). This can be an important distinction, especially when the beneficiary is a Canadian national and therefore visa exempt. What is the best way to obtain a corrected Form I-94 in this situation? Is any additional training being provided to the adjudicators on this issue?

Response: The country of citizenship was incorrectly data entered in the examples above and therefore caused the incorrect information to print on the I-94. If you receive an incorrect I-94, the best way to correct this is by calling the national customer service line and an amended approval notice can be mailed to you.

5. J-1 Waiver Exempt H-1Bs

Individuals who receive a J-1 waiver based on committing to a medically underserved area are exempt from the H-1B cap. It is our understanding that jurisdiction over such H-1B petitions is determined by place of employment. But if this cap-exempt individual is working for a cap-exempt employer at a location that falls within VSC's jurisdiction, at which Service Center should the petition be filed? Does cap-exempt employer trump cap-exempt individual such that these petitions should be filed at CSC? There seems to be some inconsistency in having these receipted at VSC. What is the best way to ensure that the properly filed petition gets receipted?

Response: It is correct that a cap-exempt employer trumps a cap-exempt beneficiary. If the petition claims a cap exemption, then the proper filing location is the CSC. VSC rejects the majority of cap-exempt petitions that are incorrectly filed at the VSC. For any cap-exempt petitions that are erroneously receipted at the VSC, we will complete the adjudication at our office.

Committee Comment: This was discussed during the meeting, and liaison reminded VSC that CSC does not have jurisdiction over cap exemptions based on receipt of a qualifying J-1 waiver. VSC said they would continue to look into this to get it sorted.

6. Exempt based on "Employed At"

H-1B petitions in which the beneficiary is "employed at" an exempt institution but "working for" a for-profit entity are exempt from the H-1B quota. A common situation is a physician working for a private practice, but working at a non-profit university hospital. Should these petitions be

filed based on place of employment, or are they considered to be "cap exempt employers" under the jurisdiction of the CSC?

Response: Any H-1B petition claiming a cap exemption should be filed with the CSC.

7. In the rare situation when an **H-1B** receipt is not issued quickly, what is the best avenue to request the receipt? Right now, employers use premium processing to get the receipt issued more quickly but is there another option? This is particularly important now that the new I-9 handbook requires the receipt notice for an H-1B to begin work at a new employer.

Response: The only option for expedited processing is the premium processing service. All other petitions/applications received at VSC are receipted on a first in, first out basis. I-129s for H-1B beneficiaries may be filed up to six months in advance. If an employer needs the receipt notice more quickly, it is suggested that the I-129 be filed sooner rather than later.

Committee Comment: If a receipt is not received after three weeks, please call NCSC to report "non-receipt" of notice.

8. On some Premium Processing cases we receive an email notification within 1-2 days of receipt, yet on others we don't. What is the criteria for sending email notifications on Premium Processing cases? In the cases where we don't receive the email notification, the original receipt notices are not received until 6-9 days after filing and sometimes not at all. Is there a way to ensure that the email notification gets generated?

Response: An automated system generates the email notification when the case information is data entered. This notification is sent to the email address provided on the I-907. If the email address on the I-907 is not correct, not legible, or not entered correctly in CLAIMS by the contractor, the notification will not be sent. Also, if petitioners/representatives have their e-mail security set too high, the automatic notice may be blocked. If a notification is not received promptly or is received by mail, call the Premium Processing phone line to ensure that the email address in CLAIMS is correct. While the officer on the phone can correct the information for subsequent contacts, the email notification cannot be reproduced.

9. What is the procedure for requesting a refund of the $1,000 Premium Processing fee? How long does it generally take to process a refund? Does initiating an investigation constitute "action" for purposes of Premium Processing?

Response: A request in writing will be accepted. Refund requests are processed as soon as they are received. An officer will review the history of the case and if appropriate, a refund letter will be generated and signed off by a supervisor. The refund approval is then forwarded to another VSC department for processing and then sent to the Burlington Finance Center, which issues the refund. The entire process may take two to three months.

Like issuing a notice of intent to deny or a request for evidence, the opening of an investigation for fraud or misrepresentation constitutes an action for premium processing purposes pursuant to 8 CFR § 103.2(f)(1) and will push a case beyond 15 days without a refund.

10. The numbers of H-1B visas available are erratic. Is this due to denials on H-1B petitions making additional numbers available?

Response: HQ maintains the H-1B cap count. There could be various reasons for changes to the cap count. For example, if an error is discovered in a response to any of the questions in Part C of the H-1B Data Collection Supplement, a change can affect the cap count. The filing of multiple petitions by an employer for the same beneficiary will result in the denial or revocation of all such petitions, which will make additional numbers available. Likewise, denials of H-1B petitions make additional numbers available.

11. An employer has filed an H-1B petition on behalf of a beneficiary and a subsequent renewal. After a gap due to ineligibility for seventh year the same employer files a third petition when the applicant becomes eligible under AC21. Would the third petition be considered an "initial filing" and subject to the $500 fraud fee?

Response: Each employer is only required to pay the $500 fraud fee one time for a beneficiary. In Part 2.2, it is suggested you check either 2b (continuation of previously approved employment) or 2c (change in previously approved employment). If the I-129 is completed in this manner, the mailroom will not reject for the fraud fee.

12. VSC handling of J waiver applications with CSC

Our understanding is that since October 6, 2006, DOS forwards all 212(e) waiver recommendation letters to VSC when those waiver recommendations are based on a "no objection" letter from the exchange visitor's home government. VSC then adjudicates the 212(e) waiver. Is this still the current protocol?

Response: Yes. The VSC has jurisdiction over all "no objection" waivers.

VSC apparently does not issue I-797 receipt notices for waivers it processes on the basis of a "no objection" letter. When schools file an H petition with CSC with a copy of the DOS waiver recommendation letter alone, it is often frustrating not to be able to refer CSC to the VSC case number for the waiver case. It can also cause delays in processing the H case. Is there a good way for us to help to coordinate the processing of I-129's in CSC and related I-612's in VSC?

Response: Unfortunately, the "no objection" waiver system cannot issue a receipt notice. It is important to include a copy of the waiver recommendation letter from DOS with the filing of the H petition because the alien's name on the recommendation letter will be the name that is entered in CLAIMS for the waiver. This will make searching the systems easier for CSC. If CSC finds the "no objection" waiver in CLAIMS, it then contacts VSC and requests adjudication of the waiver.

H-2B petitions

13. Designated Country List for H-2Bs

On December 19, 2008, a Final Rule was published in the Federal Register designating a list of countries whose nationals can be the beneficiary of an approved H-2B petition. The notice states that the rule does not affect those individuals who are currently in H-2B status. However, we have seen denials of the petitions for individuals in H-2B status and applying for extensions who were nationals of countries not listed in the Final Rule. Please provide a clarification of how the VSC understands of this rule.

Response: The Federal Register notice (73 FR 77729) identifying foreign countries whose nationals are eligible to participate in the H-2B visa program states that:

> This notice does not affect the status of aliens who currently hold H-2B nonimmigrant status.

Both CSC and VSC, together with Service Center Operations (SCOPS), have interpreted this to mean that those aliens who were already in H-2B status at the time the announcement was published would not be affected by the notice; however, should those aliens later apply for an extension of their H-2B stay, the designated list would then apply to them.

L-1A and L-1B Intracompany Transferees

14. Qualifying Corporate Relationship

There have been requests for voluminous amounts of information regarding the qualifying corporate relationship in L-1A and L-1B petitions. This includes questions that are well beyond the scope of the regulations - such as 1) evidence that the overseas entity has been continuously in contact with the incorporator and other representatives throughout the U.S. entity's incorporation process and how the overseas entity funded the incorporation of the U.S. entity; 2) evidence of the ownership and control of each parent, subsidiary and affiliate organization of the foreign organization, rather than just the two entities that are the subject of the petition (for example - EAC-09-XXX-XXXXX). Given that the petitioner must show that the qualifying relationship exists by a preponderance of the evidence, can you provide guidance on the type of evidence that would be acceptable to meet this burden?

Response: Officers look at each petition separately, weigh the submitted evidence and determine whether or not the petitioner has established the qualifying corporate relationship. Generally, if the petitioner is a large, well known corporation, a statement from the petitioner would be sufficient. However, if the evidence is not satisfactory, the officer will ask for additional evidence to meet the requirements of the regulations in regard to establishing the corporate relationship. Where a request for blanket certification has been made, officers may legitimately ask the filing entity for information regarding any or all of the entities listed on the request, if necessary to properly adjudicate the request.

The example provided has been reviewed. The initial RFE was erroneous and a subsequent RFE was issued. The petition was subsequently approved.

15. I-797 Receipt and Approval Notices for Canadian Citizens

Generally, when a Canadian citizen applies at the port of entry to enter the U.S. in L-1 status, the petition is forwarded to the VSC and a Form I-797 receipt and an approval notice are generated. In some situations, the Form I-797 approval notice is not being generated by the VSC, and the individual may need the approval so their non-Canadian citizen spouse and/or children can apply for visa stamps at the appropriate consulate or embassy. Is there a procedure we should follow to ensure the approval notice is generated by VSC in these situations? How long should we wait before following up with VSC if the approval notice is not generated?

Response: The I-129 L-1 filing received from the port of entry (POE) will generally have the approval notice generated within a two-week period. This may vary some depending on the workload.

If the approval notice is not received three weeks after the receipt notice, a follow-up through the Customer Service Helpdesk at 1-800-375-5283 would be appropriate.

16. Standards used in evaluating whether a position is one requiring 'specialized knowledge'

Requests for evidence on this issue present shifting standards for what the VSC considers to be "specialized knowledge." A number of requests reference the Puleo memo describing "specialized knowledge" (for example - EAC-09-XXX-XXXXX). Others have referenced a 1970 House report as guidance for L-1B adjudication (for example - EAC-09-XXX-XXXXX). Yet others have taken language directly from the AAO decision of July 2, 2008 discussing "specialized knowledge." We would appreciate guidance on what standards VSC will use to evaluate whether a position is one requiring specialized knowledge.

Response: Determining whether the position requires specialized knowledge is heavily dependent on the nature and scope of the individual business, product or service. The petitioner should submit whatever type of evidence they feel establishes that the position requires specialized knowledge. The officers look at many factors when determining if the beneficiary qualifies for the specialized knowledge section of the L-1B nonimmigrant classification. Factors used in the officer's decision include: all the evidence submitted and the guiding relevant statute, regulation, policy memoranda and precedent decisions. We note, however, that the Puleo memorandum is consistent with other guidance issued by USCIS, as well as congressional intent in creating the L-1B classification.

17. Types of evidence to be presented

Given the petitioner's burden to prove by a preponderance of the evidence that the position in the U.S. requires specialized knowledge, and that the beneficiary has been working at a position requiring specialized knowledge for a qualifying organization overseas, can you provide guidance on the types of evidence that can be presented to satisfy this burden?

Response: There is no specific evidence identified in the statute or regulations to establish that the position requires specialized knowledge.

The petitioner is in the best position to know what type of evidence will establish an individual's eligibility for the "specialized knowledge" worker within that company.

Types of evidence which may establish the position requires specialized knowledge may include but are not limited to evidence such as:

- Detailed job descriptions
- Training records
- Detailed descriptions of the position duties and nature of the position,
- Evidence of previous experience, education requirements for the position.

18. The Adjudicators Field Manual at 32.3(b) suggests that "the regulations do not require submission of extensive evidence of business relationships or of the alien's prior and proposed employment. In most cases, completion of the items on the petition and supplementary explanations by an authorized official of the petitioning company will suffice. In doubtful or marginal cases, the director may require other appropriate evidence which he or she deems necessary to establish eligibility in a particular case." Nevertheless, extensive documentation is being required by the Service Centers in both H-1B and L-1 cases for well known companies with proven track records in both business and as immigration filers. Can the Center offer suggestions in terms of filing tips to ensure that requests are not made, or advise adjudicators that voluminous document requests for established filers should not be required?

Response: It is the policy of the VSC to request only that evidence necessary to make a determination as to the approvability of the petition. A letter from an authorized official of the petitioning company explaining the qualifying relationship or describing the alien's prior and proposed employment generally is sufficient. However, if the petitioner's letter is vague or merely repeats the language of the statute or regulations, the letter alone will not satisfy the petitioner's burden of proof. The VSC has discretion to request additional documentation if the evidence submitted is marginal or appears doubtful.

19. ACIP and other stakeholder groups have long recognized the Puleo memo (James A. Puleo, Memorandum to District Directors, et al (CO 214L-P), Interpretation of Special Knowledge, March 9, 1994) as a valuable resource in defining specialized knowledge. At the same time, we recognize that the examples the memo uses are somewhat dated, and the memo does not take into account third party placement situations as provided in the Visa Reform Act of 2004. Is the agency contemplating updating the memo? If so, would stakeholder groups be able to provide input and examples as to what would constitute specialized knowledge in both on site and third party placement situations?

Response: This question should be addressed to SCOPS.

20. The L-1B definition of specialized knowledge was refined in the Immigration Act of 1990 to facilitate international transfers. Congress recognized an overly restrictive stance by Legacy INS at times in the 1980s and expressed a desire to take a more expansive view. The Committee Report at Conference Report, Pub. L. 101-723 set forth that "One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem. The bill therefore defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the company." Furthermore, INS in its 1991 proposed rule (56 Federal Register 31553, 31554 (July 11, 1991)) enunciated the view that the intent of the new law "as it relates to the L classification was to broaden its utility for international companies. The L regulations have also been modified to include a more liberal interpretation of specialized knowledge as defined in section 214(c)(2)(B) of the Act."

Given this, it has long been held that specialized knowledge need not be proprietary, unique, or narrowly held within a company. (e.g. Puleo memo). At the same time, RFEs issued by the VSC recently have sought evidence to demonstrate such criteria, particularly that certain knowledge is "narrowly held within a company." Companies differ vastly in size and structure of their business. Furthermore, companies vary in the nature of their products and services, and the numbers of employees who may have the specialized knowledge to provide a critical structure or service will vary accordingly. Given this, we would appreciate it if the Center could explain its definition of "narrowly held within a company" and its continued applicability to L-1B adjudications.

Response: The VSC reviews all submitted evidence and takes guidance from statute, regulations, policy, and decisions in determining whether the alien possesses "specialized knowledge." Each petition is reviewed on the merits of the specific case to determine whether the alien has "specialized knowledge." VSC recognizes that the nature and scope of business entities and their goods or services can differ widely. Nevertheless, the L-1B classification was not intended to be a catch-all category for intracompany transferees, irrespective of the depth or breadth of their knowledge or experience. While there is no requirement that the knowledge be proprietary in nature, in order to establish eligibility for the L1B classification, the petitioner should be able to demonstrate that the knowledge which the beneficiary possesses is unique, uncommon, distinct, different, noteworthy or advanced, and that such knowledge is necessary to fill the duties of the position offered.

21. On I-129 petitions requesting L-1A classification for a start-up company, the dates of employment will typically be for one year from the date of approval. However, in cases where a date of employment is specified on the I-129 form, the approval notice is issued with that specific date range. In cases where an RFE is issued, for example, this can hurt the client as by the time the case is approved, it can be a month or two after the start date of the approval notice. When you are given only one year to start-up the operations of the company, a one or two month delay can be devastating. In addition the applicant must then wait for an appointment at the US Embassy and subsequent visa issuance. In order to maximize the amount of time, can we put From: Approval To: One year on the I-129 form?

Response: The VSC will accept an I-129 L-1A petition for a start up company with the following requested employment validity dates:

From: "Date of Approval."
To: "One year from date of approval"

If the petition is otherwise approvable, the petition will be granted for a one-year period from the date of the approval.

22. Is VSC amenable to accepting requests for extensions of time in which to respond to RFEs for L-1 petitions? In some cases, the RFEs request voluminous information from the foreign employer which can take some time to collect. If so, what would be the procedure for requesting the extension? Should we send an email or fax to the Premium Processing Unit?

Response: The time allowed to respond to a request for information that will be obtained from an overseas location is 87 days. Additional time may not be granted to respond to a request for evidence per 8 CFR 103.2(b)(8)(iv).

Q-1 International Cultural Exchange Visitors

23. Standards to be used in evaluating the work component of the position

The Q-1 regulations state that the work component of a Q-1 cultural exchange visitor's employment or training must serve as the vehicle to achieve the objectives of the cultural component. Recent denials and requests for evidence from the VSC seem to suggest that the beneficiary must be 100% engaged in the performance of a culturally-specific art form in order to qualify (for example - EAC-09-XXX-XXXXX/AAO EAC-06-XX-XXXXX). We believe this runs counter to the regulations and prior VSC and AAU interpretations on the subject. Please clarify.

Response: The petitioner must establish that the beneficiary will be engaging in employment or training of which the essential element is the sharing with the public of the culture of the alien's country of nationality. In addition, the regulations clearly identify accessibility to the public, for the purposes of the beneficiary exposing the public to the foreign culture of their country's nationality as an essential requirement for eligibility in this classification.

When adjudicating the request for the Q classification, USCIS must be persuaded that the sharing of the culture of the international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

Committee Comment: This response was brought to the attention of the Director of the VSC, and he indicated that he would report back to AILA with a more specific response.

Nonimmigrant Student Issues

24. Effective date for COS to F-1 and J-1

We have noticed that F-1 and J-1 change of status (COS) approval notices now have an effective date printed on them; noting the date on which the F-1 or J-1 status begins. How is this COS effective date determined? Are we correct in understanding that this date would generally be the program start date of the I-20 submitted for change to F-1 status or the program begin date of the DS-2019 submitted for change of status to J-1?

Response: The change of status effective date is either the date of adjudication, or a date in the future depending on the specific scenario. Issues we consider are the date the applicant's current status expires and the F1 or J1 program start date. The effective date may or may not be the program start date on the I-20 or DS-2019. In general VSC would give the date of adjudication; however, in instances where the applicant may be in a valid status up until the program start date, we may give them the program start date as the effective date to allow them to maintain their current status for as long as possible. For instance, if an H1B is in a valid status up until or beyond the program start date, they may wish to continue to be employed until they begin their program.

Does CLAIMS update the SAVE database with such change of status information?

Response: CLAIMS should update the SAVE database with the change of status information. If it does not, Social Security can submit Form G-865 to the proper USCIS office to verify their status information.

25. Program start date and change of status to F-1

A. What is the Service Center's adjudication policy and procedure when reviewing a change of status application if the Form I-20's program start date has passed? Must the adjudicator look to see that the program start date has been deferred in SEVIS before proceeding with the application? There appear to be inconsistencies in how this is handled -- can VSC please clarify?

Response: If the program start date has passed and has not been deferred, VSC will continue to adjudicate as long as the applicant's record has not been canceled or terminated in SEVIS. If the program start date has been deferred in SEVIS, the officer will notate the new program start date on the I-20.

B. Under SEVP policy, a school is instructed to defer the program start date in SEVIS if it appears the change of status will not be approved before the program start date as originally set. NAFSA would like to confirm that the change of status application remains approvable after subsequent deferrals of the start date in SEVIS pursuant to this SEVP policy, provided the applicant's immigration status at the time of filing was valid to at least 30 days before the program start date on the I-20 initially submitted in support of the application for change of status.

Response: If otherwise approvable, a change of status will remain approvable regardless of subsequent deferrals of the program start date provided that the applicant's status at the time of filing was within at least 30 days of the program start date indicated on the initial I-20.

26. Change of status from J-1 to F-1

J-1 exchange visitors can remain in the United States up to 30 days after their program end date, as part of their duration of status. Can you confirm that an application for change of status from J-1 to F-1 is approvable if the 30-day J grace period falls within the 30-day window prior to the F-1 program start date?

Response: If otherwise approvable, an application for a change of status from J-1 to F-1 is approvable if the 30-day J grace period falls within the 30-day window prior to the F-1 program start date.

27. Protocol for advisers use of VSC.Schools email address

Please clarify when advisors can use the vsc.schools@dhs.gov email address, and when they have to go through the NCSC.

Response: The advisors should ensure that the student has attempted to address their concern through the NCSC. However, the vsc.schools@dhs.gov account allows the advisors to deal with issues that are not of the norm. For example, if a student has applied for post-completion OPT, but was unable to finish all course requirements, how should she proceed? In general, the vsc.schools box should be used when the issues involved are complex, unusual or particular to the student in question.

28. Procedures for withdrawing I-765 application for OPT

Please outline the process to follow when a student wishes to withdraw an application for OPT after it has been filed? What should the advisor do to assist with this type of request?

Response: The student should submit a letter to the VSC requesting the withdrawal. The letter should contain the receipt number of the I-765 and the student's signature. The advisor should cancel the request for OPT in SEVIS and email vsc.schools@dhs.gov with a scanned copy of the applicant's withdrawal request letter.

29. Revocation of OPT employment authorization

Current procedure at the Service Centers is to revoke OPT employment authorization only in the event the EAD is returned prior to the authorized start date. Requests to revoke after the employment authorization start date has passed have consistently been denied.
8 CFR 274a.14(b)(1), however, gives USCIS discretion to revoke employment authorization any time, "(i) Prior to the expiration date, when it appears that any condition upon which it was granted has not been met or no longer exists, or for good cause shown; or (ii) Upon a showing that the information contained in the application is not true and correct."
Can VSC consider exercising its discretion to revoke OPT after the OPT start date upon request of the student, and allow the student to recapture the unused portion of the OPT at a later time or for another degree done at the same educational level?

Response: The current procedure at the VSC, and at the other Service Centers, is to revoke OPT employment authorization only in the event the student requests the revocation prior to the authorized start date. We do not require that the student return the EAD prior to the start date. While we generally would not revoke OPT based upon a request by the student received after the start of the employment authorization, students are free to request revocation and offer a persuasive case. USCIS could use the discretion offered by 8 CFR 274a.14(b)(1) to revoke OPT in an especially unusual case, but any such revocation would be based upon the particular factors presented by the student.

30. VSC process for EADs returned to VSC because of faulty address

When an EAD is returned to VSC because an address is faulty, or is undeliverable, how long will VSC hold the card before destroying it?

Response: The VSC will hold EADs returned as undeliverable for one year prior to destroying them.

31. CLAIMS updates and SEVIS OPT indicators

Is CLAIMS now consistently updating the SEVIS requested / pending / approved status indicator for OPT applications?

Response: VSC has not received complaints recently that the status indicators in SEVIS are updating improperly. Because we do not own the SEVIS system, such complaints are our only indication of such problems.

U Visa Issues

32. Please provide an update on the status of U visa processing.

Response: As of the date of this document, the VSC approved 4,092 U visas for principal applicants and denied 296 U visas for principal applicants during this fiscal year. During this time period, the VSC approved 3,043 derivative U visa applicants and denied 125 derivative U visa applicants. The VSC issued approximately 5,800 Requests for Supplemental Information and 6,600 Requests for Additional Evidence during this time period. As these figures should be viewed in context, further discussion will be provided at the I-360 VAWA/T&U break out session.

33. T & U visa issues: Please review the new information and Q&A's that have come out concerning these visas emphasizing the purpose and the requirements.

Response: Stakeholders are encouraged to ask specific questions related to the VAWA and T & U visa program at the conference.

I-601 Waivers

34. Processing Times

How long is it taking the VSC to process I-601 waivers?

Response: The only stand alone I-601s that the VSC processes are those filed at the American Embassies and Consulates in Canada. Processing times vary depending on workload priorities. Since April 2009, the VSC has been focusing on consular returns as a priority. However, this month additional resources will be allocated to processing the Canadian I-601 workload.

Can the processing time be posted with the processing times chart on the USCIS web site?

Response: Processing times reported on the USCIS web site are controlled by Headquarters. We would refer you to HQ for this question.

35. Response to RFE

How long is it taking the VSC to review responses to requests for evidence for I-601 waivers?

Response: This timeframe varies also depending on workload and priorities. Since April 2009, VSC has been focusing on consular returns as a priority which has caused some delay in the review of some RFEs. However, this month, resources will be returned to processing the Canadian I-601 workload.

How long after a response to a request for evidence would it be appropriate for our members to wait before initiating an inquiry?

Response: Approximately 60 days.

NCSC Follow Up Account

36. Staffing

How many officers are handling inquiries sent to the Vermont Service Center NCSC follow-up email account? How many inquiries on average do you receive in a day? Do you plan to add more officers as the email address gets more widely disseminated?

Response: The VSC currently has 5 officers providing responses to inquiries received to this account. The VSC receives, on average, 20 to 30 inquiries per week. We will add more officers to the email account as we deem necessary to ensure the response times do not suffer due to higher volume of work. The VSC strives to keep the response time between 48-72 hours. The officers are currently responding to inquiries within 24-48 hours. If a file needs to be reviewed, an interim response will be sent to advise the customer of this.

Committee Comment: VSC stated at the meeting that the information offered above was written prior to the dissemination of the ncscfollowup e-mail to all affiliates, their members, and the

public. In the one week the e-mail has been open, VSC has received approximately 100 requests a day, with 5-6 officers responding to the inquiries. VSC stated that the officers do respond to every inquiry submitted with the goal of providing a response within 21 days of receipt. VSC indicated that many inquiries are responded to within 2 business days of receipt.

37. Signatures on G-28s

Often, when an inquiry is sent to the NCSC follow up e-mail account, the response is that there is no original signature on the Form G-28 that is on file. Does the VSC continue to follow the guidance for signatures on the USCIS web-site at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9453d59ae8a8e010VgnVCM1000000ecd190aRCRD&vgnextchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD allowing for facsimile signatures of the attorney or accredited representative? If the NCSC indicates that there is no original Form G-28 on file, does the attorney need to submit a new original Form G-28, or will a copy of the Form G-28 which was submitted with the initial application suffice?

Response: If an attorney is making the inquiry with the VSC or the AILA liaison is making an inquiry on behalf of an attorney, the officers review the electronic record to determine if Form G-28 was accepted and inputted into the electronic system. If there is no Form G-28 on record or the attorney listed on the Form G-28 does not match the name of the attorney requesting information, the officers will request submission of a valid Form G-28. We cannot accept scanned copies of a Form G-28 because the petitioner or applicant signature must be original. The VSC has established a special P.O. Box for mailing and expedited processing of new Forms G-28 (Vermont Service Center, PO Box 600, St. Albans, VT 05479-0600). You may mail the Form G-28 to the officer's attention to facilitate a speedy response from the Customer Service Unit.

Applications for Temporary Protected Status (Form I-821)

38. We have had reports of a number of cases where the attorneys have received a notice of intent to deny the Form I-765 requesting criminal records and proof that Form I-821 was previously filed or was pending.

Response: This is correct. A notice of intent to deny is issued on a re-registration I-765 if new criminal charges are found after running the fingerprint check in the current re-registration period that would render the applicant ineligible for TPS. The initial application is reviewed for J&Cs for any prior charges; however, if there are new charges since the approval of the initial TPS application, then it is the responsibility of the applicant and his/her attorney to provide the outcome for the charges.

A notice of intent to deny is also issued when an initial Form I-821 has never been filed. In the case listed below, systems show that this applicant has never filed an initial application. Part 1 on the I-821 is "b" which indicates the applicant wishes to re-register for TPS. Applicants cannot re-register for TPS until they have an approved or pending initial TPS application.

This initial evidence was submitted with the initial filing. After submitting the information, the members have been asked to file a motion to reconsider due to service error and to pay the $585 fee (for example - EAC-09-XXX-XXXXX). Will VSC consider expediting a new Form I-765 in this situation?

Response: No. This applicant has never filed an initial application and that has to be done before he can re-register.

What can attorneys do to prevent this situation from arising?

Response: Attorneys can request proof of an approved/pending initial I-821 filing or current EAD with a classification of C19 (Initial I-821 pending) or A12 (Initial I-821 approved).

Attorneys should confirm that their clients have been approved for TPS prior to filing a re-registration. If the I-821 application is meant to be filed as an initial, then Part 1(a) should be checked to indicate "This is my first application to register for Temporary Protective Status (TPS)." If any questions in Part 2 are marked yes, the attorney should provide an explanation for those affirmative answers. The filing should also include all court dispositions for any criminality issues.

39. Problems with VSC's Treatment of I-601 HIV Waivers for TPS Re-registrants and Late Initial Registrants.

We respectfully ask the VSC to explain why its agents are requesting HIV-positive applicants for TPS re-registration and late initial TPS registration to submit Forms I-693 (medical reports) to support their I-601 HIV waiver applications. We have responded to each of these requests thus far by explaining that TPS applicants are not required to submit Form I-693 pursuant to 8 C.F.R. §245.5 and 8 C.F.R. §244 *et al*, yet our HIV-positive clients continue to receive these time-consuming requests for evidence from the VSC. These requests have unfortunately resulted in significant delays in the processing of our clients' TPS re-registration and EAD applications.

Furthermore, we ask the VSC to explain briefly its procedures for adjudicating HIV waivers for TPS applicants and whether it provides instruction to its agents on the proper procedures for adjudicating I-601 HIV waivers. Perhaps a centralized and educated corps of agents should be reviewing these applications. Hopefully in the near future the HIV ground of inadmissibility will no longer be an issue for our clients and your office, but we very much appreciate your assistance with this matter in the meantime.

Response: The CDC requires this form in order to make a determination on each case. If the form is not completed and sent, the CDC will deny and, therefore, the I-601 and the TPS application will be denied.

40. Problems with VSC's handling of EADs for applicants granted TPS in court.

A number of advocates have been having problems obtaining EADs for applicants granted TPS by the court. According to information provided several months ago by the VSC, the proper procedure is to file the I-765 with a coversheet explaining that this is an EAD application based

on a TPS grant by the immigration court, and to include a copy of the judge's order. Once we got the receipt notice we were instructed to email a copy of the notice to the VSC using a designated email address and that was supposed to permit the VSC to track these applications and insure that they are handled properly. However, even though I followed these instructions, I received a NOID because I had not included a copy of the TPS application even though the instructions I had been given did not require a copy of the application. However, in response to the NOID, I sent in a copy of the application. That was in March, and I am still waiting for a response. Please clarify what the proper procedure is for obtaining a work permit for an applicant whose TPS application has been granted in court.

Response: Please provide a receipt number and we will look into this case. The instructions for how to properly file an application for TPS after a grant by an immigration judge have been published in the Federal Register.

Committee Comment: Procedures for alerting VSC to approved TPS applications granted by the court can be found in the Federal Register or at AILA InfoNet Doc. No. 09082865.

Consular Returns

41. Can you provide an update on the resources VSC is devoting to consular returns? We receive numerous inquiries from members where their Form I-130 was returned to VSC by a consular post years ago. Is there a process the attorney can initiate to get these cases moving again?

In April 2009, the VSC trained an additional team of adjudicators to work on consular returns in an effort to clear this backlog. Our goal is to eliminate the backlog by the end of the calendar year. Once this goal is reached, we will try to keep the processing time for consular returns to within six months. Please be aware that some processing delays are attributable to the amount of time it takes for petitions to be forwarded from the Consulate to the National Visa Center and, finally, to the VSC.

212(e) Waivers

42. Would it be possible to begin issuing receipt notices for these applications to assist NCSC and the attorney in tracking these applications? If not, would it be possible to submit liaison inquiries within 30 days of the issuance of a waiver recommendation by the U.S. Department of State, instead of 60 days as is not required?

The current electronic 212(e) waiver process does not allow for issuance of receipt notices. In order to change the process, an Information Technology Service Request (ITSR) would have to be submitted to HQ for approval. ITSRs can take considerable time to be processed and approved, depending on the urgency and caseload.

Our current processing targets for this case load are actually at 6 months (180 days); while we cannot entertain inquiries within 30 days of issuance of the recommendation by DOS, we will accept inquiries after 60 days.

Transfer of File to Consulate via NVC

43. What are the steps to get an immediate relative case sent to the consulate via the National Visa Center when there is no VSC file number because the Form I-130 was approved by a District Office? Members have reported delays and conflicting information on how to proceed. District Office has advised that a Form I-824 is only for duplicate approval notices, not to move case to NVC, while VSC returns Form I-824 stating file is at District Office.

Response: Form I-824 is filed to request action on an approved petition. If a beneficiary wishes to apply for an immigrant visa abroad, after initially requesting adjustment of status under section 245 of the INA, the petitioner should file an Application for Action on an Approved Application or Petition (Form I-824). The Form I-824 has five uses; they are listed on page one and two of the form instructions. To request that USCIS forward an approved Petition for Alien Relative (Form I-130) to the National Visa Center, mark "D" in Part 2 of the form. Once a Form I-130 is received at the National Visa Center, it is assigned a number based on the Consulate where it will be forwarded. This becomes the DOS number which is a means of tracking the petition through the visa process.

The Form I-824 should be submitted to the USCIS office that approved the original petition or application.

If the beneficiary leaves the United States while the adjustment process is pending, then an I-824 would need to be filed to have the approved I-130 sent for consular processing abroad.

Other Questions:

44. How long would a check (payment of fees) need to be valid after the time of arrival at USCIS? Sometimes, university-issued checks are not valid for very long. If the department requests a check and then there are complications with the case that delays the filing, occasionally a university might submit a case where the check expires within 1-3 days after being delivered to USCIS by FedEx. Is that acceptable? What happens if the filing is received during a flood of filings and it takes USCIS some time to open the mail and process checks?

Response: Unless a fee remittance states otherwise, it is only acceptable for one year from date of issue. There are no exceptions to this rule. Customers may seek to validate the check for six months from date of issue. This will protect them in the event USCIS discovers a problem with the filing or USCIS experiences a backlog in processing cases.

45. Is VSC still transferring most of the I-539 cases to CSC? This has caused issues as CSC appears to have been denying all I-539 cases transferred as they are used to processing second requests for extension of stay.

Response: There are no immediate plans to transfer additional I-539 applications to CSC in the future.

46. What is the best way to get an approval notice corrected if VSC made an error and the case was not filed using Premium Processing? Making an inquiry through NCSC generates a response "We have requested your file. Please allow a minimum of 60 days for a response."

The first step should be to contact the USCIS National Customer Service Center at 1-800-375-5283 and request a referral be sent to the VSC as a "Service Error". If the referral does not result in a correction, an email to the NCSC Follow-up account (vsc.ncscfollowup@dhs.gov) is appropriate.

47. The changes in filing procedures for N-400s (i.e. no longer accepted/processed at Service Centers, except military) – now accepted at lockboxes and processed at NBC.

Response: Effective January 22, 2009, N-400 applications are filed at a designated lock box facility, either in Phoenix, AZ or Lewisville, TX, depending on geographic location. N-400 applications filed by members or certain veterans of the Armed Forces continue to be filed directly with the NSC.

48. Please clarify which applications/petitions are usually adjudicated at Service Centers vs. the types of applications adjudicated at Field Offices. (BUF)

Response: Please refer to the document titled "Summary of Direct File Mailing Locations for USCIS Form Types" appended to this document.

49. What are the expected processing times for various applications adjudicated at the Service Center? (BUF)

Response: Please refer to the processing times report on USCIS.gov. This report is updated monthly.

50. What are the customer service options for persons specifically inquiring about applications/petitions pending at Service Centers that may have gotten off track or are pending well past expected processing times? (BUF)

Response: Inquiries should be directed to the National Customer Service Center at 1-800-375-5283. If this does not result in a satisfactory resolution to the issue, the inquiry should be directed to the following email account: VSC.ncscfollowup@dhs.gov.

51. Please review the procedure for making a request for humanitarian reinstatement of I-130 petitions that have been revoked based on the death of the petitioner (Sec 205). (NEW)

Response: The process for requesting humanitarian reinstatement consideration begins with the notification to either the Service Center or the National Visa Center of the death of the petitioner. If the death certificate is accompanied by a letter indicating that the beneficiary wishes to be considered for humanitarian reinstatement, the Service Center will respond with a letter confirming that the petition has been automatically revoked (8 CFR 205.1(a)(3)(C)). The letter then provides a list of requirements that must be met to have the petition considered for humanitarian reinstatement under 8 CFR 205.1(a)(3)(C)(2).

In order for the reinstatement to be considered, the following documents must be provided:

- The request for reinstatement must be in writing by the beneficiary of the original petition or substitute sponsor if the beneficiary is a minor child.

- Provide as much available documentation to identify and document the humanitarian reason for reinstatement. Such documentation may include, but is not limited to:

a. Evidence of a long-time residence and any equity in the U.S.
b. Evidence of relationship to other family members with evidence of their immigration status in the U.S.
c. Evidence of health-related factors that would establish the need for the reinstatement of the petition.
d. Evidence of current political or religious conditions in the beneficiary's country of origin that would indicate that the beneficiary would suffer if not permitted to immigrate to the U.S.

Please note: Economic depression, as is found in many regions of the world, is not considered to be an example of a harsh result contrary to the goal of family reunification unless it is of such an extreme nature as to possibly cause physical harm to the beneficiary.

- The new sponsor is required to submit an original Form I-864, Affidavit of Support, to show that he or she has adequate means of financial support and that the beneficiary of the petition is not likely to become a public charge.

a. The substitute sponsor must complete the Form I-864, Affidavit of Support.
b. The Form I-864 must contain an original signature of the sponsor.
c. The new sponsor must be an immediate family member or a legal guardian of the beneficiary, such as a spouse, parent, mother-in-law, father-in-law, sibling, child, son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild child at least 18 years of age.
d. Submit evidence that will establish the new sponsor's immigration status or U.S. citizenship.

- Other documentation;

a. The petitioner's death certificate.
b. The initial approval notice.
c. Any correspondence received from the Department of State or the National Visa Center.
d. Evidence of the relationship between the new sponsor and the beneficiary.

- If the death certificate submitted indicates that the lawful permanent resident (LPR) petitioner died while outside of the United States, you must establish that it was not the intent of the petitioner to abandon his or her LPR status. See Matter of Abdoulin, 17 I & N Dec. 458 (BIA 1980) and Matter of Abdelhadi, 15 I & N Dec. 383 (BIA 1975).

Such evidence may include but is not limited to:

- Evidence of a plan for a return to the United States,
- Evidence of an un-relinquished domicile in the United States, or
- Evidence of continued ties to the United States.

If it is determined that a request for reinstatement does not meet the statutory and regulatory requirements, any subsequent request will require the filing of a formal motion for reconsideration accompanied by the appropriate motion fee.

VSC Stakeholder Meeting August 20, 2009
AILA Liaison Committee Notes

Introductory Comments

Remarks of Dan Renaud, Service Center Director - VSC

- He is seeking more professionally written RFEs that eliminate lengthy boilerplate language and all denials are reviewed

- Liaison groups still have access to Service Center management with regards to trends in adjudication

- VSC plans on holding two Stakeholders meetings per year

Remarks of Michael Aytes, Acting Deputy Director - USCIS

- Surge in 2007 revenues is currently being used to try to lower the backlogs
- 180,000 I-485 cases are pre-adjudicated but waiting for visa availability from DOS – the hope is to avoid a "re-review", but updated information may be needed (ie – new employer letter) ; the pre-adjudication process for retrogressed cases will involve CIS conducting periodic background checks without requiring new ACS biometrics appointments; it is likely that RFEs will be issued a few months before expected visa number availability to request updated employment letter to confirm continuing eligibility; hope to develop a means to provide update that I-485 has been preadjudicated (e.g. list of receipt numbers on CIS website)
- Starting next year, customer-induced delays, such as RFE's, rescheduling, failing naturalization test, etc, will not be considered as part of the backlog inventory
- Government induced delays, such as FBI name checks and fraud investigations will count against inventory
- Hope to include the national inventory of filings, as well as processing times in the future
- Case status online is being updated to eventually reflect where in the process a case actually is, such as I-485s that have been pre-adjudicated
- RFE rates are down in the past few months
- CIS considering new initiative by the end of 2010 to give officers access to commercial/independent corporate information on companies and have their system indicate if a company has been previously reviewed and "approved." The Service will retain in their system corporate information about any company which has filed a prior petition so the focus will shift to the beneficiary's qualifications and minimize the need to continuously provide corporate information

- CIS is trying to come up with a new process for dealing with consular returns. The goal is revocation or reaffirmation within a six month time frame, and working to merge CIS and DOS systems so it can be treated as a single case.
- Clear service error: USCIS is trying to develop a process to elevate the case without having to file a motion.
- CIS is looking to make substantial financial adjustments

National Customer Service Center Presentation

1. New website
   - New website to be launched on September 22, 2009
   - Provide greater transparency on case status, and how case processing time relates to similar pending cases
   - New online tracking system will allow users to sign up for e-mail, text messages, and online updates.
   - Web redesign:
     - Improved case status area and navigation
     - Will give additional context on the case status, including processing steps, where the case is in the process, and will include processing times and goals
     - National dashboard will show number of receipts and pending applications
   - There will be an 800 number to call to provide feedback on the new system

2. Goals and Objectives of Customer Service Unit
   - Timely and professional assistance
   - Treat every customer with respect and empathy
   - Commitment to customer satisfaction that exceeds customer expectations
   - Promote integrity of immigration system
   - Strengthen and promote the mission of the agency
   - Assist adjudicating officers in determining how process changes will affect customers

3. VSC Customer Service Unit
   - 74 USCIS employees
   - 7 First line supervisors
   - 2 Second line supervisors
   - One Assistant Center Director (ACD)
   - Teams specialized by form type and specialized areas
     - VAWA unit – 5 officers – will expand soon
     - PP Unit – 10 officers
     - Congressional Unit – 8 officers, 2 analysts, 2 clerks
   - Customer Service Unit responds to inquiries and assists adjudications unit
   - The customer service unit will soon be adjudicating cases

4. Public Phone Inquiries
   - Two tiers:
     - Tier One – NCSC contractor follows written scripts and can only access what we can access online [**Scripts are available at AILA InfoNet Doc. No. 09071472. VSC noted it was important to use language from the scripts when communicating with NCSC]**
     - Tier Two – USCIS officer, has access to USCIS systems
   - 6 criteria to determine if an NCSC call should go to "Tier 2" – a VSC officer
     - Approved case: Non-delivery of document or document not received
     - Request for evidence: explanation needed
     - Pending case: consulate or POE has not received notification of approved I-129
     - Pending case: Change of information on I-129
     - Pending case: companion cases have been separated
     - If there's a Service Center error on a card, approval, or receipt
   - Provides customer service to customer when the Service must be involved
   - Fewer officers on the phone means more adjudications
   - VSC Tier 2
     - averages 1700 calls/month
     - average call answered in 2.5 min
     - average talk time is 5 min

5. Written Correspondence
   - Currently responding in 30-60 days
   - Sorted by form type – clearly mark form type on the envelope

6. Service Request Management Tool (SRMT)
   - Inquiries generated by NCSC call center, local office
   - Completed 147,000 inquiries from October 2008 to June 2009
   - National response target times are established
   - Can take expedite requests through SRMT
     - NCSC should pass along all information
     - Customer Service officer will review to determine if it meets the expedite criteria

7. E-mail Accounts
   - They try to be consistent among stakeholders
   - vsc.schools@dhs.gov
   - vsc.ncscfollowup@dhs.gov
   - Also have internal stakeholder accounts

8. VSC Schools Account
   - Average of 20 requests per day
   - One officer/day
   - 48-72 hour response time

- To assist DSOs and Foreign Student Advisors with general concerns regarding student issues. Specific case issues should still go to NCSC e-mail

9. NCSC follow up email account - vsc.ncscfollowup@dhs.gov
- Average of 100 requests/day
- Five to six officers working the requests
- Established to assist customers with issues that were not resolved through the NCSC phone number or website
- Wait 30 days after calling NCSC
- E-mails should be sent to the service center with jurisdiction
- Contact scopsscata@dhs.gov , if no response from NCSC email within 21 days
- Must be the applicant/petitioner/attorney of record or AILA liaison for the attorney of record
- Cannot provide information related to VAWA, T, U, or S visa status
- They are utilizing the account to determine trends, etc

10. Premium Processing
- 3 phone lines
  - Open 8-4:30
  - 1,100 calls monthly on average
  - Average call time answered in 1.25 min
  - Call time average 3.25 min
- E-mail account
  - Average 830 responses/month
  - Average response time 5-24 hours
- Correspondence
  - E-mail or fax
  - Supports the adjudicative process

11. Congressional Unit
- Phone Inquiries
  - 3 dedicated phone lines
  - 1,000-1,500 inquiries/month
  - Average call time 10-20 minutes
- Fax/written
  - Average 15-20 inquiries/month
- E-mail – average 850-1,000 e-mails per month
- Response times are established by HQ
  - Phone Calls/voice mails – 1 business day
  - E-mail – 5 business days
  - Written – 10 business days

12. VAWA Unit
- 5 officers
- Specifically trained to handle VAWA cases

- Provides customer assistance after verifying identity
- Voicemail & phones – No live calls for verification purposes. VAWA unit calls back.
- Accepts correspondence with signature of applicant
- E-mails for internal stakeholders only (ie, Office of Chief Counsel and District Offices)
- Adjudicates VAWA related I-765s
- Prima facie review

13. Achievements
    - Hired 61 Immigration Security Officers (ISO) through workforce restructuring
    - 58 officers sent to bridge or basic training
    - Recently completed 9,000 security checks for U visa process
    - SRMT Target dates – VSC has achieved first place among service centers for the past five months
    - Over 99.8% of correspondence responded to within target dates
    - SRMT Blitz – In September 2008, there were more than 20,000 pending requests, and they fulfilled over 14,000 requests in one month.

14. June 4 cases
    - Over 700 RFEs were sent out on August 19, 2009, with respect to those cases with the full response period
    - Will refund the fees if someone filed a motion
    - To alert VSC of problem cases, send inquiries to the NCSC e-mail account and put 'June 4 issue' in the subject line
    - Per Michael Aytes, VSC adjudicates between 4,000 and 5,000 cases a day so 1000 RFEs spread around all working groups is not unusual

Family Based Immigrant Visa Petitions & I-751 Petitions:

1. I-130 Consular Returns

- In April 2009, VSC had 48,000 pending cases. They have 17 officers focused on this backlog and have reduced it to 24,373 pending cases. If there is a suspicion of fraud, the file will go to the Fraud Unit and then back to the adjudicators
- Approximately 3700 of the 48,000 cases were situations where the Petitioner had died. VSC will send a letter with instructions on applying for Humanitarian Reinstatement
- Many consular returns are from US Consulate Guangzhou

2. Adam Walsh Act

- Will issue RFE/NOID if the conviction is an offense under the Adam Walsh Act

- They have identified 250 AWA filings. Of this number, 60 have been denied and 6 have been approved

3. I-751

- Currently six month processing time
- Focus on those who did not file within the expiration of the Conditional Residence status. These cases will be placed on a shelf for 90 days to see if an I-751 petition is filed. If not, it will go to the Notice to Appear Unit.
- Late filings must have 'sufficient' reason/explanation for the late filing (tightening standards)
- New policy memo on separation – they will issue an RFE for the final divorce decree. If Conditional Permanent Resident cannot get the divorce finalized within the allotted response time, the petition will be denied. CIS will not grant a continuance.
- If clients filed a joint petition because they were married and living together at the time, but the situation changes while the application is pending, send a letter to VSC indicating the change in the parties' status. State that you wish to convert to a waiver application or even if you do not wish to convert, let VSC know that the parties are no longer living together and/or will be will be filing for divorce. The application will then be processed accordingly.
- 18-25% of cases are referred to District Office for interview
- I-751 file transfer will not be reflected in online case status because these cases are within the Marriage Fraud Adjudication System (MFAS) and this system does not communicate with CLAIMS. When you call NCSC, the information officer will not have access to the MFAS either, but instead will send a Service Request Management Tool (SRMT) to VSC
- If case involves abuse and filing both I-751 and U petition, VSC will adjudicate I-751 first

Session on VAWA, T and U

1. Statistics

U visas

- 4,414 principals approved
- 6,673 RFEs on principals
- 1,738 RFEs on derivatives
- 90% RFE rate
- Only 30% response to Request for Supplemental Information – this is resulting in 90% RFE rate
- By September 4, 2009, unit intends that all applications will have been touched/initially reviewed.

T visas

- 262 principals approved
- 251 derivatives
- 254 RFE on principals
- 72 RFEs on derivatives
- In September, additional resources will be allocated to VAWA cases.
- **T adjustment issue:** "Case completed" requires letter from DOJ (allowing adjustment before 3 years in T status). "That is the only exception in the statute."

2. For U visas:

- Bona fide standard and process: intend to have this information available by October 1, it is currently in the final stages of preparation. Focus is on I-918B and information to be provided therein. I-918B provides most of the information to establish eligibility, so VSC can use that to make bona fide determination.

- Individuals in detention. VSC checks the system weekly to determine as soon as possible if someone in detention has made a prima facie case for a U. If they hear on a Monday or Tuesday, they will try to have a bona fide determination to ICE by Friday. This is not predictive of adjudicative outcome, but rather is meant to let ICE know that the person has submitted a complete application for U status.

- 10,000 cap on U visas Not clear that there will be 10,000 approval cases as of October 1, as there are currently about 7,000 RFEs and VSC is not receiving responses. The goal is to work every possible approvable case. There are about 1,000 deniable cases. Denials have been issued.

- **U Adjustments**

    - U adjustments are being adjudicated: 43 principals approved; 6 derivatives approved. All RFEs for medical. ~700 may be eligible according to VSC records.
    - Medicals - VSC is researching this issue and should have guidance soon after Labor Day. Current position is that the **medical is required** per 8 CFR 245.5. Will not adjudicate U visa based AOS without the medical
    - CANNOT file U based AOS until three years in U status. While this does include time in interim status, it does not kick in until the I-918 is approved and the applicant is in U status.
    - VSC expects a bubble of U AOS filings once the I-918s are approved
    - VSC is positive on 314 for a prima facie determination, but negative on 108 derivatives – for lack of relationship documentation

- **Derivatives**

    - VSC acknowledged that there is a problem with AOS for those who filed after the Principal, and they are currently trying to develop a solution.

- Age Outs are also an issue. There are some protections built into the law. VSC is holding these in abeyance and seeking guidance.
- Guidance is coming regarding whether I-539s can be used as an extension of U status

- **Indirect victims**

  - Parents of sexually abused children qualify as indirect victims, even if the child is a USC. It falls under the incompetent/incapacitated victim. The I-918B should reflect the parent/indirect victim as the victim on the form. The confusion has been in cases where the I-918B indicated the direct victim.

- **Pointers on Submissions/Standards**

  - "Substantial abuse" is defined in the regulations. Include: Duration of harm, severity of harm. Type of documentation: clear statements from victim, therapist, medical documents, police representative
  - Victim statements should be in the victim's voice. Even if spelling/grammar errors, want to hear it from victim's experience
  - I-192 and national/public interest waivers
    - Concern is for those cases that go **beyond** EWI and unlawful presence (ULP) issues –
    - NOT adjudicating ULP since it is only triggered by a departure
    - Officer lists all pertinent factors and revises with supervisors.
    - MUST INCLUDE evidence of rehabilitation and why case merits favorable discretion
    - Statements in beneficiary's own voice make the biggest impact – how they overcame drug problem
    - Also counselor's statement verifying beneficiary's ability to take responsibility and deal with the issue

3. VAWA

- **Documenting Good Faith Marriage**

  - A short marriage will require more evidence. Concrete statements, documentation of comingling, etc. Description of courtship and what happened prior to marriage, statements from friends. Issue is intent at time of marriage
  - Acknowledge and resolve inconsistencies up front
  - If lacking documentation such as no comingling, explain.
  - Entering in K-1 status is not enough because K is adjudicated at consulate and VSC did not review the evidence. Can include documentation submitted with K petition, however.
  - Beware of statements that appear "overly coached"

- **No evidence of abuser's status**

    - Provide as much biographical information as possible to assist USCIS in determining status. VSC can only investigate abuser's status in the context of an application.
    - Also, file U petition if you want person to have status and consider U visa for H-4 or other derivatives being abused.

- **Priority date:** To recapture a priority date, the original I-130 must have been petitioned by the abuser.

- **District Office Interviews** – There was concern about 384 violations at the District Level. Michael Aytes was in attendance and questioned whether these types of adjustments should be done at the local office. USCIS/VSC asked for suggestions on improving this process, and asked to be informed of inconsistencies in adjudications at local districts.

- **I-212s** - Adjudicated in a separate unit at VSC, which requires coordination between the VAWA Unit and this unit. Clearly identify that the I-212 is based on a VAWA case when you send it in (on application, on cover letter). Only 3 officers handling these and the manager of that unit is the former manager of VAWA Unit.

Section on TPS

- VSC has sole jurisdiction for TPS re-registration
    - All TPS applications should be filed through the Chicago Lockbox
    - Intended to cover nationals from countries going through armed conflict, natural disasters, or extraordinary temporary conditions.
    - Countries covered include El Salvador, Honduras, Nicaragua, Somalia, Sudan, Liberia.
    - Burundi is no longer on the list as of 5/2/2009.
    - Deferred Enforced Department for Liberia was extended on March 20, 2009 by Presidential Memo.
    - Current case load is roughly 300,000.
    - VSC still has roughly 640 Honduran and Nicaraguan ("Hon/Nic") cases which have been delayed due to issues beyond Service control (e.g. fingerprint checks, security checks, RFEs regarding outstanding criminal charges awaiting court disposition)
- Most problems with I-821 TPS applications relate to insufficient supporting documentation to demonstrate nationality, identity, physical presence, and physical residence, as required in the regulations.
- Erroneous Approvals

- The VSC recently sent out a batch of 3,500 TPS based EAD cards with errors. The cards were mistakenly approved for a shorter period of time. Letters have already been sent out to the applicants giving them instructions for fixing the mistake. They do not anticipate that this problem will be repeated because it was related to the processing of EADs using batches, something that is no longer being done.

- State Felony rules carefully considered
  - A person does not qualify for TPS if he has been convicted of any felony or two or more misdemeanors;
  - The VSC stated that they would look closely at the situations where a crime that might normally be considered a misdemeanor has been classified by the state law as a felony.
- Biometric Notices
  - There have been reports of inconsistency in the mailing out of biometric notices to both the TPS applicant and the attorney of record. In some cases the biometric is only sent to one or the other.
  - The VSC is investigating their policy for sending our notices to ensure a consistent approach.
- Email Registration for TPS Granted by IJ
  - In a situation where TPS status is granted by an immigration judge, theI-1-821 and I-765 should be filed with the Chicago Lockbox, including a copy of the court order.
  - Following the issuance of the receipt notice, the applicant or attorney of record should send an email to the VSC (tpsijgrant.vsc@dhs.gov)
  - Failing to follow the procedure can create delays or result in the issuance of an RFE.

Session on I-539/I-765 Student Issues

1. Communication Between USCIS and SEVP

a. USCIS HQ, USCIS SCOPS and SEVP hold monthly calls, although communication is "not close"

b. VSC made clear they cannot fix specific problems in the SEVIS program, but they can communicate the problem to SEVP.

VSC Accomplishments for I-765	**1.1.2009 – 8.1.2009**	**1.1.2008 – 8.1.2008**
I-765 Student Receipts	22, 938	23, 415
Adjudication Times as of First Week of August	30 days	83 days
Remaining pending filings as of First Week of August	About 1,852	About 6,875

* VSC would like to be within 70 days on any I-765

c. Everyone is now cross-trained with I-765 and I-539 applications (J, F, M)

d. Reason for 30 day turnaround in 2009 for I-765s was that it took fewer resources to adjudicate cap cases, since there were fewer applications. As such, those resources were used to adjudicate student I-539s and I-765s.

VSC Accomplishments for I-539	**1.1.2009 – 8.1.2009**	**1.1.2008 – 8.1.2008**
I-539 Student Receipts	10,343	10,697
Adjudication Times as of First Week of August	55 days	120 days
Remaining pending filings as of First Week of August	About 2,780	About 5,815

2. Maintenance of Status

a. An I-539 applicant requesting change of status to F, M, or J must be maintaining valid nonimmigrant status
b. Change in Procedures on M Validity
    i. For consistency with CSC, VSC began adding the 30 day grace period for M-1 extension into the validity date, as long as it does not exceed one year.
c. OPT
    i. Along with the I-20 containing the recommendation for OPT, student should submit copies of any prior I-20s that contain recommendations for any prior OPT or CPT
    ii. Although SEVIS will show CPT was authorized, USCIS officers can't see the amount of time that was offered and whether the work was full-time or part-time
    iii. VSC can see the dates applied and granted previous OPT and CPT. With OPT, further information is somewhere in the system, so they can find, but they cannot access the CPT information at all.
    iv. OPT approved for Associate certificate
    v. Better not to e-file I-765 unless there is a deadline issue

3. SEVIS

a. Occasionally, VSC receives requests to do a data change in SEVIS.
b. Note that often SEVIS Helpdesk is advising DSOs to contact VSC to do the change. VSC then advises DSOs to contact the SEVIS Helpdesk because VSC has view accessibility ONLY in SEVIS, with an exception for officers that do reinstatements.

4. Questions/Follow Ups

a. Can you withdraw an I-765?
    i. Yes, as long as the validity date has not yet started. Alert SEVIS and the VSC and send a letter from the student withdrawing the application.
b. What should be done if there is clear Service error on the I-765 for a student?
    i. Contact VSC using the school e-mail vsc.schools@dhs.gov
c. Goal for changing from J to F is around 55 days.
d. If economic hardship is accepted for one year, will a second request for economic hardship in a subsequent year be more difficult to obtain?

i. No. Send all pertinent information. The approval of a previously submitted economic hardship request will have no effect.

e. E-filed I-765s usually take longer to adjudicate than mailed in I-765s.

Session on Hs and Ls

1. H-1Bs

Staff (Allied Group 3 – H-1/H-1B1/H-2B/H-3/E-3/TN/I-612):
1 Assistant Center Director; 6 Supervisors; 3 Senior officers; 49 officers

- H-1B FY2010 Cap
  - 33,828 approved, approximately 12,600 pending (6,373 at VSC)
  - If case filed between April 1 and April 7, receipts issued April 7 and all premium processing cases processed by April 21.
  - Receiving approximately 80 petitions per day (60 regular processing; 20 premium processing) and processing goal of 60 days should be reached by September
- June 4th Denials
  - All denials identified and being re-opened to confirm if RFE sent – VSC should have the files pulled from storage and new RFEs sent in approximately 2 weeks
- EAWA – TARP Funding effective February 17, 2009
  - VSC continuing to issue RFEs asking for the re-submission of the new H-1B data collection form, if the old one is submitted
  - If the TARP recipient box is checked on the H-1B petition, the VSC, in most cases, is issuing an RFE requesting additional details regarding the funding and to ensure/determine whether the case is approvable.
- RFEs for Contracts and Itineraries
  - Benefit Fraud and Compliance Assessment (BFCA) issued in 2008 indicates that when employment takes place at a third party worksite or when an employer has a large number of H-1B employees, the incidence of speculative employment and benching greatly increase. Another concern is whether the job duties being performed at the worksite are the same specialty occupation duties listed in the petition.
  - VSC is re-tooling RFEs to allow for letters from third parties (end-user) as proof
  - Indicated that guidance on this issue would be issued by USCIS headquarters soon
  - In examining "speculative" employment, there is a difference between an H-1B filed by a "job shop" where employment is contingent on the existence of a contract with a third party, and an H-1B petition filed by an established company that may have a variety of different client sites and in house projects, where an H-1B workers could be employed. In the latter situation, the H-1B petition may be filed well in advance of the start date, and the employer may be anticipating where the person will be working. But over time, the client site may shift as circumstances changes. In these

instances, the VSC is open to the argument that a change in client site does not render the employment speculative.

- Filing before LCA certified by USDOL
  - VSC cannot accept a filing without a certified LCA
  - Will accept proof of a timely-filed LCA with proof that the USDOL delayed certification and a request for nunc pro tunc relief in "extraordinary circumstances beyond the control of the petitioner"
- Proof for Recapture
  - The electronic system is not always accurate on dates of entry and exit
  - VSC suggests to provide a list of dates backed with copies of I-94s and passport exit/entry stamps, but even plane tickets will be considered
  - Recapture is not necessary for H and L visa holders who are not residing continuously in the U.S. or travel seasonally/intermittently because the time limitations do not apply in those instances.
- AC 21 Extensions
  - VSC acknowledges that the USCIS has gone through several different interpretations as to what the policy is with regarding to H-1B extensions based on the AC21 language.
  - Current interpretation is that a 365 day period must be met when a 6th year is completed, if requesting remainder of time plus an extension
  - If not seeking a reminder of time, then the 365 day period must be met by the start date on the petition.
- Standard of Evidence
  - VSC officers trained on what equates to the preponderance of evidence and when the clear and convincing standard is required
  - RFEs are sample reviewed and officers reminded of the 51% preponderance of the evidence standard
  - VSC agreed that the process of issuing an RFE should be transparent in the sense that once a petitioner has met the prima facie case by a preponderance of evidence standard, the officer should have to articulate a material doubt regarding the evidence submitted before requesting additional evidence.
- Indication of Type of Employment on New LCA Form
  - VSC indicated that they have not reviewed the legal significance, if any, of an LCA indicating new employment filed with an extension petition or where an LCA is for multiple positions which relate to different beneficiaries with various status options (e.g. new employment, extension, change of employer, etc)

- Site Visits
  - 20,000 site visits planned, but no feedback has been provided to H-1B adjudicators (FDNS still working on reports and mechanism to evaluate)
  - A "clearance" of a worksite of an individual beneficiary's worksite will not equate to a "clearance" of the employer and all worksites

2. H-2Bs

- New Rules
  - Effective January 18, 2009 and new Supplement issued January 22, 2009
  - Start date on I-129 must be the same as the L/C date of need or will be denied
  - File I-129 within 120 days before requested start date. If filed prematurely, it will be rejected and returned with fee
  - Substitution can be accomplished inside the U.S. with an amended petition and payment of fees or outside the U.S. with a consulate letter
  - Payment of recruitment fees by beneficiary prohibited
  - One time event could be up to 3 years (e.g. World's Fair)
- Contact Information
  - For payment of recruitment fees: VSC.H2BPROPLACEMENT@dhs.gov or letter to VSC, ATTN: BCU ACD at the St. Albans' address
  - For early terminations: VSC.H2BABS@dhs.gov
- FY2010 Cap Re-Opened August 6th
  - Only 40k of 68k available were actually issued
  - All petitions must be received and approved with an employment start date before October 1st
  - All RFEs will have a response date of September 30th

3. Ls

Staff (Allied Group 6 – L/O/P/Q/I-539/I-765/I-102):

  - 1 Assistant Center Director; 6 Supervisors, 3 Seniors, and 50 officers (25 do both L petitions and other petitions)
  - Processing currently at 30 days
  - Expedited Premium: if a petitioner files a case under premium processing and requires adjudication in less than the standard time frame for premium due to emergent circumstances, then the VSC will entertain expediting the premium processing

- RFEs
  - Instituted quality reviews and reviewing standard language
  - Consistency in evidence helpful in processing these cases – the same category is selected and listed in all parts of forms and letters
  - Proof required for the "qualifying relationship" varies from company to company – well-known company: letter and annual report, but small company and not well-known: needs more (e.g. stock certificates, articles of incorporation)
  - Cover letters on the relationship between the companies are very helpful
  - RFEs reflect one of the largest areas of concern, which is whether or not an L-1B worker is essentially labor for hire or whether the person is in fact being supervised by the petitioner.
  - VSC acknowledged that there are several ways a petitioner can demonstrate specialized knowledge, but they normally expect that the specialized knowledge will be related to the product, procedures, processes of the petitioner and not that of a third party.
- Specialized Knowledge

    - No one definition or standard. Characteristics include, according to VSC: unique, advanced, noteworthy, uncommon, distinct, different (AILA is discussing these characteristics with VSC, as some appear contrary to Puleo and Ohata Bemos)
    - Evidence includes job descriptions, training records, evidence of previous experience, but is not limited to these items
    - Offsite employment may trigger RFE to request evidence of who supervises the employee
- Deference in Extensions
    - VSC officers will give some deference to the prior decision to issue the L visa, but not if Part 2.C. is selected on the Form I-129
- New Offices
    - The petition can ask for one year from the date of approval, but if Form I-129 lists an end date, the visa status will be issued to the date listed

4. Miscellaneous
    - Attorney's office address change. Update NCSC
    - Officers work both Premium Processing and Non-Premium Processing cases (different colored file folders)