

Vermont Service Center National Stakeholder Meeting
September 15, 2017
Unofficial Notes/Q&As Provided by AILA's VSC Liaison Subcommittee

I. Opening Sessions/Tours:

- Miscellaneous facts:
 - 5% of USCIS funding comes from Congressional appropriations.
 - Tier 1 and Tier 2 of the National Customer Service Center (NCSC) are on different systems. They will eventually both be Salesforce systems.
 - Mail is always sent to St. Albans, and may take a while to get to Essex.
 - 500 contractors handle movement of all files.
 - Customer Service and Premium Processing phones only in St. Albans.
 - There are no phones on officer desks at Essex office.

- New USCIS National Model for Open Houses:
 - New model (the first is today's VSC Stakeholders Event) will be replicated at the other Service Centers for their Open Houses in 2018, and there will also be a monthly telephonic event.
 - New model is based on feedback from stakeholders wanting a more concentrated approach.
 - There is just one big list now to subscribe to email alerts for all USCIS Stakeholder Events (no longer divided by Service Center).

- Premium Processing:
 - Makes no difference if you call or email premium processing - same level of responsiveness.
 - Petition reaches officer by Day 3 usually.

- USCIS Teleworkers:
 - 400 officers work from home 4 out of 5 days, and take physical files home with them.
 - Work from home officers receive home visits annually from USCIS to make sure that officers' working conditions are up to USCIS standards and files are handled securely.
 - You must work for USCIS for a year to be eligible to work from home. Work from home employees allow VSC to increase its hiring capacity.
 - Premium processing officers must go into the office twice per week, other officers just once a week.

- Hiring/Employee Portfolio:
 - VSC has no minimum requirements for hiring, but many recent hires have been recent law grads or attorneys who have left private practice.
 - VSC welcomed 100 new officers last year.
 - VSC currently has about 1,050 employees, and expects to get 100 more this year.
 - VSC at near capacity, but regularly takes on new employees, many leave VSC within 1-2 years.

- Training/Oversight:
 - Officers can transfer to different visa types after 2 years.
 - It can take up to 8 months to train a new officer on a particular I-129 visa.
 - Supervisors generally approve denials, particularly for newer officers. If the officer is more experienced, supervisor review is not needed.
 - Generally there is one supervisor for every 8 officers.
 - Motions to reopen and AAO decisions are used in training.
 - Supervisors regularly send out reminders regarding the priorities of cases to be adjudicated.
 - L/O/P/H - takes an officer an hour or more to review (CSC is close to the same, but a bit faster than VSC).
 - Officers on Ls, Os, and Ps are generally required to stay with these visa portfolios.
- Extensions:
 - Not standard practice of officer to review prior petition for extensions (i.e. make sure you include ample documentation!).
- RFEs/Motions to Reopen:
 - RFEs are generally held on site.
 - Motions to reopen are generally returned to the initial adjudicating officer, unless that officer has left VSC.
- H-1B Update:
 - There are 3,000 untouched cap H-1B's (as of 9/15/17).
 - "Cap Gap" H-1Bs get the highest priority.
 - The H-1B level 1 RFE is part of a SCOPS-level "national policy."
- Processing Times/Workload Transfers:
 - 80 officers make up a surge team who work on visa categories with large backlogs.
 - USCIS is expecting to be back to 60 day adjudications over the winter.
 - The service centers nationwide are aiming to provide consistent results and processing times.
- National Processing time goals:
 - Os/Ps: 15 days.
 - Ls: 30 days.
 - Other I-129s: 60 days.
 - VSC hoping to move more work to Lockbox.
 - The Potomac Service Center (PSC) has severe limitations on intake and storage, so they do I-90s, H-4/EADs, and ELIS work.
- Policy/Memo Updates:
 - All draft policy memos are under review by SCOPS to ensure compliance with the Administration's "Buy American, Hire American" Executive Order.
- Mission and Vision Statements:
 - New Mission Statement of the USCIS - As dedicated public servants, we are committed to issuing timely and accurate decisions in compliance with immigration laws.

- New Vision Statement – Through an empowered workforce and innovation, we deliver excellence to our customers and the American people.
- Buy American, Hire American Executive Order
 - USCIS has a "Buy American, Hire American" office: <https://www.uscis.gov/laws/buy-american-hire-american-putting-american-workers-first>
 - SCOPS is currently reviewing **EVERY** USCIS policy to promote hiring U.S. workers and raising U.S. wages.
 - It was implied that this office may be behind the new requirements on H-1B wage levels, but the officer from this office could not comment on this.

II. Guest Speaker Ernest DeStefano, Chief, Office of Intake and Document Production:

- Lockbox handles as much of the administrative process as possible, including the creation of green cards and EADs.
- Lockbox is in charge of keeping forms shorter, which is often at odds with OCC and OPNS.
- Lockbox may soon start destroying documents after they are scanned - this is already true in the context of the I-90.
- The N-400 may soon be electronic.
- Lockbox processes submissions within 48 hours, unless it is passed to the Case Resolution Unit (CRU). Submissions are sent to CRU if the DOB is wrong, the fee is wrong, it is a fee waiver request, or if some other material field appears to be wrong. Lockbox can only accept or reject, not issue RFEs.
- Lockbox scans archival material in B&W and submissions in grayscale - no color.
- The aim is to digitize everything from filing to adjudication - but this is several years off. Electronic Immigration System (ELIS) must be properly working first.
- New forms are 2 columns because it allows more information per page, scans better, and provides better data collection.
- There is no plan to include O, P and Q nonimmigrant visa petitions in the Lockbox.
- There is a 48 hour hold on printing green cards, just in case the officer changes their mind. Green cards are mailed one day later - meaning they are mailed 3 days after approval.
- His office has taken over responsibility for the Post Office Nondeliverable (PONDS) Unit, which attempts to unite permanent residents with their permanent resident cards and applicants for adjustment with EADs and advance parole documents that have been returned by USPS as nondeliverable.
 - If a permanent resident card or EAD is not delivered, you can contact this unit at lockboxsupport@uscis.dhs.gov.
 - 60,000 cards are returned every year, of the 5 million issued.
- Mr. DeStefano confirmed to AILA by e-mail after the Stakeholder Engagement that they do not contact counsel to obtain new address information about LPRs or applicants for EAD/AP. They will suggest to the Office of Chief Counsel contacting counsel as a means of getting the beneficiary's updated address.
- Mr. DeStefano stated that he will reach out to the Customer Service and Public Engagement Directorate to inform them of Stakeholder frustration with the

electronic AR-11 form not updating addresses. Applicants may also update a residential address by calling the USCIS customer call center, in addition to filing Form AR-11.

- Lockbox Filing Tips:
 - Send in the correct fee.
 - Sign the forms properly.
 - A separate check for each required fee is better.
 - No electronic/scanned signatures are accepted; must be original signatures.
 - Lockbox does not want separators or post-its.
 - Lockbox can handle double-sided submissions but Service Centers prefer one-sided copies.

III. O/P/Q Presentation:

- General Information:
 - USCIS Customer service will soon be able to handle address changes over the phone.
 - Beneficiaries have no grace period after termination.
 - VSC provides industry training with respect to sports, but not the entertainment industry.
 - O's and P's can be self-employed as long as they have an agent.
 - USCIS still expects evidence that comports with the regulations, even if it is an O-1 for someone in new media.
 - Negative consultation letter does not prevent approval; it can be overcome by evidence.
USCIS was noncommittal as to whether recording a song for a motion picture soundtrack is Arts or MPTV.
- Filing Tips:
 - Prefer table of contents with separator sheets (either different color, weight, or texture). NO TABS or anything that hangs below the page.
 - No mandatory order for exhibits.
 - Don't mix and match criteria from O-1A, O-1B Arts, or O-1B MPTV.
 - The VSC attempts to adjudicate primary petitions with dependents, but can't always, so make sure dependent petitions can stand on their own.
 - Clearly identify consultation letter in the filing.
 - Color copies are not required.
 - If return Fed Ex mailer is included, USCIS will use it but include explanation that USCIS should use it to mail the approval notice.
 - Do NOT send double-sided copies.
 - Beneficiary cannot translate their own publications for O-1 petitions; they have to be "certified" for translation.
 - USCIS wants the entire article translated, not just the abstract.
- Agent Petitions
 - When filing an agent petition, explain the agent relationship.
 - If the agency relationship does not fall under the categories listed in the regulations, explain the relationship to the Service with as much detail as possible.

- If a performer changes agents, no deference will be given to the previous O petition because a new petitioner is a change in circumstances - deference does not apply.
- Itineraries/contracts:
 - Provide all contracts and itineraries for the requested validity dates.
 - USCIS indicated that the contracts/itineraries should contain phone numbers, and that they can/will call the venue/employer.
 - Itineraries should also contain beneficiary's duties.
 - If requesting time that starts before contract date or goes beyond contract dates, explain why you are requesting such time.

IV. Pre-Submitted Questions by AILA with Answers Provided During the O/P/Q Session:

1. **Processing times** - We appreciate that the VSC has worked on their backlog to speed up processing times for O-1 and P-1 adjudications.
 - a. For cases that are filed under regular processing, under what circumstance will USCIS use the prepaid FedEx label provided to ensure quick delivery of the approval notice?

USCIS ANSWER: Must be pre-paid and addressed to and from the Attorney's office.

- b. Are there circumstances where use of the prepaid FedEx label would delay the mailing of the approval notice(s)?

USCIS ANSWER: No.

2. **Order of Exhibits** - Is there a preferred order for the exhibits for O, P, and Q petitions? Please also advise to any preferred order when submitting petitions for multiple beneficiaries (i.e., support staff and/or dependents).

USCIS ANSWER: There is no preferred order, but USCIS would like a table of contents and separator sheets.

3. **Agents as Petitioners** - There continues to be confusion on this issue as the regulations only list 3 scenarios, when this list is merely suggestive and not exhaustive. The wording of 8 CFR §214.2(o)(2)(iv)(E) and 8 CFR §214.2(p)(2)(iv)(E), which is not exhaustive, provides in relevant part:

*A United States agent **may be:** The actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent....*

- a. What type of training do officers receive on this issue?
- b. What control factors are considered in deciding whether a petitioner qualifies as performing the function of an employer versus being in business as an agent such that deal memos/contracts with end employers are not required?

USCIS ANSWER: An agent is NOT limited to the three enumerated agents listed in the regulations. If the relationship doesn't quite meet the criteria for the enumerated agents, USCIS asks that the agent, petitioner, and beneficiary relationship be clearly explained and documented.

4. **Itineraries** – What type of training do officers receive regarding industry standards? For example, in sports, although the competition may only be 6 months of the year, the athlete(s) is required to be in the U.S. for training and other activities during the off-season and validity dates should not be arbitrarily limited to competition dates only. Similarly, in the rock music-entertainment industry, artists signed to record labels and agencies are contracted to write, record and perform new music and validity dates should not be arbitrarily limited to live performance dates available on the internet. Please remind officers that AFM chapter 33.4(e) explains how a series of activities on an itinerary may be considered as one “event or activity”, in which case the petition should be approved for the full requested validity period. Finally, we note that any objection by USCIS to “speculative employment” is not based on any statutory or regulatory provision, and that language in RFEs to that effect should be omitted.
 - a. What is the best practice for attorneys/petitioners to demonstrate the need for the beneficiary/beneficiaries to be in the U.S. for training/practice/recording, etc. in accordance with industry standards?
 - b. Similarly, 8 CFR §214.2(o)(2)(ii)(C) and 8 CFR §214.2(p)(2)(ii)(C) require “[a]n explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities.” However, USCIS often requests very detailed itineraries for potential dates in the future that, at the time of filing the petition, are not yet known or established. For example, in the context of fashion models, the beneficiary may know that he or she will model in spring and fall fashion shows but may not know the specific designers for whom he or she will perform services. If a well-established booking agency states that it will book dates for an established artist for the requested validity period, and/or the model has booked similar shows in previous years, what is the best evidence to provide to the Service to support the approval for the validity dates requested on the petition?

USCIS ANSWER: All contracts and itineraries should include phone numbers for the locations and a detailed explanation of the activities listed beyond the contracted dates. See [“USCIS Provides Filing Tips for Form I-129 O,P, and Q Petitions” AILA Doc. No. 17092201](#), for more information on contracts and itineraries.

5. **Advisory Opinions** - Thank you for updating and posting online the USCIS list of labor union and management organizations.
 - a. Is there a way to update this list more regularly to reflect correct fees, contact persons, and jurisdictional lines?
 - b. If more than one union is qualified to provide an advisory opinion with respect to a particular occupation and each union appears on the USCIS list, how does USCIS suggest petitioners go about selecting the appropriate union for

consultation and document that such selection is sufficient so as to avoid issuance of an RFE?

- c. Further, when an RFE is issued for an advisory opinion letter, frequently the language states that such a letter is required, but does not instruct on the appropriate organization to request the letter. In some instances, there may not be an appropriate organization that petitioner is aware of, so there is no way for the petitioner to adequately address the Service's concerns. How should the petitioner respond to this type of RFE?

USCIS ANSWER: The address index is updated on a quarterly basis.¹ However, USCIS encourages stakeholders to email updates or information on additional groups/organizations to: USCIS-IGAO Outreach@uscis.dhs.gov. If there is more than one qualified union to provide an advisory opinion, the petitioner may submit an additional advisory opinion. If no labor union or peer union exists that can provide an advisory opinion letter, then the petitioner should show proof that a good faith effort was made to locate one.

6. **Consultation Process** - Some unions, peer groups, and management organizations impose extra-regulatory and burdensome requirements during the consultation process. While we appreciate union concerns about fraud in the O/P consultation process, the unions should not insist on documentation which USCIS does not require in order to issue an advisory opinion.
 - a. How does USCIS communicate with advisory organizations about the regulatory requirements in reviewing a case?
 - b. In connection with the unions concerns about fraudulent letters and applications, can the Service share and discuss the actual amount and type of fraud currently found in consultation letters, so we may work together towards a more focused and efficient solution?

USCIS ANSWER: USCIS may issue a NOID if the consultation is thought to be fraudulent.

7. **New Media (i.e., Instagram, YouTube artists, etc.)** - What is the best way to present evidence that the beneficiary is an artist of extraordinary ability in a field of emerging media that does not fall precisely within the regulations? Can we recommend that such evidence include the following?
 - Internet downloads, views, commentary, and online ratings for productions and performances (e.g., Netflix, YouTube, Vimeo, Vine, etc.);
 - Blog or website traffic and popularity/commentary (i.e. number of daily views, unique visitors, press impressions, and recognition by *other* social media websites); and/or
 - Social media popularity and presence (e.g. Facebook “likes” or “fans,” YouTube “views” or “subscribers,” Twitter “followers” or number of re-tweets, Instagram followers, etc.)

¹ For the Address Index for I-129 O and P Consultation Letters, please visit <https://www.uscis.gov/working-united-states/address-index-i-129-o-and-p-consultation-letters>

USCIS ANSWER: USCIS is aware of and will consider new media evidence, but only in addition to the evidence required by regulation. This evidence by itself would very likely not be enough and would result in the issuance of an RFE.

8. **O-2/P Essential Support Personnel** – Members report that VSC has been requesting evidence of O-2 support that is beyond regulatory standards and not in line with industry norms, such as articles about the O-2 beneficiary, photographs of the O-1 and O-2 together, paystubs from the same employer, passport stamps showing the O-1 and O-2 traveling together, etc. For example, on a large-scale tour, the artist will hire the US lighting, sound and video companies, which in turn pay either the O-2 foreign national directly or through their foreign counterpart. This is a different entity than the O-1, who may be paid by the promoter, the record company, or their own loan-out company. Although the O-1 and O-2 essential support personnel have worked together on the tour outside the United States, the payroll records do not reflect this. Moreover, it is not reasonable to expect the O-2 foreign nationals to have articles written about them. Oftentimes we have submitted paystubs from the same company or photographs of the O-1 and O-2 together and USCIS states such evidence does not satisfy the requirement of critical skills. A letter from the petitioner or O-1 beneficiary should be given credit.
- a. How does USCIS weigh the evidence?
 - b. What support do any of these evidentiary requirements have in the regulations?

USCIS ANSWER: SCOPS/VSC asked for specific examples. If an AILA member has a specific example of this particular issue, please contact [AILA's VSC Liaison Committee](#).

9. **U.S. Consulate in London O-1 Denials and Revocations** - Recently, the AILA VSC Liaison Committee has received numerous reports from AILA members concerning O visa adjudications by the U.S. Consulate in London, specifically a marked increase in 221(g) visa denials, referrals to USCIS for revocation, and placement into administrative processing for apparently meritorious and approvable O visa applications. AILA recognizes that officers diligently work to make appropriate determinations on each application that comes before them and that officers need to be able to exercise wide discretionary decision-making authority to carry out their duties. AILA would like to ensure the VSC is aware of this uptick in visa denials and delayed adjudications.
- a. For the petitions that are being sent back to VSC for revocation by the consular post, what is the process for handling these petitions, and what is the timeframe for reviewing cases that have been returned to the service center?
 - b. For the returned petitions, is there a more efficient manner by which the service center can notify attorneys waiting for review of the consular officer's recommendation for revocation, such as updating the Online Case Status and/or including returned petitions in the USCIS Processing Times Report?

USCIS ANSWER: VSC cannot comment on DOS determinations but will look into the process once a petition is received from KCC with a recommendation to revoke. The file must be received back from the National Records Center in order for the VSC to review it.

10. **Comparable Evidence** – Please provide a status of the Comparable Evidence memo. Until the memo is published, please clarify CIS policy with respect to the comparable evidence category and confirm that petitioners only need to show that one regulatory criterion does not apply to the field of endeavor in order to be permitted to rely on comparable evidence. Please also confirm that a detailed, credible narrative explanation from the petitioner as to why a regulatory ground does not apply to the beneficiary's field of endeavor will suffice.

USCIS ANSWER: The Comparable Evidence memo is still considered a draft memo. All policies, including draft memoranda, remain under review due to the “Buy American Hire American” Executive Order issued earlier this year.

11. **Musician performing as a musician on motion picture and television** – Please confirm that if a musician performs on a soundtrack for a movie, a consultation from AMPTP should NOT be required as the musician is not doing anything different than writing and performing music regardless if it is on live, streamed, or recorded soundtrack. Only the medium on which the music is recorded is different. This change of recording medium should not change the O-1 standard from *arts - prominence* to *motion picture – extraordinary achievement*.

USCIS ANSWER: This would need to be reviewed on a case-by-case basis but generally, VSC should only require one consultation for the arts.

12. **Requirement of Lead or Starring Roles** - Members have reported receiving RFEs in which USCIS is requesting evidence that O-1 beneficiaries in the arts and film/tv will perform in lead or starring roles for distinguished productions/events or organizations/establishments as per 8 CFR section 214.2(o)(3)(iv)(B)(1) and (3) as well as 8 CFR section 214.2(o)(3)(v)(B)(1) and (3). These requests are beyond the scope of the O-1 statute. INA section 101(a)(15)(O)(1) requires that a beneficiary seek to enter the U.S. “to continue work in the area of extraordinary ability.” Also, the O-1 final rule, published at [59 FR 41818](#), makes it clear there is no statutory support for requiring an O-1 alien to be coming to the U.S. to perform services requiring an alien of O-1 caliber. This is further confirmed in the AFM at Chapter 33.4(d). Please confirm that USCIS will follow the regulations consistent with the law, legislative history and policy memos.

USCIS ANSWER: USCIS encourages petitions to explain which evidence meets which criterion.

13. **Lower-Level Sports Leagues** - Lower-level sports leagues (e.g., Indy Lights), participants in individual sports (e.g., triathletes), and new forms of professional and amateur sports should be eligible for P-1 status. However, USCIS often refuses to recognize that competitions in such leagues and sporting events can have a distinguished reputation (albeit at a lower level than major league sports) and require participation of athletes with an international reputation. Denial of these petitions gives the false impression that the U.S. does not welcome international athletes in competitions against U.S. athletes, and could lead to other countries denying participation by U.S. athletes in foreign competitions.

- a. Would USCIS consider the issuance of a policy memorandum setting forth a presumption of international reputation of the competition in which a P athlete will participate, where the P athlete otherwise meets the eligibility requirements of 8 CFR section 214.2(p)(4)(B)(2)? There is precedence for the application of a presumption in other areas of the regulations and this could be applied here as well. In addition, the policy memorandum could explicitly state the importance of facilitating the entry of international athletes for the purpose of competing in U.S. sporting events and affirm that athletes competing in lower-level leagues that feed into major leagues, or in sports that are newer or non-mainstream, are fully eligible for P-1 status.

USCIS ANSWER: Not answered. If an AILA member has a specific example of this particular issue, please contact the [VSC Liaison Committee](#).