American Immigration Lawyers Association
USCIS Field Operations Directorate
October 22, 2015
AGENDA

AILA appreciates the opportunity to engage with the USCIS Field Operations Directorate and values the exchange of ideas and suggestions. We thank USCIS for this opportunity to meet and look forward to a productive and informative discussion.

New Initiatives, Staffing Updates, USCIS Field Office Updates, and Follow-Up Items

1) Please provide an update on any key Field Operations Directorate staffing changes that have taken place since our last engagement on April 16, 2015,[1] a current list of contact information for the USCIS District and Field Offices, and a current organizational chart.

   USCIS Response: Michael Valverde entered on duty as the Field Operations Directorate's Deputy Associate Director on September 20, 2015. Tony Bryson is now the District Director for the Tampa District (District 10). Michael Borgen is the District Director for the Philadelphia District (District 5). Alanna Ow is the District Director for the San Diego District (District 24). A full list of field leadership and an organizational chart are attached.

2) Please provide updates on Field Operations Directorate initiatives that are currently in process or new initiatives scheduled for FY2016. We are particularly interested in the following:

   a) During the April 16, 2015 meeting, Field Operations stated that it is making a concerted effort to closely align interview-waiver case adjudication processing times with cases that are scheduled for an interview.[2] Please provide an update about the processing of interview-waiver adjustment of status applications and specify whether or not Field Operations is continuing to relocate interview-waiver cases based on field office capacity rather than geography.

      USCIS Response: Field Operations is continuing to relocate interview-waiver cases based on field office capacity rather than geography. Field Operations is close to bringing parity to these two form types. The average cycle time for these forms is 6.4 months.

   b) Field Operations advised AILA during the last liaison meeting that it is planning to centralize the adjudication of Special Immigrant Juvenile Status (SIJS) cases.[3] Has USCIS decided on the centralized location where these cases will be adjudicated?

[1] AILA/USCIS Field Operations Directorate Liaison Q&As (4/16/15), AILA Doc. No. 15042206, http://www.aila.org/infonet/ailauscis-field-operation-directorate-liaison-qa.
[2] *Id.* at Q1.
[3] *Id*.

USCIS Response: Yes. Processing of SIJ-related petitions and applications will be centralized at the National Benefits Center.

c) Please provide the number of SIJS I-360 stand-alone and SIJS "one-step" interview-waiver cases that have been adjudicated for FY2015.

USCIS Response: In FY15, USCIS has adjudicated 9,078 (8,677 approvals and 401 denials) Form I-360s for Special Immigrant Juvenile status; however, it does not track in its systems which Form I-360s had an interview and which ones did not.

3) Over the past few years, AILA and USCIS have discussed ways to facilitate the processing of biometrics for persons in proceedings.[4] On June 19, 2015, AILA and ICE representatives discussed ICE's procedure for obtaining biometrics from detained respondents who are seeking a USCIS benefit.[5] However, the meeting did not cover procedures for obtaining biometrics for respondents in proceedings who are not detained. Please provide an update on attempts to implement a standard procedure for processing biometrics for persons in proceedings.

USCIS Response: USCIS continues to work with ICE to develop a national approach to obtaining biometrics for individuals in removal proceedings. In the interim, attorneys are encouraged to work with their local field offices to determine the procedures for obtaining a biometrics appointment for detained applicants.

4) AILA has received reports from members that officers continue to issue vague Requests for Evidence (RFEs) instructing applicants to file a Form I-601, Application for Waiver of Grounds of Inadmissibility before conclusively determining that a ground of inadmissibility exists. AILA suggested at the April meeting that the RFE should provide applicants with the opportunity to dispute the necessity of the I-601 waiver.[6] USCIS stated that it would take this suggestion under advisement. Has there been any further discussion on this issue or have any steps been taken to implement it?

USCIS Response: In the April 2015 USCIS Field Operations Directorate meeting with AILA, USCIS agreed to look at RFE language suggested by AILA. While USCIS appreciates the suggestion, it will not be incorporating the language into RFEs that request an adjustment applicant file a Form I-601. Adopting that proposal could make it necessary to issue multiple RFEs. USCIS continues to note that nothing precludes an adjustment applicant from responding to the RFE by submitting along with the Form I-601 and the Form I-601 supporting evidence, any evidence and argument seeking to rebut the inadmissibility finding. Keep in mind that if there is a reasonable basis for a finding of inadmissibility, the adjustment applicant must

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[4] AILA/USCIS Field Operations Liaison Q&As (4/11/13), AILA Doc. No. 13041848, http://www.aila.org/infonet/uscis-field-ops-liaison-minutes-04-11-13; AILA/USCIS Field Operations Liaison Q&As (10/9/14), AILA Doc. No. 14101041, http://www.aila.org/infonet/uscis-field-ops-liaison-minutes-10-09-14; See Q&As from April 16, 2015 Meeting, *supra* note 1 at Q 3.

[5] *AILA ICE Liaison Committee Q&As (6/19/15)*, Q21, AILA Doc. No. 15082001, http://www.aila.org/infonet/ice-liaison-committee-meeting-qas-06-19-15.

[6] *See* Q&As from April 16, 2015 Meeting, supra note 1 at Q 8.

establish admissibility "clearly and beyond doubt." *Matter of Bett,* 26 I&N Dec. 437 (BIA 2014).

Employment Authorization Documents and Interviews

5) Members in at least one field office are reporting that officers are taking an applicant's Employment Authorization Document (EAD) at the conclusion of a successful adjustment of status interview, but are refusing to issue an I-551 stamp so that the applicant has proof of their ongoing right to work. It currently takes several weeks for the permanent resident card to arrive in the mail, leaving applicants without the ability to prove that they are authorized to work, entitled to a driver's license, or even authorized to be in the U.S. A lawful permanent resident, by law, is authorized to work as of the date of the grant. 8 CFR §274a.12(1).

   a) Has USCIS changed its policy to allow field offices to confiscate a current EAD from an applicant without issuing an I-551 stamp as temporary proof of LPR status?

      USCIS Response: USCIS has not changed its policy. When an applicant's adjustment of status application is approved, USCIS systems are updated to reflect his or her new status as a lawful resident. With that system update, the applicant is mailed an I-797 approval notice; the Permanent Resident Card usually follows within approximately three weeks. Upon notification of their adjustment of status approval, applicants must surrender the EAD as the authority under which the EAD was granted no longer applies to the alien's status.

   b) Would USCIS direct field offices to provide an I-551 stamp at the conclusion of a successful adjustment interview if the local office chooses to confiscate the current EAD from the applicant?

      USCIS Response: USCIS will not direct field offices to provide an I-551 stamp at the conclusion of an adjustment interview. An ADIT stamp may be provided before the arrival of the Permanent Resident Card at the discretion of the field office. An applicant will also still be recognized as employment authorized in the e-verify and SAVE systems should an inquiry be made between the date that a Form I-485 is approved and when the Permanent Resident Card is received.

Summarily Denied I-130s Per INA §204(g)

6) AILA members report a pattern of summary I-130 denials based on INA §204(g) and INA §245(e)(1) in cases where the petitioner and beneficiary married while in removal proceedings, even when the applications provide "clear and convincing evidence that marriage was entered into in good faith."[7] In some instances, even beneficiaries who are not in proceedings, have had their petitioner denied under INA §204(g). Attorneys have successfully appealed these decisions to the Board of Immigration Appeals (BIA), but in the meantime, U.S. citizens and their spouses have had to wait years for the decision.

[7] INA §245(e)(3). For examples from District 26, see WAC1190642479, LIN1491037705.

a) Would USCIS remind field offices that where an applicant has requested an exception to INA §204(g) and INA §245(e)(1), officers must consider all of the evidence submitted in support of the petition?

USCIS Response: USCIS instructs its staff to consider all evidence submitted by the applicant when determining if there is clear and convincing proof a marriage was entered into in good faith. Guidance directing ISOs to take into consideration all submitted evidence is provided through several sources which include statutes, regulations, Standard Operating Procedures (SOPs), and trainings. However, if there are specific instances, please forward them.

b) Would USCIS remind field offices that where an applicant was not married while in removal proceedings, that applicant is not subject to the prohibition on approving an I-130 petition under INA §204(g) and may not be denied on that basis?

USCIS Response: If a marriage was entered into before immigration proceedings commenced or after the completion of immigration proceedings (either through the applicant's departure from the United States or termination of proceedings), the applicant's adjustment of status application does not fall under INA 204(g). Such guidance is provided to the ISOs through several sources, which include statutes, regulations, Standard Operating Procedures (SOPs), and trainings. Please provide examples of cases that were denied under INA §204(g), but should not have been.

K-1 *Matter of Sesay* and *Matter of Le* Guidance

7) During our liaison meeting on March 21, 2012, USCIS stated that it had drafted guidance related to *Matter of Sesay*, 25 I&N Dec. 431 (BIA 2011) and *Matter of Le, 25 I&N Dec. 541 (BIA 2011)* and that the guidance would be issued soon after the completion of an internal review.[8] Please provide an update on the status this guidance.

USCIS Response: USCIS has draft guidance related to *Matter of Le* and *Matter of Sesay*. This guidance is currently undergoing internal review.

8) In March of 2012, USCIS indicated that it would require a K-1 petitioner to provide an I-864 for the K-1 beneficiary in order to adjust status, even after the marriage has terminated.[9] However, *Matter of Sesay* emphasizes that there are certain factors, including whether there was abuse or deception in the relationship, that should be taken into account in the discretionary analysis of whether to grant adjustment of status for a K-1 beneficiary after the marriage has been terminated.[10] Requiring a K-1 beneficiary to obtain a signed I-864 from an abusive spouse would run contrary to USCIS policies that aim to project victims of abuse. Would USCIS allow a K-1

[8] AILA/USCIS Field Operations Liaison Q&As (3/21/12), AILA Doc. No. 12050847, http://www.aila.org/infonet/uscis-field-ops-liaison-minutes-03-21-12, page 1.
[9] *Id.*
[10] *Matter of Sesay*, at 443-444.

beneficiary to provide a substitute sponsor willing to assume the obligation for the I-864 or allow the beneficiary to file an I-864W to waive the affidavit of support requirement altogether if the local office determines that the beneficiary was subjected to abuse or deception?

USCIS Response: USCIS does not require the K-1 petitioner to submit a Form I-864. The statute and the implementing regulations do so.

The Board stressed in *Sesay* that, while visa availability is determined (assuming a timely marriage) as of the date of K-1 admission, the applicant must still establish admissibility. And the applicant must be admissible on the date of the adjudication of the Form I-485. Under INA 212(a)(4)(C), all immediate relatives (other than widow(er)s and VAWA self-petitioners) must have an affidavit of support. As the Board held in *Sesay*, the K-1 adjusts as an immediate relative. For this reason, the K-1 must have a Form I-864. Under INA 213A, the petitioner must submit the Form I-864. The K-1's eligibility for classification as an immediate relative has always been predicated on the Form I-129F. 25 I&N Dec. at 439. The affidavit of support rule reflects this practice, by treating the Form I-129F petitioner as the equivalent of an I-130 petitioner. 8 CFR 213.2(b)(1).

If the alien and the original sponsor are divorced, the K-1 may adjust so long as the original sponsor already executed a Form I-864 or is willing to do so. Divorce on its own does not end the Form I-864 obligation. If the original sponsor never executed a Form I-864, and is not willing to do so, the K-1 will be inadmissible as a public charge, unless the beneficiary qualifies for an exemption on Form I-864W, Intending Immigrant's Affidavit of Support Exemption.[11]

If the K-1 claims that he or she is a victim of abuse, the K-1 may file a Form I-360 as a VAWA self-petitioner. Adjustment based on an approved VAWA Form I-360 would still be within the scope of INA 245(d), since the individual would be adjusting on the basis of the marriage to the petitioner. If adjusting as a VAWA self-petitioner, the individual would submit the Form I-864W to document in the Form I-485 record that he or she is no longer be subject to the Form I-864 requirement.

Filing the Form I-360 would also mean that the abuse claim is reviewed and adjudicated by an officer trained specifically to adjudicate these sensitive cases.

I-751 Interview Delays

9) USCIS field offices around the country report widely differing times for scheduling an I-751 interview from the time of filing with the field office:

- Dallas: 18 months +
- Orlando: 9-12 months

[11] A beneficiary may qualify for an exemption if he/she has earned or can receive credit for 40 quarters of coverage under the Social Security Act (SSA), the intending immigrant is a child who will become a U.S. citizen upon entry under section 320 of the Immigration and Nationality Act (INA), he/she is filing for an immigrant visa as a self-petitioning widow(er), or he/she is filing for an immigrant visa as a self-petitioning battered spouse or child.

- LA County: under 6 months
- LA: under 5 months
- San Bernadino: 3-4 months
- San Jose: 45 days
- Santa Ana: under 6 months
- Milwaukee: 30-60 days
- St. Louis: 3-4 months
- Des Moines: less than 90 days
- Indianapolis: 3-4 months
- Portland: 3-4 weeks
- Boise: 30-45 days
- Wichita: within 1-2 months
- Kansas City: 3-6 months
- San Francisco: 5 months
- Denver: 14 months
- El Paso: 1 month
- Tampa: 4-5 months
- New York City: upon receipt
- Queens: 22 months
- Long Island: 15 months
- Boston: 18 months
- Atlanta: 1 year
- Norfolk: 3-6 months
- DC: 3-6 months
- Chicago: 90 days
- Philadelphia: 90 days
- Hartford: 3-4 months

USCIS field offices are advising AILA members that N-400, Applications for Naturalization and I-485, Applications for Adjustment of Status have higher priority than I-751 petitions, and that this is causing long backlogs for I-751 interviews in some field offices. These delays are not merely an inconvenience to I-751 applicants, but can create major problems for applicants in state and local jurisdictions that tie the issuance of driver's licenses and other benefits to I-551 expiration dates.

While we appreciate the staffing challenges and varying case volumes with which USCIS deals at the field offices, would it be possible for USCIS allocate additional resources to adjudication of I-751s or to prioritize backlogged petitions in field offices where long delays exist?

USCIS Response: USCIS will look into this issue and will work to ensure that Form I-751s are adjudicated in a more consistent manner.

***Matter of Arrabally/Yerrabally* and Guidance to the Field**

10) At the October 9, 2014 liaison meeting, USCIS stated that guidance on *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012) was going through the internal review process.[12] Could you please provide an update on the status of this guidance?

USCIS Response: This guidance is pending departmental review. In particular, USCIS notes that the Secretary has directed the DHS General Counsel to address this issue.

a) USCIS has previously stated that field offices should not be holding adjustment of status cases where an applicant for adjustment of status previously had DACA or TPS status but who traveled on advance parole and subsequently had a parole entry. However, AILA continues to receive reports that some offices continue to hold these cases in abeyance. Would USCIS remind field offices that these cases should not be held in abeyance?

USCIS Response: USCIS will remind field offices that cases should not be held in abeyance pending guidance on *Matter of Arrabally*.

b) Is there any distinction for an applicant for adjustment of status in these scenarios who may have departed on advance parole but who had a previous order of removal? The BIA's ruling in *Arrabally and Yerrabelly* states that an "an alien who has left and returned to the United States under a grant advance parole has not made a "departure from the United States" within the meaning of Section 212(a)(9)(B)(i)(II) of the Act." *Id* at 779. While *Arrabally and Yerrabelly* is explicitly limited to determinations of inadmissibility under 212(a)(9)(B)(i)(II), the case also notes that it was "Congress' intention to enact 'a symmetrical and coherent regulatory scheme' in which all parts fit into a harmonious whole." *Id.* at 775, *citing FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 12, 133 (2000).

USCIS Response: The Board expressly stated in *Matter of Arabally* that its holding applies *only* to the issue of inadmissibility under INA 212(a)(9)(B). Inadmissibility under INA section 212(a)(9)(A) always rests on the execution of a removal order. The presence or absence of a removal order is not an element of inadmissibility under INA 212(a)(9)(B).

Emergency Advance Parole

11) USCIS has stated that applicants seeking emergency advance parole should visit a field office.[13] However, AILA has received reports from members that at least one field office has explicitly stated that it is "not in the business of issuing advance parole" and that another field office has

[12] See Q&As from October 9, 2014 Meeting, supra note 4 at Q4.
[13] AILA/USCIS Field Operations Liaison Q&As (10/16/2012), Q9, AILA Doc. No. 12100546, http://www.aila.org/infonet/uscis-field-ops-liaison-minutes-10-16-12; USCIS Policy Memorandum, PM-602-0023, December 21, 2010; and USCIS Policy Manual, Chapter 12.C.

explicitly refused to accept or adjudicate emergency advance parole requests.[14] The issuance of emergency advance parole is a critical function of USCIS field offices and the only recourse for many applicants facing true emergency travel situations. Would USCIS remind field offices to both accept emergency advance parole applications and issue emergency advance parole in appropriate situations?

USCIS Response: USCIS surveyed its field offices and all field offices will issue emergency advance parole documents if the situation warrants issuance; therefore, a reminder is not necessary. Requests for an emergency advance parole document must meet the USCIS expedite criteria[15] and must be accompanied by evidence to support the need to travel, evidence of the relationship, if applicable, a Form I-131, and the proper form fee. If the request for an advance parole document is filed based on a pending Form I-485 and there is a request for initial evidence related to the Form I-485, USCIS will not issue an advance parole document. If the travel is not immediate, the field office may request that the service center or national benefits center expedite a pending Form I-131 rather than issue an emergency advance parole document in the field office.

12) AILA has received reports from members that a number of field offices are broadly refusing to consider emergency advance parole applications under the "emergency situation" or "humanitarian reasons" criteria where the request does not relate to an immediate family member of the applicant. We understand that the decision to issue an emergency advance parole document is at the discretion of the local USCIS office, however certain field offices have adopted blanket policies that narrowly construe the USCIS expedite criteria. Would USCIS instruct offices to not create additional blanket limitations on the issuance of emergency advance parole and remind them that there is no requirement that an emergency advance parole request relate to an immediate family member?

USCIS Response: Issuance of an advance parole document is a matter of discretion, not entitlement. While there is no requirement that the emergency must relate to an immediate family member, it is a factor weighed in determining whether an emergency request for advance parole document should be favorably considered. USCIS will remind the field that a request for emergency issuance of an advance parole document need not necessarily be related to an immediate relative.

I-212 Acceptance and Adjudications

13) According to the USCIS website, a person who is currently abroad and who does not require an I-601 to waive any inadmissibility ground is to file an I-212 application with the USCIS field office with jurisdiction over the place where the deportation or removal proceedings were held. However, AILA has received reports that some field offices are refusing to accept these I-212

[14] Case Example: (A number redacted by USCIS).
[15] USCIS may expedite a petition or application if it meets one or more of the following criteria: severe financial loss to company or person; emergency situation; humanitarian reasons; nonprofit organization whose request is in furtherance of the cultural and social interests of the United States; Department of Defense or national interest situation; USCIS error; or compelling interest of USCIS.

applications. When a field office refuses to accept the I-212, the applicant is forced to file with the Nebraska Service Center (NSC) and hope that the NSC agrees to accept the filing under the "Special Circumstances" exception. If successful, the file is eventually transferred from the NSC to the field office that should have accepted the filing in the first place. This causes significant delay and ongoing separation for families who are torn apart but with potential immigration relief available.

What measures have been taken to train local offices on their obligation to accept these direct filings, what can be done to ensure this problem does not continue, and what is the recommended method of inquiry if cases are still refused by the field office despite these instructions?

USCIS Response: The current information about where to file a Form I-212 is on the USCIS website at http://www.uscis.gov/forms/direct-filing-addresses-form-i-212-application-permission-reapply-admission-united-states-after-deportation-or-removal. That information clearly shows that USCIS has not transferred the authority to adjudicate an immigrant visa applicant's stand-alone Form I-212 to the NSC. If an attorney or applicant is experiencing an issue with the filing of a Form I-212, he/she should ask to speak to a supervisor.

I-290Bs

14) AILA members are reporting significant delays in the forwarding of I-290Bs/EOIR-29s being forwarded to the AAO and BIA. We have received reports where some appeals have remained at the field office level for months, even close to a year, before being forwarded to the BIA or the AAO. Members attempt to work through the Field Office Director (FOD) or through local liaison, but with limited success.

    a) According to the AAO Practice Manual, the USCIS field office that issued the unfavorable decision will first conduct an "initial field review" which should be completed within 45 days.[16] The AAO also specifies that the transfer from the originating jurisdiction should be completed within 75 days of filing.[17] What procedure can attorneys follow if the field office does not forward the I-290B to the AAO within a timely manner?

    b) What procedure can attorneys follow if the field office does not forward the EOIR-29 to the BIA in a timely manner?

    USCIS Response: The regulation only requires that the deciding official forward the appeal 'promptly' to the AAO. 8 CFR 103.3(a)(2)(iv). Please notify the Field Office Director if the case has not been forwarded to the BIA or AAO.

Would USCIS consider requiring supervisory review of all Forms I-290B prior to a final decision being issued? AILA members are concerned that in cases where the law was misapplied, sending the case back to the officer who originally adjudicated the case will lead to

[16] AAO Practice Manual, Chapter 6.2 Processing Times and Status Inquiries; *See* 8 C.F.R. §103.3(a)(2)(iii).
[17] *Id.*

the same incorrect result. Having a supervisor review Forms I-290B would help ensure consistency in adjudications.

c) **USCIS Response:** A supervisor or senior officer reviews Motion to Reopen or Reconsider decisions before they are sent to the applicant.

EB-5 Issues

15) We appreciate that the Immigrant Investor Program Office (IPO) is working hard to enhance the EB-5 Program through the development of policy guidance on emerging issues. In addition, we applaud USCIS's commitment to holding quarterly EB-5 stakeholder engagements. While these engagements offer a great opportunity for those new to the EB-5 program to learn and ask general questions, this format has failed to provide a meaningful venue to address highly technical or complex issues. Would USCIS consider re-establishing the smaller, public gatherings known as "Conversations with the Director?" The conversations – which were open to the public – were very productive and allowed the participants to tackle more complex issues.

USCIS Response: In light of potential legislation to reauthorize the regional center program, USCIS anticipates utilizing a wide range of engagement options and will consider AILA's request as it moves forward. USCIS welcomes all suggestions to ensure its EB-5 stakeholder engagements meet the needs of the entire stakeholder community. USCIS is committed to ensuring that all interactions with EB-5 stakeholders comport with the requirements of the newly-released EB-5 protocols and that no stakeholder interactions give the appearance of favoritism or preferential treatment.

The "Conversations with the Director," which occurred in FY 2011and 2012, offered in-person attendance to the first 25 registrants and phone attendance to other interested parties. The landscape of the EB-5 program has changed significantly since then. In FY 2011, there were approximately 100 regional centers at the start of the fiscal year and USCIS received about 3,800 I-526 petitions that year. By comparison, at the close of FY 2015, there were more than 740 USCIS-approved regional centers and USCIS received more than 12,000 I-526 petitions. USCIS is mindful of the dramatic growth of the program as it considers engagements that will be most beneficial to the program as a whole and to all of its stakeholders.

16) During the February 2014 stakeholder call, USCIS announced that it was beginning to work on revised EB-5 regulations and solicited feedback regarding proposed changes. What is the current status of any proposed regulations?

USCIS Response: The proposed regulations have been delayed due to the program reauthorization anticipated in FY 2016, which may result in statutory changes to the program. The revised estimated completion date of the draft regulation is September 2016.

17) Before the creation of IPO, Form I-526 and Form I-829 petitions were adjudicated by CSC. During that time, AILA regularly engaged with CSC through an established liaison process to resolve certain routine case issues like errors on receipt notices and failure to send notices to attorneys, and to inquire on cases pending past the posted processing times. Members

report that they are now being directed to send all inquiries to a designated e-mail box (USCIS.ImmigrantInvestorProgram@uscis.dhs.gov). Unfortunately, these inquiries result only in template responses that do not solve the underlying issue. If members call the NCSC I-800 number, they are directed to submit their question to the designated e-mail address. Would USCIS consider establishing a more formal case inquiry system to resolve EB-5 case issues where the attorney or petitioner is unable to be resolve the problem through the current established methods?

USCIS Response: The IPO Stakeholder Engagement Branch was established in April 2014 to provide more timely responses to stakeholder inquiries, to provide more useful and timely program information on a more frequent basis, and to manage IPO's stakeholder engagement plan. In addition to responding to congressional inquiries about 125 times per month, the branch also responds to approximately 760 customer inquiries each month. USCIS is committed to improving service for all IPO customers and will consider enhancing its customer service tools and processes.

18) During the last stakeholder call in Los Angeles in August 2015, the Director stated that USCIS plans on implementing a process at the I-829 stage that will lead to interviews of investors at the field office.

a) What is the purpose of these interviews? What are the criteria for choosing which cases will be transferred for interview?

USCIS Response: Like any USCIS interview, the purpose of these interviews will be to provide the officer with information needed to determine whether the petitioner meets eligibility criteria. As discussed in a recent GAO report, these interviews will help USCIS better manage the EB-5 program. USCIS IPO will develop interview criteria in conjunction with other USCIS components and agency partners and may also use a statistical sampling methodology to select petitioners for interview.

b) Please describe the training that USCIS officers, many of whom will be new to EB-5, will undergo before interviews are commenced.

USCIS Response: IPO hires many experienced USCIS employees to adjudicate EB-5 applications and petitions. Many of its adjudicators have worked in USCIS field offices and have conducted interviews in that capacity. All Adjudications Officers assigned to IPO receive intensive training on the EB-5 program and attend USCIS adjudicator basic training, if they have not done so previously. Additionally, before adjudicating Form I-829, Adjudications Officers develop proficiency adjudicating Form I-526, so no employees that are new to EB-5 will be conducting these interviews.

c) When will this new policy be implemented?

USCIS Response: Although USCIS may conduct an I-829 interview at any time if it is necessary for that particular adjudication, it anticipates implementing a more comprehensive Form I-829 interview strategy in late FY 2016.

N-600s Filed by Applicants Living Abroad
(originally included on the RAIO agenda)

19) AILA members report receiving denials of N-600 applications where the child is no longer residing in the U.S. and report being erroneously advised to instead file Form N-600K. Please confirm that the N-600 Application for Certificate of Citizenship, and not the N-600K for Citizenship under INA §322, is the correct form to be filed on behalf of a child who enters the U.S. on an IR-4 or IH-4 visa and finalizes the adoption in the U.S. but then resides outside of the U.S. with his or her family.

USCIS Response: INA 320 requires as part of the eligibility criteria that a child reside in the United States in the legal and physical custody of the U.S. citizen parent in order to acquire citizenship. Therefore, a child who makes only a temporary visit to the United States would not acquire citizenship under this provision. Children, including adopted children, who reside outside the United States and are otherwise eligible to apply for citizenship under INA 322, should file the N-600K to do so.