

Immigration Newswire
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Bispecialization Snafus

As reported in the [last issue](#) of Immigration Newswire, USCIS began using a new I-129 and I-140 filing system on April 1, 2006. This system has been termed "bispecialization." This change has led to some not entirely unexpected snafus:

- 1.) The Vermont Service Center, to which all I-129 petitions are now to be sent, has not yet sent out receipt notices for many petitions filed subsequent to April 3. This is particularly problematic for H-1B beneficiaries who filed the petition in order to [port](#) to a new H-1B employer. Without a Receipt Notice in hand, it is not safe to port and could result in unauthorized employment.
- 2.) Neither the Vermont nor the California Service Center [Processing Time Reports](#) includes any information about TN Petitions. Apparently TN petitions are being processed, however, as our office has received at least one Receipt Notice for a TN petition filed post-April 1st.
- 3.) We have seen indications that USCIS is not necessarily following the procedures outlined in its [Fact Sheet](#) on bispecialization. For example, we filed an I-140 petition with the Vermont Service Center in March, before bispecialization took effect, and received a Receipt Notice from the Vermont Service Center. According to the Fact Sheet, Vermont should continue the adjudication of this case. However, when checking the [status of the case online](#), we discovered that the case had been transferred to the Texas Service Center for adjudication.
- 4.) The California Service Center Processing Time Report no longer has an I-140 processing time listed, even though it has not yet adjudicated all of the I-140 petitions filed prior to April 1.

The bottom line is that the USCIS' transition to the new bispecialization system is likely to cause problems in the processing of several cases, some of which will be inconsequential and others of which may take a long time to straighten out.

Benefits to I-360 Religious Workers Who Self-Petition

A little known and seldom used provision of immigration regulations permits an [I-360 religious worker](#) to file the petition on her own behalf. This provision is unusual. The only other employment-based immigrant visa category that allows a foreign national to self-petition is the Employment Based Second Preference "National Interest Waiver" category.

Ordinarily, a religious worker who does not self-petition must intend to work for the I-360 petitioner upon approval of her application for permanent residency. If the religious worker changes jobs before obtaining permanent residency, a new I-360 may need to be filed. (There may be [limited exceptions](#) to this rule).

A religious worker who files the I-360 on his own behalf may open up a limited type of portability for herself, allowing herself limited flexibility in changing jobs prior to obtaining permanent resident status. Self-petitioning does not obviate the requirement that the religious worker have a full-time, permanent U.S. job offer. A U.S. religious organization must still write a letter of support on the religious worker's behalf.

An example illustrates the benefit of self-petitioning. One of our clients recently filed his own I-360 petition as an fill-in Pastor who was going to be perpetually reassigned to new churches within the district. It did not make sense for the church at which he was first assigned to file the petition on his behalf, because he would not be working there any more by the time his green card application was approved. Therefore, he self-petitioned and we explained his unique pastoral position in the denomination. The arrangement was that he would be paid by whatever church he was currently assigned at and that the district would guarantee to pay his salary in the event the local church was unable to do so. Both the I-360 petition and the immigrant visa application were approved.

While self-petitioning does not allow unlimited portability to new jobs, it does provide some flexibility to accomodate for unusual religious worker positions.

Department of Labor Backlog Reduction Efforts

When the Department of Labor implemented the new "[PERM](#)" system for the filing of labor certification applications on March 28, 2005, all labor certs that remained pending under the old filing system got stuck in a backlog. Those old, unadjudicated applications initially were housed at the Department of Labor state or regional offices that were responsible for adjudications. PERM did away with the DOL state and regional offices. All labor certifications are now adjudicated by an electronic matrix and are reviewed by DOL staff at one of two National Processing Centers. Meanwhile, the pre-PERM labor certs that were still pending at the local offices were shipped to what were initially called Backlog Reduction Centers, and have since been re-named "Backlog Elimination Centers" in DOL's apparent effort to seem very serious about adjudicating those lingering cases.

A banner appeared on the [PERM web site](#) a few months ago stating that the backlog would be eliminated in 18 months. A month later, it was changed to state that it would be eliminated in 19 months. It now says 18 months again. According to the Biweekly Stakeholders Call between the American Immigration Lawyers

Association and the DOL, held April 17, 2006, DOL states that it is on course to eliminate the backlog by September 30, 2007, meaning that all of the cases that remain pending at the Backlog Elimination Centers should be adjudicated by that date.

Many of our clients had labor certifications filed as long ago as 2001 and have not yet received any word on the status of their case. At the time those cases were filed, not all DOL offices had a practice of acknowledging their receipt of labor certification applications. Therefore, the only confirmation we have that those cases were received is Federal Express tracking information. The Backlog Elimination Centers are not providing any information about the status of cases. People are thus left in the dark wondering what is happening to their application.

Changes to I-864 Affidavit of Support Filing Requirements

Family-based immigrant visa applicants, and certain employment-based applicants, are required to present an **[I-864, Affidavit of Support](#)** as part of their **[adjustment of status or consular processing](#)** applications. USCIS has recently revised I-864 filing requirements that pertain to Adjustment of Status applicants. Previous USCIS policy required affidavit of support sponsors to provide their last 3 years of federal income tax returns and W-2 statements in support of the affidavit. Under the new guidelines, the sponsor need only provide the most recent year's Federal income tax return. USCIS has also recently clarified that income from unauthorized employment *can* be counted toward the income requirement on an Affidavit of Support.

In March, the Department of State adopted similar guidelines for consular processing applicants, meaning that I-864 sponsors for consular processing immigrant visa applicants only need to file their most recent year's tax return and W-2 statement. The Department of State guidance includes additional changes that *do not* apply to adjustment of status applicants: (1) the affidavit of support sponsor for Consular Processing applicants is not required to have the I-864 form notarized since the form is signed under penalty of perjury; and (2) the sponsor for a Consular Processing applicant need not supply a letter of employment unless required to do so by a consular post because the post doubts the veracity of the income stated on the affidavit.

USCIS Issues Fact Sheet on Immigration Security Checks

Most USCIS petitions and applications undergo some form of security clearance before an approval notice can be issued. The lengthiest security clearances are conducted on adjustment of status and naturalization applications. We have had some clients who have had to wait over a year for a security clearance to go through. Because security clearances are conducted by agencies outside of the Department of Homeland Security, USCIS has no control over how quickly the clearances are processed. Therefore, no type of intervention, including intervention by a U.S. Senator, can speed up a security clearance.

USCIS recently issued a [Fact Sheet](#) on how immigration security checks work. It provides some helpful information about the types of clearances that are conducted and explains why security checks can sometimes take so long.

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