

Immigration Newswire
Volume 5, Issue 8
September 18, 2006

Premium Processing Not Available for All EB-3 I-140 Petitions

According to the [USCIS web site](#), Premium Processing was made available on most Employment-Based Third Preference (EB3) I-140 petition on August 28, 2006 (excluding the "other workers" category). The web site indicates that USCIS plans to make premium processing available for other types of I-140 petitions at some point in the future, although no information has been released about when this service will become available.

After making the initial announcement that premium processing was available for EB3 petitions, the USCIS added certain limitations to the availability of I-140 premium processing. The web site now states:

Premium Processing Service is available for the Form I-140 classifications indicated on the chart ... provided that the case does not involve:

1. A second filing of a Form I-140 petition while an initial Form I-140 remains pending;
2. Labor Certification substitution requests; and
3. Duplicate Labor Certification requests (i.e., cases filed without an original labor certification from the Department of labor).

[Premium processing](#) is an expedited adjudication procedure which allows the petitioner or applicant to pay a \$1,000 fee in addition to any required filing fees, and which guarantees adjudication within 15 calendar days. Premium processing also affords the attorney, applicant or petitioner direct telephone contact with an actual USCIS adjudicator rather than with a mindless drone available at USCIS's general 1-800 number.

In most cases, it will not be beneficial to use premium processing for an EB3 I-140 petition, because priority dates are so retrogressed that most people's I-140s will be adjudicated years before a visa number becomes available, even without premium processing. However, there may be certain cases, such as where an EB3 labor certification has been stuck in a backlog for several years, where premium processing on an EB3 I-140 is of great benefit. In addition, premium processing of an EB3 I-140 is beneficial for those wishing to take advantage of section 104(c) of the [American Competitiveness in the Twenty First Century Act \(AC21\)](#). Section 104(c) of AC21 permits extensions of H-1B status past the 6th year in three-year increments where:

- (1) An I-140 petition has been approved on the beneficiary's behalf; and
- (2) The beneficiary is unable to obtain permanent residence because a visa number is unavailable.

These extensions are permitted in three-year increments until the alien's application for adjustment of status has been processed and a decision made thereon. Because an I-140 approval is needed before a 3-year H-1B extension can be granted under AC21 104(c), premium processing may permit some H-1B holders to extend their stay in cases where it would otherwise not be possible for them to do so.

Highlights of AILA Meeting With Social Security

Following are highlights from the May 2006 meeting between the American Immigration Lawyers Association and the Social Security Administration (SSA):

1. SSA reiterated its advice that aliens wait to apply for a Social Security Number until 10 days after entering the U.S., as SSA must electronically verify the status of each alien with USCIS before issuing a Social Security Number. If the alien applies for a number fewer than 10 days after admission, the information about the alien's status may not yet be uploaded into the database. The result is that a manual check of the alien's status may be launched and it could take months.
2. SSA has taken the stance that the spouses of E and L nonimmigrants are not required to obtain an Employment Authorization Card (EAD) from USCIS in order to be eligible to receive a Social Security Number. While this seems to be the original intent behind the regulations allowing E and L spouses to work, USCIS has always taken the stance that E and L spouses must obtain EAD before working. Currently the USCIS has not reversed its position that EAD is required.

USCIS Purports to Have Eliminated the Naturalization Application Backlog

On September 15, 2006, USCIS issued a News Release stating that it has reduced the wait-time for N-400 (application for naturalization) adjudication from an average of 14 months to an average of 5 months. Not included in that calculation, however, are "cases that are pending law enforcement security checks."

Our office handles a fairly small volume of applications for naturalization. Most of the individuals who inquire about naturalization procedures with our office, we advise to file the application themselves as it is relatively straightforward in most cases and does not require attorney assistance. Cases that do require attorney assistance are typically those where the applicant has spent a significant portion of time outside the United States during the required residency period, or where other complications exist with the case. However, of the small volume of naturalization applications that we handle, approximately half are currently held

up in security clearances that are taking several months to resolve. Therefore it is our suspicion that the "backlog elimination" announced by USCIS is somewhat misrepresentative of how long naturalization applications are actually taking.

Security clearances must be run on every naturalization applicant. They are conducted by agencies external to USCIS, such as the FBI and CIA. Therefore, USCIS does not have control over how long the security clearances take. Often they can be held up because someone with a name similar to the applicant's has a criminal record or is wanted by the FBI. This is particularly true with very common names.

In some of our clients' cases, they have been called in for their naturalization interview *prior to conclusion* of security clearances. They are then told that they must await conclusion of security clearances before their application can be adjudicated. Applicants in this situation should be aware that under 8 C.F.R. 310.5(a), they have the right to petition a federal district court for relief. The court may either determine the issues brought before it on their merits, or remand the matter to the Service with appropriate instructions.

Bispecialization Phase II: Adjustment of Status Applications

As of July 24, 2006, USCIS has implemented phase two of "[Bispecialization](#)." All employment-based I-485 applications for Adjustment of Status based on an approved I-140 must now be filed at USCIS's Nebraska Service Center. The application will be adjudicated by either the Nebraska or Texas Service Center. The service center that issues the receipt notice is the service center that should be adjudicating the application.

Note that an employment-based I-485 application that is filed concurrently with an I-140 immigrant petition must also be filed at the Nebraska Service Center, since all I-140 petitions are now filed at Nebraska. However, an I-485 application filed to accompany a currently pending I-140 petition would be filed either at Nebraska or Texas, depending upon which service center issued the receipt notice for the I-140, as the I-140 and I-485 must be adjudicated by the same service center.

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