

**National Visa Center/AILA DOS Liaison Committee Meeting  
November**

## 2. Obtaining Police Certificates From the US

We understand that the NVC requires a copy of the applicant's police certificate(s) before scheduling the case for interview; however, in cases where the beneficiary is still living in the U.S. (i.e. he/she just received approval of I-601A), sometimes the police certificate cannot be obtained until he/she travels to the foreign country because fingerprints or other national documents are required. This adds a significant delay to cases, many of which already contain elements of extreme hardship. Would the NVC consider allowing the applicant to indicate that he/she will bring the police certificates to the interview in those instances so that the case can be scheduled and the applicant's return to the US is not delayed? If this is not an option, is there another work-around that may be used in these circumstances?

**RESPONSE:** Applicants who find themselves in this situation can submit a letter in lieu of the police certificate when they submit their other civil documents to NVC. The letter should outline that the applicant is unable to obtain the police certificate due to complicating factors caused by the I-601A approval, and that he or she will obtain and submit the Police Certificate at the time of the interview. If you have already submitted your forms and documents and NVC is *only* waiting for the Police Certificate, you can email this letter to [nvcattorney@state.gov](mailto:nvcattorney@state.gov) instead, and we will work to update and qualify your case accordingly.

## 3. Reopening "NVC Complete" Cases

On May 1, 2015, the China EB-5 Immigrant Visa category retrogressed 2 years, which meant that applicants had about 4-5 years wait time for a visa number to become available. Until September 2016, NVC initiated DS-260 processing as soon as they received approved cases from USCIS. In September 2016, NVC switched to the "Chart B" early filing system, which means NVC does not begin visa processing (by permitting the DS-260 filing and fee payment via the CEAC site), until about a year prior to expected visa availability. Therefore, between 5/2015 and 9/2016, NVC accepted fees and DS-260s and issued "NVC Complete" letters on cases that still had 2 to 4 years wait before visa availability. It appears that NVC is now reopening these cases.

- a. Can NVC confirm whether all such cases will be reopened automatically?

**RESPONSE:** NVC is only re-opening EB-5 cases impacted by the October 2016 retrogression. This is due to a change in policy where NVC will no longer place cases (regardless of visa classification) in non-current status when the Chart B, Dates for Filing, retrogress.

- b. If the cases are not being reopened automatically, what is the best way to notify NVC that the applicant would like the case reopened?

**RESPONSE:** They will be re-opened automatically, and NVC will notify case agents when this occurs.

- c. Once the case is reopened, will the applicant be required to pay any fees and submit any civil documents again?

**RESPONSE:** If the fees were already paid, and the case did not enter MFL or Termination status, then the fees will remain on the case and will *not* need to be repaid.

- d. If a fee or form DS-260 is submitted by a child applicant during a time of visa non-availability, is the child's age automatically frozen on the date of visa availability if the child has not yet passed its CSPA-adjusted 21<sup>st</sup> birthday?

**RESPONSE:** Yes, this is correct.

If not, does the child need to attend an interview and adopt/verify/swear to the DS-260 filing in order to activate it and become protected under CSPA?

**RESPONSE:** N/A

- e. In the May 2015 to September 2016 window, hundreds, perhaps thousands of EB-5 children filed DS-260s and/or paid fees. Will they be grandfathered in?

**RESPONSE:** If a fee was paid or a DS-260 filed on a child's behalf while the case was current per Chart B, Dates for Filing, this fulfills the "sought to acquire" requirement under Sec. 3 of CSPA. Therefore, the child's age will freeze on the day a visa becomes available per Chart A, Final Action Dates. Please note that this is true of all visa classifications, not only EB-5s.

#### **4. Early Filing Dates for CSPA Cases**

Could the NVC please explain the relation between the Early Filing Dates (Chart B) and freezing a CSPA adjusted age, if any?

**RESPONSE:** The early filing dates (or Dates for Filing - Chart B) reflect dates when applicants with a priority date earlier than the application date in the chart are notified to start paying fees and submitting forms and documents to NVC. The following actions will fulfill the "sought to acquire" requirement under Sec. 3 of CSPA:

- Paying the Affidavit of Support fee;
- Paying the Immigrant Visa fee on behalf of the applicant in question;
- Completing and submitting Form DS-260 online on behalf of the applicant in question;
- Submitting a completed, signed Affidavit of Support (listing the applicant in question) to NVC; or
- Filing an I-824 on behalf of the applicant in question with USCIS

Taking any of the above actions while the case is current per Chart B, will, in turn, freeze the CSPA adjusted age of the applicant upon the date the case becomes current by the Final Action Date (Chart A), because the applicant has technically already sought to acquire.

#### **5. I-601A Email Scam**

Several AILA members have reported receiving the following email from [NVCI601A@state.gov](mailto:NVCI601A@state.gov) asking that applicants with pending I-601A applications pay an immigrant visa application processing fee by visiting [www.immigrantvisas.state.gov](http://www.immigrantvisas.state.gov).

**From:** <[NVCI601A@STATE.GOV](mailto:NVCI601A@STATE.GOV)>

**Date:** April 25, 2017 at 6:45:11 AM EDT

**To:** <REDACTED BY AILA>

**Subject:** I601A MEP2013823022 - LOPEZ CRUZ, EDUARDO

Our records indicate that your immigrant visa application processing fee has not yet been paid. Please go to [www.immigrantvisas.state.gov](http://www.immigrantvisas.state.gov) and click the "Pay immigrant visa application processing fee(s)" link to make your fee payment.

If you need a physical copy of your payment receipt to complete your I-601A application you should request one from the NVC after completing payment.

One of our members who have received these emails has confirmed with the NVC that this is not an official email and that the website is not linked to the Department of State's domain. It appears that the website has now been deactivated; however, we would appreciate if NVC would include information on the relevant official website or in your official correspondence warning about these scams and advising applicants against making payments through links sent in emails.

**RESPONSE:** Thank you for bringing this to our attention. This is actually an email sent from our system with outdated information, and not a scam. We will replace the destination webpage from the deactivated [www.immigrantvisas.state.gov](http://www.immigrantvisas.state.gov) to the correct, working webpage: <https://nvc.state.gov/fee>.

## 6. Pending I-601 and Case Continuances

In cases where the adjudication of I-601/I-601A applications takes longer than one year, AILA members are reporting that they are receiving emails from the NVC asking if they wish to continue the case as it has been over a year since the last communication. If they indicate that they wish to continue with the case, they are being asked to resubmit all of the required fees. As the delays in communication with the NVC are a result of USCIS adjudication delays, we would like to avoid having these applicants, all of whom are suffering extreme hardship, repay the fees.

- a. Is it best for attorneys to proactively communicate with the NVC on a regular basis via the [NVCattorney@state.gov](mailto:NVCattorney@state.gov) email to alert NVC that the case is still pending and they would like to keep it open?

**RESPONSE:** USCIS notifies NVC whenever a beneficiary files an I-601A. If the case is in NVC's system, we will update the case to hold it until we are notified of USCIS' decision (approving or denying the waiver). In some circumstances, NVC may fail to receive the notification from USCIS. Therefore, we recommend you confirm that USCIS notified us of the I-601A filing about a week or two after you receive the approval notice. If we do not have proof, you can provide us with the approval notice and we will work with USCIS to update our records to reflect the filing.

- b. If this is not the most efficient way, could you please provide the best way that AILA members should communicate this information?

**RESPONSE:** Contacting [NVCattorney@state.gov](mailto:NVCattorney@state.gov) mailbox is still the best mechanism for dealing with these issues.

- c. In cases where fees have already been paid twice, is there anything the applicants can do to request a refund of those fees?

**RESPONSE:** As their attorney of record, you can write to the [NVCattorney@state.gov](mailto:NVCattorney@state.gov) mailbox and request a refund. Please be sure to indicate the termination was invalid because the applicant had an I-601A pending with USCIS and provide proof of the waiver filing (such as the I-797 Approval Notice for the I-601A).

- d. Will the NVC consider revising the requirement that these fees must be paid a second time if the I-601/I-601A case is still pending beyond one year due to USCIS adjudication delays?

**RESPONSE:** Yes, based upon your feedback, we are reevaluating our current termination protocols with the Visa Office with respect to these circumstances.

## 7. G-28 and Contacting Representatives

Several of our members report not being sent notices despite having a G-28 on file.

- a. Has there been a policy change with regard to communicating with attorneys of record?

**RESPONSE:** There have been no changes to our policy for communicating with attorneys or other representatives.

- b. What is the best way to ensure that the attorney receives the relevant notices?

**RESPONSE:** The best way to assure proper communication is to keep all physical and email addresses up-to-date with NVC.

- c. Will the NVC communicate with any member of the law firm staff (other attorneys, paralegals, etc.), or must communication be only with the attorney of record on the G-28?

**RESPONSE:** As long as the law firm staff provides the required privacy release information, NVC will communicate with them and respond to their inquiries.

- d. Will the NVC accept a G-28, or a letter on firm stationery, with the signatures of all the immigration attorneys in the firm, the names of whom are listed on the G-28 or the letter, to ensure that any of the firm's attorneys can communicate with the NVC?

**RESPONSE:** NVC can only record one Attorney name per case; however, anyone in the firm can write in, and as long as they provide the privacy release information, NVC will respond if identifiably working on behalf of the attorney of record.

## **8. NVC System Issues Impacting Fee Payments and Cover Sheets**

Several cases have been reported where CEAC indicates that the AOS has been "paid" but the IV fee is "in process," even several weeks later. Similarly, other cases in which both fees have been paid, the representative cannot print out the cover sheet.

In particular, since the July 10, 2017, update to the CEAC, it appears that many cases are held up at either the I-601A or DS-260 stage.

When fee bills are being paid, the funds clear through accounts as before, within 1-2 business days. However, the CEAC system does not indicate that fees have been paid. In addition, fees that were paid before July 10, 2017, are not showing as paid in the NVC system.

As a result, the attorney or applicant cannot use the NVC's system to open a new DS-260 form, generate a cover sheet in preparation for a consular interview, or print fee bill receipts as necessary for a USCIS I-601A application. Cases have been frozen for three weeks or more. In a few instances, the CEAC system has apparently communicated with the NVC system, so that fees show up as 'paid' in the NVC system. However, this update does not resolve the issue, because when the attorney or applicant attempts to print a cover sheet, a message appears that says 'application error.' A spreadsheet with five examples is attached for your review; additional information about these cases can be provided upon request.

NVC customer service has advised that this is a 'known issue.' Their recommended work-around is to email a bank statement with proof of payment to NVC for each case. While this does eventually address the underlying issue, it significantly slows down the cases, and it adds extra work for the NVC officers.

Would the NVC please look into this issue with the third party contractors to ensure that the online system is working properly? Please also advise on any efforts that have been taken to date to resolve this issue and an anticipated timeline for resolution.

**RESPONSE:** We are aware of issues affecting the submission and transmission of fee payments within the CEAC application. We have been working closely with the CEAC developers to rectify these payment issues. The CEAC Development Team has fixed the issues for the cases contained in your attachment. All of these applicants should now be able to generate receipts, cover sheets, and complete the DS-260.

When you encounter fee related issues like the ones described above, please call or email [NVCattorney@state.gov](mailto:NVCattorney@state.gov) and provide us with an overview of your issue. We will work with the CEAC Development Team to fix the problem and get your case back on track.

## **9. Document Review**

After submission of Form DS-260, the NVC sends an automatic email stating that the form will not be reviewed until an affidavit of support and civil documents are submitted. However, as a common practice, our members submit Form DS-260 electronically, and a package is mailed with all forms and documents required for consular processing. As the automatic email gives no indication that the package has arrived, many members email the NVC to confirm delivery and they report receiving a reply stating that NVC will not review the file to see if the package has arrived. AILA members routinely confirm with the courier (FedEx, etc.), that the package has been delivered, but, we have received reports where,

despite the courier confirming delivery, the NVC eventually reaches out and states that it has not received the documents. This can cause serious delays in processing and results in applicants having to resubmit documents after months of waiting. Is there a mechanism to create an automatic email to alert applicants and/or their representative when the package containing the required documents has arrived to the NVC? Alternatively, would NVC consider confirming with attorneys or applicants who proactively reach out for confirmation that the package has arrived that the NVC has received the mailed documents?

**RESPONSE:** We are willing to explore developing a mechanism that would confirm the receipt of mail at NVC. Thank you for the suggestion. Additionally, a party to a case can always contact NVC by mail, phone, or email and ask if/when we received a package of mail for their case. Please note that this is an issue that will be alleviated for cases processed in the Modernized Immigrant Visa system that is currently being piloted.

### **10. Modernized Immigrant Visa (MIV) Process**

We understand from our last meeting that the Consular Electronic Application Center (CEAC) has been undergoing significant program developments. Please provide an update on the implementation of the Modernized Immigrant Visa (MIV) application process at the initial six pilot posts. In addition, can NVC provide any update on the worldwide deployment of MIV processing?

**RESPONSE:** Round 1 for the six pilot posts started in May 2017. All I-130 petitions received at NVC for the six posts since then have been using the new enhanced CEAC. With the success we have seen in the first round, we will be expanding the pilot to eight more posts on November 1 (Addis Ababa, Baghdad, Guatemala City, Kiev, Monrovia, Phnom Penh, Tegucigalpa, and Tashkent). Our plan is to begin worldwide rollout in January 2018 and complete the rollout with Ciudad Juarez in October 2018.

### **11. Update on Processing and Response Times**

Please provide an update on the following:

- a. How long it takes to receive a file from USCIS after approval of an immigrant petition?

**RESPONSE:** It can take up to six weeks for a petition to arrive at NVC after USCIS approval.

- b. How long it takes to enter data in the NVC system once a file is received from USCIS?

**RESPONSE:** It currently takes seven business-days for NVC to data enter a petition into our system after receipt from USCIS.

- c. How long should an applicant wait after approval of a petition by USCIS before inquiring about the status of the application with the NVC?

**RESPONSE:** It typically takes up to six weeks for a petition to arrive at NVC after USCIS approval. If case longer than six weeks to arrive at NVC, we recommend you reach out to [NVCresearch@state.gov](mailto:NVCresearch@state.gov). Our team of case

researches will work with USCIS to attempt to locate the petition and get it transferred to NVC.

- d. How long should it take for an applicant or attorney to receive a response from AskNVC@state.gov or NVCattorney@state.gov?

**RESPONSE:** You should receive a response within seven business days.

## **12. Escalation Protocol**

At our last meeting in November 2016, the NVC provided the following process for attorneys to inquire about cases pending with the NVC.

When inquiring about a case, send an e-mail to NVCattorney@state.gov. If you do not receive a response within eight business days, send a second follow-up e-mail to NVCattorney@state.gov. If you still don't receive a response within an additional eight business days, send a third e-mail to NVCattorney@state.gov with "Attention PI Supervisor" in the subject line. You should receive a response from the PI Supervisor within five to seven business days.

Are there any changes to this escalation protocol?

**RESPONSE:** No.



**Live Questions During Visit Q&A Session:**

1. A visiting attorney mentioned that she never receives notification from NVC when they forward an I-129F petition to an embassy or consulate.

**RESPONSE:** After reviewing its letter generation protocols, NVC confirms that they are not sending notifications to attorneys of record when they send an I-129F petition to a U.S. Embassy or Consulate. Based upon this finding, NVC will update its I-129F letter protocols to begin sending notifications to attorneys of record as soon as possible. NVC thanks the AILA member for this valuable feedback.

2. A visiting attorney mentioned that she is unable to select a country from the “Country/Region” dropdown in the “Family > Children” section of Form DS-260 for a particular case.

**RESPONSE:** This appears to be related to a known issue with Form DS-260 where a user initially selects the “Do Not Know” box for the child’s address then unchecks this same box in the same instance. This will lead to the “Country/Region” field being unselectable (grayed out).

A user can work around this issue by answering “Yes” to the question “Does this child live with you?” and then change the answer back to “No.” This will wipe out the existing data and should enable the “Country/Region” field again.

Consular Systems and Technology’s DS-260 Development Team is working to address this issue in a future release of the DS-260.

3. Several visiting attorneys mentioned that they would like to see NVC offer a service to reopen Form DS-260 if an applicant makes a mistake on the form.

**RESPONSE:** NVC is currently developing a process for representatives, petitioners, or applicants to reopen Form DS-260 by contacting NVC. We will inform AILA as soon as this new process is finalized.

4. A visiting attorney mentioned that she sometimes does not receive IV fee bills for certain derivative applicants because it appears to NVC that the derivative applicant’s CSPA adjusted age is over 21. In these circumstances, even though she does not agree with NVC’s CSPA adjusted age, the applicant cannot pay the IV fee bill or submit a DS-260 to “seek to acquire” under CSPA.

**RESPONSE:** In this situation, the attorney can still fulfil the “sought to acquire” requirement under Sec. 3 of CSPA by paying the Affidavit of Support Fee and ensuring the derivative applicant in question is listed on the Affidavit of Support filed with NVC. See 9 FAM 502.1-1(D)(6)(a)(3). The Affidavit of Support Fee is a case level fee and applies to all eligible applicants on the case. If an attorney or applicant insists on an adjudication with a consular officer in spite of NVC’s CSPA age assessment, then NVC will add the derivative applicant to the case and require the payment of fees to continue processing. Should the Consular Officer find that the derivative applicant in question’s CSPA adjusted age is *under* 21 at the time of the interview, the date the Affidavit of Support fee was paid can act as his or her “sought to acquire” date to lock in the CSPA benefit.