



**Homeland  
Security**

**DATE:** August 24, 2007  
**TO:** Dr. Emilio T. Gonzalez, Director, USCIS  
**CC:** Michael P. Jackson, Deputy Secretary, DHS  
**FROM::** Prakash Khatri, CIS Ombudsman  
**RE:** **Recommendation on the Processing of Petitions that are Returned by the U.S. Department of State for Revocation/Revalidation**

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***Recommendation Summary:***

***The Ombudsman recommends the following regarding USCIS adjudications of petitions that are returned to USCIS by the U.S. Department of State (DOS) for revocation or revalidation:***

- ***Issue receipt notices to customers when the petition file is returned and received by USCIS Service Centers.***
- ***Establish a nationwide standard for the re-adjudication of petitions returned by consular offices for revocation or revalidation and amend the Operating Instructions/Adjudicator's Field Manual accordingly; include a "REVOCATION" entry in the processing time reports.***
- ***Provide additional information about revocation or revalidation processes on the USCIS website.***

**I. BACKGROUND**

**A. Applicable Legal Provisions**

The Immigration and Nationality Act (INA) provides for various types of revocations: 1) Automatic revocation;<sup>1</sup> 2) Revocation due to failure to follow the one-year notification for a visa;<sup>2</sup> and 3) Revocation on notice.<sup>3</sup> The revocation of an immigrant petition is regulated by INA Section 205 and Title 8 Code of Federal Regulations (CFR) Section 205. Nonimmigrant benefits and their revocation or revalidation are regulated in the INA section governing the particular benefit and are supplemented by 8 C.F.R. Section 214.2.

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<sup>1</sup> See INA §205, as implemented by 8 C.F.R. §205.1. Reasons for an automatic revocation include age-out, withdrawal of an approved petition, or death of the beneficiary.

<sup>2</sup> See INA §203(g).

<sup>3</sup> See INA §205, as implemented by 8 C.F.R. §205.2

## **B. Petitioning, Visa Issuing, and Revocation/Revalidation Procedures**

Generally, a petition approved by USCIS is a prerequisite for the issuance of an immigrant or nonimmigrant visa to a beneficiary residing abroad. USCIS does not approve a petition until it has been established, through the submission of documentary evidence, that the required relationship or qualifications exists. Once approved, USCIS forwards the approved petition to DOS for visa processing.<sup>4</sup>

DOS conducts preliminary processing of the visa petition at its National Visa Center (NVC) in the United States; after preliminary processing is completed, an interview is scheduled at a consular office, generally in the country of nationality of the beneficiary. After the interview of the beneficiary, a consular officer: 1) issues the visa; 2) denies the visa pursuant to INA Sections 212 and 221; or 3) returns the visa request pursuant to INA Section 221(g) to USCIS for further action – possible revocation of the underlying approved petition or revalidation.<sup>5</sup> Generally, DOS only returns a petition to DHS/USCIS for revocation where fraud, misrepresentation, or ineligibility is likely to lead to revocation, not where it is merely suspected.<sup>6</sup> Return of the petition has to be supported with factual and concrete reasons previously not considered by USCIS because the revocation procedures should not be a re-adjudication by DOS of the petition. If the consular officer decides to return the petition, the beneficiary is given written documentation containing an explanation and the legal basis for the non-issuance of the visa and the return of the petition to USCIS.<sup>7</sup>

Upon return to the USCIS facility, the status of the petition is logged into USCIS' system. The "re-locating" of the petition into the system updates the national USCIS database system, which in turn updates USCIS' Case Status Online system available to customers on USCIS' website. Some, but not all, of the USCIS service centers send receipt notices to individual petitioners, informing them that the petition is now located at the particular USCIS facility. A case then is prepared for re-adjudication and forwarded to an adjudications officer, who will evaluate the reasons provided by the consular officer for the return.<sup>8</sup> If the adjudicator concurs with the consular officer's reasoning, USCIS issues a "Notice of Intent to Revoke" to give the petitioner the opportunity to respond.<sup>9</sup> Once the response from the petitioner is received, the adjudications officer will either reaffirm the petition and send it to the DOS for processing, or deny the petition and thereby revoke it.

## **C. Issues Outlined by USCIS Customers**

Petitioners and beneficiaries have reported the following issues to the Ombudsman:

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<sup>4</sup> See INA §221.

<sup>5</sup> It is also possible, pursuant to INA §205, that USCIS itself requests for "good and sufficient cause" the return of the petition.

<sup>6</sup> See Cable, DOS, 01-State-121801 (July 13, 2001); see also Foreign Affairs Manual (FAM) 42.43.

<sup>7</sup> See Cable, DOS, 04-State-41682 (February 25, 2004); see FAM 42.43; see also Matter of Arias, 19 I&N Dec. 568 (BIA 1988).

<sup>8</sup> USCIS, Adjudicator's Field Manual, Redacted Public Version, 20.3(b)(1) (2007).

<sup>9</sup> See 8 C.F.R. §205.2.

- 1) For a prolonged period of time, over six months in the majority of cases problems received by the Ombudsman and often for over 12 months, many petitioners are unable to obtain case status information through the National Customer Service Center (NCSC) or Case Status Online. Once their cases are sent for revocation by DOS to USCIS, many petitioners are only able to locate their cases after receiving the Notice of Intent to Revoke.
- 2) This lack of information and lengthy processing time may cause a petitioner to file multiple new petitions that ultimately will not be processed by DOS until USCIS has acted on the original and returned petition.
- 3) Customers have a limited understanding of the process in general, and in particular why there is often a prolonged processing period for USCIS to review and adjudicate the returned petition.

## **II. RECOMMENDATION AND JUSTIFICATION**

### **A. Issue receipt notices to customers when the petition file is returned and received by USCIS Service Centers**

As discussed above, often the first time a petitioner receives written information about the case is when the petitioner receives the “Notice of Intent to Revoke.” To enhance customer service and reduce the number of customer inquiries, the Ombudsman recommends that upon “re-locating” the petition into USCIS’ system, a receipt notice should be produced and mailed to the petitioner.

### **B. Establish a nationwide standard for the re-adjudication of petitions returned by consular offices for revocation or revalidation and amend the Operating Instructions/Adjudicator’s Field Manual accordingly; include a “REVOCATION” entry in the processing time reports.**

While USCIS management has established processing time goals for adjudications subsequent to issuance of a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID), the Ombudsman knows of no such guidelines for revocation/reaffirmation adjudications.<sup>10</sup> This recommendation possibly would prevent duplicative work for USCIS where individuals file additional petitions, often the Form I-130 Petition for Alien Relative and/or Form I-129F Petition for Alien Fiancé(e), because the original petitions were revocable based on the evidence obtained by the consulate but remain pending. Where fraud is suspected, appropriate law enforcement authorities can be notified and additional fraudulent petitions/applications thwarted.

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<sup>10</sup> See Operations Instructions, §20; see also Interoffice Memorandum, by Michael Aytes, Associate Director, Domestic Operation to Regional Directors, District Directors, Service Center Directors, Directors, National Benefits Center, Officers-in-Charge, entitled “Case Management Timelines,” (October 27, 2006) (hereinafter “Memorandum on Case Management Timelines”). The Ombudsman has received a number of case problems, including one petition pending with the California Service Center since 2001.

Currently, USCIS processing reports do not include the category “revocation.” Without publicly available processing reports, USCIS customers cannot have any expectations about when cases will be completed pre-or post-adjudication of the Notice of Intent to Revoke.

Since March 2006, USCIS significantly improved its system by “re-locating” into USCIS systems petitions that are received for revocation/revalidation from DOS. Under this process, USCIS: 1) locates and traces a returned petition; and 2) includes adjudications of these petitions for statistical information gathering purposes. A logical step following these improvements would be to provide processing times on the USCIS website.

### **C. Provide additional information about revocation or revalidation processes on USCIS’ website.**

Currently, the USCIS website does not provide information about the revocation/revalidation process. Customers are left with the information they receive from DOS. When inquiring about process and procedures with either USCIS or DOS, the sense of helplessness of individual petitioners and beneficiaries is often compounded by the fact that DOS refers petitioners to USCIS, and/or USCIS refers them back to DOS if USCIS does not yet have jurisdiction of the petition. Once USCIS has the petition, the agency responds to inquiries by stating that the petition is “pending” and that the petitioner will be contacted in the future. Providing information about the revocation process on the USCIS website (that may be coordinated with information provided on the DOS website) would be a significant improvement of customer service.

The website should provide information such as: 1) a general explanation of the petition and visa process through the revocation/revalidation stage; 2) the impact of multiple petitions that are filed after a petition is sent for revocation/reaffirmation; and 3) when it is appropriate to make a case status inquiry with USCIS.

## **III. BENEFITS**

### **A. Customer Service**

These recommendations would improve customer service by providing for: 1) tracking of petitions; 2) timely adjudication of consular returns; 3) enhanced customer information; and 4) improved process accountability.

### **B. USCIS Efficiency**

These recommendations would improve USCIS efficiency by: 1) enhancing information access for USCIS officials; 2) reducing the number of customer inquiries; 3) enhancing USCIS’ adjudication procedures including data collection; and 4) improving interdepartmental communications and case processing.

### **C. NATIONAL SECURITY**

Recommendation from the CIS Ombudsman to the Director, USCIS

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These recommendations would not alter current USCIS security screening. They would eliminate or improve the screening of additional petitions that are filed during the revocation process of an earlier filed petition, and therefore, would enhance national security.