



U.S. Citizenship
and Immigration
Services

Memorandum

DATE: May 23, 2008

TO: Michael T. Dougherty
Citizenship and Immigration Services Ombudsman

FROM: Jonathan R. Scharfen /S/
Acting Director

SUBJECT: Response to Recommendation #33, Recommendation on the Processing of Petitions that are Returned by the U.S. Department of State for Revocation/Revalidation

Ombudsman Recommendation

Your office has recommended several changes in the way USCIS currently handles petitions that are returned by the U.S. Department of State (DOS) for revocation/revalidation.

The specific recommendations are that USCIS should:

1. Issue receipt notices to customers when the petition file is returned and received by USCIS Service Centers.
2. 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.
3. Provide additional information about revocation or revalidation processes on the USCIS website.

USCIS Response

USCIS appreciates your interest in the issue of processing petitions that are returned by DOS. Each recommendation listed above is addressed separately below:

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

Response to Recommendation #33, Recommendation on the Processing of Petitions that are Returned by the U.S. Department of State for Revocation/Revalidation

Page 2

This has been accomplished. Once a petition/application is returned by DOS and received by USCIS, it is updated in the USCIS database (CLAIMS-3). Since at least February 2006, a Form

I-797C, Notice of Action, is generated and forwarded to the petitioner informing him/her that DOS has returned their petition for review.

2. 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.

USCIS does not believe that it is practical to establish nationwide standards for re-adjudication for returned petitions from DOS because the processing of the revocation depends on the information received from the Consulate. For example, cases returned for fraud or suspected fraud are routed to dedicated fraud units for further investigation. The length of the fraud investigation depends on the nature of the alleged fraud and whether or not the case is part of a larger fraud scheme. Additionally, it is not always feasible to disclose information on a pending revocation involving fraud, as USCIS would not want to compromise an ongoing investigation. There are several situations where USCIS may not act on a specific returned petition. For instance, K-1 petitions are temporally limited and may expire due to the passage of time. According to 8CFR 214.2(k)(5), an approved K-1 petition is only valid for four months. Consequently, in a number of cases, the K-1 petition will have already expired by the time DOS returns it to USCIS. Once a petition has expired, it may not be reviewed by USCIS. Furthermore, Petitions for Alien Fiance(e) (Form I-129 F) returned from a Consulate, Embassy, or NVC after approval may not be revoked, as there are no provisions in the law or regulation for revoking the approval of an I-129F.

In addition, USCIS does not believe that the Adjudicator's Field Manual (AFM) must be amended. Presently, the AFM includes general standard operating procedures for revocations that apply when an adjudicator has found derogatory information or after a petition/application has been returned by DOS for review (AFM chapter 20.3& 30.10). USCIS will issue a Notice of Intent to Revoke (NOIR) granting the petitioner a reasonable period of time (usually 30 days) to submit evidence in opposition to the revocation. If the petitioner overcomes the reasons for revocation, the adjudicator updates CLAIMS-3. A reaffirmation notice is then generated and forwarded to the petitioner. If the petition was returned from DOS, the petition is sent back to DOS with copies of the letter of intent to revoke, the petitioner's response, and a reaffirmation memo stating the reason for the return. If the petitioner does not overcome the basis for the revocation, or fails to respond timely, a decision of revocation is prepared on Form I-292. A petitioner may file an appeal on a decision to revoke a petition.

USCIS does not agree with the Ombudsman's recommendation to include "REVOCATION" entry in the processing time reports. Although "REVOCATION" does not appear in the processing time reports, it is treated as a Request for Evidence or a Notice of Intent to Deny.

3. Provide additional information about revocation or revalidation processes on the USCIS website.

Response to Recommendation #33, Recommendation on the Processing of Petitions that are Returned by the U.S. Department of State for Revocation/Revalidation

Page 3

USCIS agrees with this part of the recommendation and will add a revocation fact sheet to its website.