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September 6, 2022

Ur Jaddou, Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Washington, D.C.

Dear Director Jaddou,

We thank your agency for the recent announcement on extension of COVID flexibilities to October 23, 2022, and the permanent adoption of the reproduced signature policy.[1] In addition to aiding efficiency, USCIS demonstrates compassion and good sense in extending these measures. These flexibilities are necessary given the continuing effect of pandemic delays, mailing problems, and the backlogs in issuance of receipts and notices.

As you are aware, the unprecedented processing delays burden both applicants for benefits and USCIS. Applicants are left in limbo without the ability to work, establish valid status, or unite with family members, among other consequences. Because of the delays in adjudication, USCIS suffers multiple filings and inquiries from frustrated applicants, Congressional members, and attorneys.

In the most recent extension of COVID flexibilities, USCIS announced that the agency is considering making other COVID flexibilities permanent. We would like to make a few suggestions of permanent flexibilities as well as extensions that would be helpful to both applicants and USCIS.

In addition to the below measures, we hope that USCIS will continue to explore other backlog reduction and efficiency measures including reusing biometric data whenever possible and reducing the requirement of in-person appearances for applicants at USCIS offices.

1. **The extensions of time in which to answer all types of notices and appeals enumerated in the USCIS announcement should be 90 days across all categories.**

We appreciate that USCIS has taken recent measures to alleviate the backlog. However, we believe the extensions should be renewed beyond the current deadline of October 23, 2022, because the problems with mailing, issuances of receipts and notices have continued to date and do not show signs of abating. We suggest that these extensions of time to respond continue

[1] USCIS, Alert, https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities.

to be renewed annually until such time as USCIS can reduce the pandemic era processing delays to reasonable levels.[2]

The extensions are needed because there are continuing delays in issuance of receipts and notices. This has been reported by practitioners and is described in USCIS's announcements, as well. In July 2022, USCIS announced receipt delays in the asylum system, but also said that delays in issuance of receipts were occurring across other application types in service centers as well.[3] Recent examples include severe problems with timely mailings from the Texas Service Center and the Vermont Service Center, the latter affecting U visa petitioners, especially those with fee waiver requests accompanying their applications.

Applicants should not be penalized for government delays in mailing and processing, or where replies by applicants sent by U.S. Postal Service or by private mailing services continue to take much longer than normal. Practitioners report delayed mail services impacting them on both ends, either coming from the government to their office, or when they were responding to the government. Additionally, practitioners have reported that even paying for expedited delivery service does not guarantee a delivery date, leaving them without redress if there is a delay (discussed further below).

We propose that the extensions be lengthened to 90 days from the current 60 days for all categories of application actions covered in the flexibility announcement. Doing so will lessen the possibility of confusion for applicants as well. It would also be helpful if the flexibility extension is calculated on the notice for applicants so that deadlines are clear.

We propose the following language for the next flexibility announcement:

> *U.S. Citizenship and Immigration Services is extending certain COVID-19-related flexibilities through (date one year from the announcement) to assist applicants, petitioners, and requestors. Under these flexibilities, USCIS considers a response received within 90 calendar days after the due date set forth in the following requests or notices before taking any action, if the request or notice was issued between March 1, 2020, and (date one year from the announcement) inclusive:*
>
> - *Requests for Evidence;*
> - *Continuations to Request Evidence (N-14);*
> - *Notices of Intent to Deny;*
> - *Notices of Intent to Revoke;*
> - *Notices of Intent to Rescind;*
> - *Notices of Intent to Terminate regional centers;*
> - *Notices of Intent to Withdraw Temporary Protected Status; and*
> - *Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant.*
> - *I-290B, Notice of Appeal or Motion*

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[2] USCIS, Case processing times provide many examples of egregious delays: I-485s Adjustment of Status by family categories are posted as 24 months for I-485s in Atlanta USCIS and 29 months in Brooklyn USCIS. I-601 A Provisional Unlawful Presence Waivers are taking 35.3 months at the Potomac Service Center. I-765 Employment Authorization Applications for approved asylum applicants take 15 months at the Texas Service Center. A nonimmigrant visitor attempting to renew their status must wait 21 months at the Texas Service Center for a decision.

[3] USCIS, Information on Form I-589 Intake and Processing Delays, July 28, 2022, https://www.uscis.gov/newsroom/alerts/information-on-form-i-589-intake-and-processing-delays.

- *Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA),*

2. **To ameliorate the impact of mailing problems on both ends, we propose that USCIS consider a uniform policy of "mailbox rule," where an applicant who can demonstrate that they mailed the required response within the period allotted would be considered to have timely filed.**

With a mailbox rule in place, an applicant who has mailed their Request for Evidence (RFE), required notice or appeal by the deadline would not be penalized when the mailing service later reports that it was unable to deliver the materials for several days because of staffing problems. During the height of the pandemic and continuing to date, these kinds of delays were reported by representatives using private mailing services as well as the U.S. Postal Service even where applicants paid for expedited shipping and delivery guarantees.

The impact of mailing problems and delays beyond applicants' control can be illustrated by a Special Immigrant Juvenile Status (SIJS) application that was reported to us by a partner program. The SIJ application was denied as untimely filed although it was filed and arrived at USCIS on Saturday May 9, 2020, because the receipt date noted by USCIS was Monday, May 11, 2020, the date of the applicant's 21st birthday. Mailing delays and late issuance of receipts can result in an applicant's loss of eligibility for the benefit, and a mailbox rule would be an equitable solution.

3. **USCIS should consider altering policy guidance to allow applicants who have had a qualifying relative for a waiver at any time to continue to apply for a waiver even if that qualifying relative dies before the immigrant visa or adjustment of status process is completed.**

The long delays in USCIS and Department of State processing and the toll of COVID-19 have resulted in many situations where applicants' qualifying relative for a waiver dies before the end of the process, rendering them ineligible for any relief.

There is a current policy for INA § 204(l) applications that allows death of certain relatives to be the functional equivalent of extreme hardship for a waiver. In these cases, the death of the relative who qualified the applicant for 204(l) is deemed the equivalent of extreme hardship for an applicant and the waiver application can proceed.[4] The policy could be expanded beyond 204(l) to all types of waiver applications even by non-204 (l) situations where a qualifying relative for the waiver existed at one time, but dies prior to the waiver process. This could be accomplished by changes to the policy manual.[5]

The tragic situation for many families currently is that they are facing years of delays before being scheduled at the consulate for immigrant visa processing,[6] and processing of I-601A waivers is taking up to three years. Many suffer

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[4] 7 USCIS PM A.9, https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-9.

[5] For example, in the discussion of qualifying relatives for waivers at https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-4 the PM currently states, "A USCIS officer must verify that the relationship to a qualifying relative exists." Suggested language would be: "A USICS officer must verify that the relationship to a qualifying relative exists or existed previously. Death of a qualifying relative for a waiver will be deemed the equivalent of extreme hardship for the waiver." Similar language could be adopted in the extreme hardship discussion in the Policy Manual at https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-2.

the death of their U.S. citizen or LPR relative, their qualifying relatives for waiver eligibility, before the end of the process and lose all avenues to relief after years of processing.

We have an example from a recent case reported by one of our partner programs: An applicant for an immigrant visa arrived in the United States in 1993 and has never departed. Her U.S. citizen daughter filed an I-130 for her in 2019. The applicant filed an I-601A waiver for her unlawful presence in December 2020 which remains pending to date. The applicant's mother was the qualifying relative that satisfied the requirement of a U.S. citizen or LPR spouse or parent needed for the unlawful presence waiver (her U.S. Citizen daughter does not qualify her for a provisional unlawful presence waiver).

Unfortunately, in these long waiting periods, the applicant's LPR mother died. Two weeks later, her LPR father died. Under current guidance this applicant has no way to proceed, even though she has lived in the United States for 30 years, has U.S. citizen children, until recently had two LPR parents, and is otherwise eligible for an immigrant visa.

We ask that USCIS consider expanding the "functional equivalent" interpretation beyond the 204(l) situation to all types of waiver applications. Thus the death of a qualifying relative for any type of waiver would be considered the functional equivalent of extreme hardship and allow an applicant to continue with a waiver application where they could demonstrate that they previously had a qualifying relative for the waiver, but that relative died.

Conclusion

In sum, our suggestion is that USCIS maintain COVID-related flexibilities until such time as backlogs are significantly reduced and operations at USCIS Service Centers as well as mailing services are fully functional. In addition, we urge USCIS to consider adopting a uniform mailbox rule in determining timely filing, and to consider policy guidance changes which would allow applicants who suffer the death of a qualifying relative for a waiver to remain eligible for that waiver application after the death of that relative.

Thank you for consideration of our suggestions. Contact pgleason@ilrc.org if further discussion would be helpful on these topics.

Sincerely,

Peggy Gleason
Senior Staff Attorney on behalf of
Immigrant Legal Resource Center

[6] See NVC, Immigrant Visa Backlog Report (July 2022) where 421,668 Immigrant Visa (IV) applicants were documentarily complete and ready to be scheduled for interview world-wide, and only 32,888 were scheduled for interview in August 2022. It will take years for the Department of State to regain normalcy in the processing of IVs. https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-backlog.html.