

**Questions for NVC/AILA DOS Liaison Committee Meeting
Portsmouth, New Hampshire
November 4, 2014**

INTRODUCTION

*** These are AILA's notes from the meeting*
(Revised 12/3/14 following review by DOS)**

The Department of State Liaison Committee of the American Immigration Lawyers Association (AILA) thanks the National Visa Center (NVC) for the opportunity to meet and discuss issues of mutual concern. The Committee believes that frequent and frank communication advances the mission of the NVC while providing clarity to the public on current policies and practices. Through extensive outreach to our more than 13,000 members, the Committee has identified a number of issues that are presently impacting the immigrant visa process. By raising these issues here, it is our hope that we will all walk away with a better understanding of the challenges involved in each other's work and that the feedback provided by the Committee will allow the NVC to enhance process efficiencies. We look forward to a continuing dialogue with the NVC.

NVC Backlog:

- Over the past year, the NVC received increasing numbers of Immediate Relative petitions from USCIS.
- Prior to October 2013, the NVC used to receive approximately 8,000 cases per week. That number swelled to up to 25,000 cases per week in 2014 and has since subsided to around 17,000 petitions per week.
- The NVC is now receiving a large increase in non-current cases as well.
- Over the past several months, much of the NVC backlog was at the front end of the process – case creation. The case creation process was at 45 days over the summer. It is now at 12 days.
- At present, delays continue at the document review stage (55 days, down from 60 days). Staff are cross-trained and resources have been reallocated to document review to bring the backlog down.
- The NVC is hiring additional staff and looking at its internal processes and will continue to work on improvements.

NVC Overview:

- The NVC opened in 1994 for the purpose of centralizing immigrant visa processing and eliminating administrative burdens on Posts. NVC allows Posts to focus on adjudications.
- NVC is a public/private partnership of the Department of State and FCI Federal. There are more than 560 FCI Federal employees representing 33 languages and more than 40 nationalities.
- Prior to this, legacy INS would send all approved petitions (both current and non-current) to Posts. **Current Cases:** NVC processes and ships files to Post.
- NVC processing consists of document collection and appointment scheduling.
- **Consular Returns:** NVC receives about 50,000 cases per year; 10 days to process returns, conduct quality checks, and return to USCIS.
- **Non-Current Cases:** NVC stores until they become current, then processes and ships to Post.

- The NVC processes the following petitions: I-130; I-140; I-730; I-129F; I-600; I-600A; I-800; I-360; and I-526.

Process:

- Once USCIS approves a petition, it takes approximately 30 days for the file to get to the NVC.
- Upon receipt, NVC enters the case into its system, and sends notification to the applicant to begin processing. During summer of 2014, case intake was backlogged – it was taking about 45 days to enter cases into the system upon receipt from USCIS. Today it is down to about 12 days.
- Incoming mail is unloaded, x-rayed and sorted by unit. Once the package is opened, a cover sheet is placed on top of each mail packet. Incoming mail and cases are matched by bar codes.
- When sending documents to the NVC, it is recommended that attorneys use binder clips (not fasteners/punch holes).
- Six steps outlined on website (Note: website was updated in September 2014). See <http://travel.state.gov/content/visas/english/immigrate/immigrant-process/approved/contact.html>
 - Choose an agent
 - Pay fees (Note: 80% of fees are collected electronically; 20% through lockbox).
 - Submit visa application Form DS-260
 - Collect financial documents
 - Collect supporting documents
 - Submit all financial and supporting documents to the NVC

Best Practice: Submit all supporting documents at one time rather than separately to avoid documents and NVC communications crossing in the mail.
- NVC does not adjudicate cases. It conducts “administrative review” of documents to ensure they are complete. Legal questions, such as CSPA issues, are referred to the legal team at the Visa Office in Washington, DC.
- Once documents are deemed complete, NVC schedules interview.
- NVC schedules interviews for all 144 immigrant visa processing posts except Guangzhou.
- NVC coordinates with the Post twice per month to schedule appointments.
- NVC transfers physical and electronic file to Post.

FY 2014 Statistics:

- 709,000 cases received from USCIS.
- 99,000 current family-based petitions.
- 349,000 cases shipped to Post.
- 2.6 million total cases.
- 1.4 million pieces of incoming mail.
- 3.3 million pieces of outgoing mail.
- 1.7 million written inquiries.
- 1.6 million calls.
- 98,000 Congressional inquiries.

Inquiries:

- NVCAttorney@state.gov (for attorneys only)

- AskNVC@state.gov (general public)
- DO NOT copy both NVCAttorney@state.gov and AskNVC@state.gov.
- Telephone: (603) 334-0700 (M-F, 7:00 AM to Midnight ET).
- Currently taking approximately 25 days to respond to e-mails sent to NVCAttorney@state.gov. If no response to e-mail within 45 days send follow-up e-mail. (*See further instructions about follow-up inquiries below.*)
- Reference case number in subject line.
- Do not inquire about multiple cases in one e-mail. Send a separate e-mail for each case inquiry.
- **Note:** NVC does not adjudicate expedite requests. If expedite request is received, it is forwarded to the Post. Post makes the ultimate decision. Alternatively, the attorney can contact the Post to see if they will agree to accept the case early. If Post agrees, NVC will forward the file.
- K-1s, orphans, and refugee cases are processed quickly. Upon receipt of the case from USCIS, NVC does basic data entry and sends the case to the Post within 24 hours.

General Notes:

- Beginning in early 2015, the NVC will begin fielding telephone inquiries on nonimmigrant visa cases. The NVC's telephone infrastructure is being revamped and should be in place by mid-February. The new infrastructure will allow the NVC to handle the increase in call volume.
- NVC is in the process of transitioning from paper-based processing to electronic processing. Pilot program for digitizing documents to send to Post began in 2008. Software is in development and is expected to be rolled out in late 2015.
- NVC prefers, but does not require G-28s on blue paper.
- NVC is scanning cases upon receipt for e-mail addresses and is manually entering e-mail addresses into its system. If you include your e-mail address on the G-28, it will be entered into the system and might help expedite communications.
- The fraud unit at the NVC randomly selects cases for screening (less than 10% of cases); however, this random screening does not impact general processing times.
- **Change of Address:** NVC does not have access to USCIS AR-11. Must notify NVC of change of address separately. This is particularly important for non-current cases. Changes of address and errors in name spelling, address, etc. are updated electronically.
- **Telephone and Congressional Inquiry Unit:** Handles e-mails and calls from USCIS, state and local government, Embassies and Consulates, and the White House. Congressional inquiries do not have priority over individual inquiries.

NVC Staffing and Statistics

1. Please provide an update on the staffing levels at the NVC, including the number of Department of State employees, contractors, and employees of other federal agencies.
 - 8 U.S. Government Employees:
 - 2 Physical Plant employees -- NVC and National Passport Center next door
 - 2 NVC Fraud Prevention Division
 - 1 Management (Management Assistant)
 - 2 Foreign Service Officers (Phillip Slattery, NVC Director and Antje Weygandt, Deputy Director)
 - 1 USCIS Fraud Prevention

- On June 23, 2014, the NVC hired a new contractor, FCI Federal. As of October 6, 563 FCI contractors at the NVC.
2. What is the current volume of immigrant visa cases that the NVC is processing on a monthly basis?
 - For the past 6-9 months, the NVC received a higher than average petition workload from USCIS.
 - The NVC is currently receiving an average of 17,000 cases per week.
 3. What is the current volume of nonimmigrant (fiancé(e)) visa cases that the NVC is processing on a monthly basis?
 - From July to September 2014, NVC received approximately 2,600 per month.

Erroneous Termination of Immigrant Visa Applications

AILA members report that immigrant visa applications are being erroneously terminated under INA §203(g), for failure to contact the NVC within one year of notification of the availability of a visa, even when the individual or the attorney has been in contact with the NVC within the one-year period. Examples are available upon request.

4. In the event an attorney receives a notice that a file has been terminated by the NVC under such circumstances, please confirm that:
 - a. The NVC will reopen the file and resume processing upon receiving documentary proof that the attorney has, in fact, contacted the NVC within the one-year period.

The NVC is not aware of any erroneous terminations but if the attorney has contacted the NVC within the one-year period and the NVC determines that termination was invalid, the NVC will reinstate the case.

- b. If visa fees have already been paid, it will not be necessary to resubmit the visa fees for cases terminated in error.

Confirmed.

- c. The file will be placed back in its original place in processing and will not be placed at the back of the processing queue.

Confirmed.

5. In the event an attorney receives a notice that a file has been terminated by the NVC under such circumstances, what is the best method for notifying the NVC that a visa application has been erroneously terminated?

E-mail NVCAttorney@state.gov and include evidence of contact within the relevant period of time—it is very important to include dates of contact. Both calls and e-mails are sufficient forms of contact to keep a case alive.

***Note:** Recent changes to language appearing in NVC acknowledgement letters do not signal a change in policy. It is **not** necessary to complete immigrant visa processing within one year. It is necessary only to communicate with NVC at least once per year while processing continues.*

In addition, the NVC indicated that it would consider implementing an expedited procedure for contesting termination inquiries, but until further notice, follow the instructions noted above.

Affidavits of Support, Form I-864

6. Members report receiving correspondence from the NVC, including the returned Form I-864, Affidavit of Support, requesting that all blank spaces on the form be filled with “N/A” rather than left blank. According to the Form I-864 instructions, if an item on the I-864 is “not applicable” or the answer is “none,” the sponsor is to leave the space blank.¹ Please confirm that the NVC does not require “N/A” or “None” to be placed in all blank spaces on Form I-864.

Confirmed.

AILA members report numerous situations in which the NVC has returned Forms I-864, Affidavit of Support, when there is a discrepancy between the sponsor’s current income and the income indicated on the sponsor’s last filed federal income tax return. Examples are available upon request. Under INA §213A(f)(1)(E), a sponsor must simply demonstrate “the means to maintain an annual income equal to at least 125 percent of the Federal poverty line” based on his or her household size. Moreover, there are many legitimate reasons why a sponsor’s current income will not match the income reported on the last filed tax return.

7. Please confirm that sponsors are only required to submit documentation sufficient to demonstrate that they are able to maintain an annual income equal to at least 125 percent of the Federal poverty guidelines for his or her household size which includes the sponsored alien, and that it is not necessary for the sponsor’s current income to match the amount reported on the last federal income tax return.

Confirmed. Please note that the Department of State Visa Office has recently reviewed the NVC’s I-864 processes and procedures and has identified some areas where changes will be made.

Moving forward, if the NVC determines that the information submitted is objectively complete and if taken as true would satisfy the affidavit of support requirements, the case should move forward. The goal is to reduce processing delays associated with the “back and forth” between the applicant and the NVC on affidavit of support issues. NVC will work closely with posts to

¹ See “Instructions for Affidavit of Support Under Section 213A of the Act,” at p.2, available at: <http://www.uscis.gov/sites/default/files/files/form/i-864instr.pdf>

ensure that changes in NVC's processing do not result in an increased burden on posts (e.g. requests for additional evidence related to the affidavit of support).

8. While data listed on the Affidavit of Support and in the supporting evidence must be accurate and consistent, where the evidence submitted satisfies the statutory requirements and a discrepancy is *de minimis*, please confirm that examiners are able to and are encouraged to exercise reasonable judgment in allowing the application to move forward.

Confirmed. This will be addressed as NVC reviews processes and procedures. See above.

An I-864 typically must be accompanied by the sponsor's most recent tax return. If a sponsor has filed an extension with the IRS for the most recent tax year, the sponsor may file Form I-864 with the prior year's tax return and a copy of the extension request.² Members who have filed the I-864 with this documentation report receiving correspondence from the NVC indicating that this is not sufficient.

9. Please confirm that an affidavit of support filed with the most recently filed tax return and, if applicable, an extension request for the current tax year is sufficient, absent other issues, to allow the case to move forward.

Confirmed. This will be addressed as NVC reviews processes and procedures. See above.

Affidavit of Support Exemptions, Form I-864W

10. If an immigrant visa applicant qualifies for an affidavit of support exemption, he or she may file Form I-864W, Intending Immigrant's Affidavit of Support Exemption. An exemption may be warranted if the applicant has earned or can be credited with at least 40 qualifying quarters of work under the Social Security Act (SSA) (9 FAM 40.41 N4.4-2), among other reasons (*see generally* 9 FAM 40.41 N4.4-3). In cases where the visa applicant has submitted a properly completed I-864W with supporting documentation, members report receiving correspondence from the NVC requesting submission of a completed Form I-864 in order to proceed with immigrant visa processing. We would appreciate it if NVC staff could be provided with additional training on this issue.

This training issue is being addressed. See above.

Lost Deliveries

AILA members report receiving requests from the NVC for original documents whose previous delivery to the NVC has been verified by the U.S. Postal Service. Replacement of lost, original documents is time-consuming and costly for applicants.

11. Please describe the system the NVC employs to track the receipt and handling of original documents.

² See "Consolidation of Policy Guidance Regarding USCIS Form I-864, Affidavit of Support (AFM Update AD06-20)," (June 27, 2006), available at: http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2006/affsuppafm062706.pdf.

All documents received by mail at the NVC are assigned a unique bar code and document cover sheet that is associated with the case file. The Document Review Unit matches the documents to the file.

12. If original documents which were previously delivered to the NVC cannot be located, will the NVC accept copies of the documents along with proof of delivery of the originals in lieu of duplicate originals?

Note: Following the AILA meeting, the NVC announced that as of November 12, 2014, it is no longer collecting original civil documents in support of immigrant visa applications. See [DOS Announcement: National Visa Center No Longer Collecting Original Civil Documents](#).

Duplicate Requests for Documents

AILA members frequently report receiving requests from the NVC for documents that have previously been submitted. In addition, members report receiving requests for documents without any acknowledgement of understanding of the facts of the underlying case (e.g., requests for a divorce decree from persons who were never previously married).

13. What is the best method for responding to an NVC request for documentation or information that was previously submitted?

The NVC identified some issues with its mail procedures that were causing documents and NVC correspondence to “cross” in the mail, thus the “duplicate” requests. New procedures have been put into place which should address this. However, if you receive a duplicate request, send a response to the request (e-mail for electronic submissions and postal mail for all other cases) to keep the case moving. **Do not send an e-mail to the NVCAttorney mailbox.**

NVC Processing Times and Communicating on Delayed Cases

In response to a question concerning delays in the issuance of fee bills, the NVC indicated, at the [April 9, 2014 AILA liaison meeting](#) with the Department of State Visa Office, that it was experiencing an increase in the number of approved petitions from USCIS, suggesting that this situation may be contributing to the delay. During the summer of 2014, AILA members frequently reported receiving letters from the NVC stating that there will be a delay of “at least 60 days” before processing instructions will be sent due to an increase in the number of USCIS approved immigrant visa petitions. Recognizing that the NVC has limited resources, we would like to develop a better understanding of the current documentation processing challenges that the NVC is facing. Toward that end, please advise:

14. Does the NVC track processing times for immigrant visa cases? If so, is the NVC willing to share its processing time reports with AILA?

Approximately 7.6% of cases are moving along in 120 days; 40% of all cases are processed within 6 months; 20.8% are processed within 180 to 239 days. The rest take longer.

15. What is the average amount of time it is currently taking to complete visa processing from the time the fee bills are paid until an application is sent to a consulate, if no request for additional

documents or information is required? What is the average processing time if a request for information is issued? How does this compare to the NVC's processing goals?

See above.

16. Does the NVC estimate that instructions will be sent within approximately 60 days of submission of documents?

Over the summer, it was taking approximately 60 days to process incoming documents. The current timeframe is 55 days and decreasing.

- a. If not, within what timeframe may members expect to receive instructions following submission of documents?

The current timeframe is 55 days and decreasing.

- b. What is the best method inquiring on a case where processing instructions have been significantly delayed?

Send an e-mail to NVCAttorney@state.gov.

- c. Is there anything AILA can do to assist the NVC in reducing document processing times or unnecessary processing delay inquiries (e.g., publicize instructions or expected waiting periods)?

Submit all supporting documents in one package rather than separately. Your case may be significantly delayed if you fail to submit all of your documents in one package. Remember to submit the coversheet on the top of the filing.

Ideally, the NVC will review all civil and financial documents at the same time as the DS-260. The NVC will check the system and if the system shows that there is incoming mail pending, it will wait for the case call-up date and review everything together. If 21 days pass since the filing of the DS-260 and the system does not show that there is incoming mail pending, the NVC will review the DS-260 and will issue a document checklist.

E-mail Inquiries to NVCAttorney@state.gov

AILA members report that e-mail inquiries sent to the nvcattorney@state.gov e-mail address are not receiving responses.

17. Is the nvcattorney@state.gov e-mail address still actively monitored by the NVC?

Yes. The NVCAttorney e-mail box was heavily backlogged. The backlog has peaked and is now decreasing. Please be sure to include the following information with each inquiry:

- NVC case number
- Principal applicant's name and date of birth
- Petitioner's name and date of birth

- If your visa petition is employment-based, include the employer’s company or organization name.
- Send a separate email for each case inquiry.

18. What is the estimated response time for an e-mail inquiry sent to this address?

Incoming e-mail to NVCAttorney@state.gov is generally processed on a “first-in, first-out” basis. The current estimated response time is approximately 25 days.

19. After what period of time should an attorney make a follow up inquiry if no response is received to an initial e-mail inquiry?

If you have not received a response to an e-mail inquiry in 45 days, send a second inquiry.

20. If it is necessary to send a follow up inquiry, should a particular subject line be used to flag it as a second inquiry?

If 45 days have passed without a response from the NVC, submit a follow up e-mail to the NVC. It is recommended that the second inquiry indicate in the subject line that it is a second inquiry and include the previous e-mail chain.

21. In the event that an attorney does not receive a response to a follow up (i.e., second) inquiry, what additional steps can be taken to determine the status of a matter?

If a reasonable period of time has elapsed without receiving a response from the NVC, members should submit a third inquiry to the NVC using the following subject line: “Attention PI Supervisor.”

22. What is the general protocol for escalating a case to an NVC supervisor?

See above.

Telephone Inquiries

AILA members report that when trying to reach the NVC by telephone they frequently encounter a busy signal, or the phone is not answered or they are placed on hold for long periods of time. In [April 2014](#), the NVC advised AILA that there was a plan to upgrade the NVC phone system within the next several months to offer greater capacity to handle calls.

23. What is the status of the phone system upgrade?

The new phone system will be in place in February 2015. This phone system will increase the number of phone lines available and reduce wait times.

24. What is the current staffing level for the NVC phone system?

The Customer Service division has 150 employees that work on both written and telephone inquiries (2 shifts). Phones are answered Monday through Friday, 7:00 am to 12:00 midnight (ET).

Visa Processing for Same-Sex Fiancé(e)s

25. As a result of the U.S. Supreme Court's 2013 decision in *U.S. v. Windsor*, which overturned Section 3 of the Defense of Marriage Act (DOMA), same-sex spouses are now entitled to the same benefits as different sex couples under the INA. In some countries, same-sex relationships are unlawful or public knowledge of the relationship may create a threat of physical harm to the affected parties. Recently, a situation arose in which an attorney contacted the NVC requesting that a nonimmigrant fiancé petition for a person in a same-sex relationship be sent to a consular post in a country other than the applicant's native country in order to protect the applicant from potential harm. The NVC completed processing of the fiancé petition and forwarded it to the applicant's native country. Is the NVC willing to create a procedure or policy that would allow reassignment of a fiancé visa application for a same-sex partner to a consular post in a jurisdiction other than the applicant's country of last residence or nativity?

NVC normally has possession of K-1 fiancé(e) files for as little as 24 to 48 hours after a case file is received from USCIS. In order to for NVC to be able to direct a file to a U.S. consulate in a country other than where the beneficiary is located, it is essential to take steps in advance of NVC receiving the file from USCIS. The NVC has created the following procedure for requesting third-country processing in these cases:

1. Once a K-1 petitioner receives a Form I-797, Notice of Action from USCIS (receipt notice or approval notice), the case number may be used to alert NVC that special handling is being requested. Send an e-mail to NVCAttorney@state.gov with the USCIS case number and "**K-1 URGENT**" in the subject line. NVC will create an electronic file with a "flag" based on the USCIS case number.
2. Provide the following information in the body of the e-mail:
 - a. USCIS receipt number;
 - b. Petitioner name;
 - c. Applicant name and date of birth;
 - d. Desired U.S. Embassy or Consulate (**Note:** it is recommended that you provide two or three Posts where the applicant would be able and willing to appear for processing); and
 - e. Any additional information regarding the request (such as a general description of the reasons why the applicant is afraid or unable to appear at the embassy or consulate in his or her home country to apply for the visa).
 - f. The NVC will contact the designated posts to request that they take jurisdiction over the case. Please note that certain consulates may not be able to take jurisdiction based on workload.
3. It takes approximately 30 days for the file to arrive at the NVC from USCIS. As long as the petition has not yet arrived at the NVC, the NVC will flag these cases for special processing and will e-mail the attorney with further instructions.

Visa Retrogression Issues

26. Immigrant visa applicants who are abroad and who have children approaching age-out cannot submit the fee or DS-260 until the fee bill is issued, which currently takes approximately 2 to 3 months following approval of the immigrant petition. If the priority date retrogresses during this period, the child is not protected under the Child Status Protection Act (CSPA) (though such children who are in the U.S. and who are able to file for adjustment of status prior to retrogression are protected). The State Department monitors priority dates and often predicts when priority dates might retrogress, sometimes months in advance. Similarly, before the CSPA was passed, legacy INS had protocols in place for identifying and expediting cases to prevent age-out. Can the NVC create a process to expedite age-out cases in preference categories that are current but for which retrogression is anticipated?

The NVC monitors age-out cases. If the applicant would not be protected under the CSPA, the NVC pulls the case 120 days in advance of age-out for expedited processing.