



## **Practice Alert: Details on Employment-Based Interviews Emerge During CIS Ombudsman Stakeholder Call**

On September 28, 2017, the Office of the CIS Ombudsman hosted a stakeholder call, featuring Associate Director of the USCIS Field Operations Directorate, Dan Renaud, to discuss the implementation of [the new interview requirement for employment-based adjustment of status applicants](#).<sup>1</sup> The following is a summary of the information presented and the questions addressed during the call.

**This information is a compilation of the notes taken by AILA members and staff and is not an official record of the call, nor has it been endorsed or approved by USCIS.**

**Q: Which employment-based adjustment of status cases are subject to the interview requirement?**

**A:** Cases filed before March 6, 2017, will be adjudicated by USCIS Service Centers under prior procedures. Approximately 5 to 10 percent of employment-based cases have been subject to interview, so the “odds” of a pre-March 6 case being pulled for interview will be about the same. All employment-based adjustment of status cases where the underlying petition is a Form I-140 (EB-1, EB-2, and EB-3) that are filed on or after March 6, 2017, will be subject to an interview.<sup>2</sup> Thus, for FY 2018, adjudications will be shared between Field Operations and Service Center Operations (SCOPS). Beginning in FY 2019, I-140-based adjustment adjudications will be handled solely by Field Operations.

**Q: How will USCIS phase in the new workload?**

**A:** The new interview requirement is being rolled out nationwide, with interviews starting on October 2, 2017. Interview notices for these initial cases were mailed out approximately 30 days ago. USCIS is taking an incremental approach and will focus first on employment-based I-485s, then more slowly, I-730s. With employment-based cases, the goal is to make sure the maximum number of visas are allocated each fiscal year.

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<sup>1</sup> Though USCIS has announced that it will also require interviews for beneficiaries of I-730 refugee/asylee relative petitions who are in the U.S., the call focused on interviews for employment-based adjustment applicants.

<sup>2</sup> March 6, 2017, is the date that [Executive Order 13780](#), “Protecting the Nation From Foreign Terrorist Entry Into the United States, was signed by President Trump.”

**Q: Describe the roles that SCOPS, the National Benefits Center (NBC) and Field Operations will play.**

A: SCOPS will adjudicate the I-140. If approved, the case will be sent to the NBC, which is the “hub” of Field Operations. The NBC will conduct pre-processing activities and ensure a case is “interview ready.” Individual Field Offices will communicate interview availability to the NBC and the NBC will slot cases for interview. The NBC will generate an interview notice and send it to the applicant and attorney of record, and then ship the file to the field office for interview. Applicants will not receive a transfer notice when the case goes to the field office. The interview notice will tell you that the case is on its way to the field office.

**Q: Is anyone exempt from the employment-based interview requirement?**

A: Generally every employment-based principal and derivative will be required to appear for an interview. USCIS will consider waiving the interview in cases where the applicant is under the age of 14.

**Q: How have officers been trained to handle employment-based interviews?**

A: As noted above, about 5 to 10 percent of employment-based cases have been referred to field offices for an interview at the discretion of SCOPS, so this is not an entirely new workload for Field Operations. SCOPS provided a course of training for field officers, which included training on Supplement J and how to coordinate with DOS to manage visa numbers. The last day of training was September 28, 2017, but there will be ongoing training/refreshers moving forward. Trained Field Operations personnel are ready to handle these cases now.

**Q: Will USCIS Officers Readjudicate or Review the I-140?**

A: Officers have been instructed and trained not to readjudicate the I-140. Field officers will give full faith and trust in the I-140 adjudication conducted by SCOPS. However, officers will assess the validity of the supporting documents that SCOPS relied on in making that decision. The field officer will not “readjudicate” the petition but will evaluate whether the evidence used to support the I-140 was accurate, bona fide, and credible.

**Q: Will NBC issue a Request for Evidence (RFE) for a medical exam or Supplement J before scheduling the interview?**

A: If additional evidence or documents are required on a pending application, the NBC will issue an RFE. The goal is for the NBC to prepare the file so that it is ready for favorable adjudication at the field office. USCIS urged listeners not to submit unsolicited evidence and ask that it be matched to the file. Files are moved frequently throughout this process and unsolicited documents can be lost. At the same time, waiting to submit documents at the interview may delay the case. According to USCIS, a best practice is to submit documents initially when the application is filed or in response to an RFE issued by the NBC.

**Q: What types of questions can employment-based adjustment applicants expect?**

A: Applicants can expect to be asked any question relating to the I-485. USCIS wants to be sure that it has accurate answers to questions regarding admissibility and eligibility. In addition, the applicant will be asked to explain where they will work, what they're going to do, and their educational background and experience so that the officer can assess the credibility of the evidence submitted to support the I-140. USCIS will also confirm that the employer still intends to employ the applicant and that the applicant still intends to take up employment. Family members of the principal should expect questions regarding their relationship to the principal and the bona fides of that relationship. It is advised to bring to the interview documents confirming the relationship (birth certificates, marriage certificates, etc.) and documents showing the bona fides of the relationship as well. The purpose of the interview is to ensure the integrity of the immigration system.

**Q: Will families be interviewed together?**

A: Every applicant who is scheduled for an interview will receive an interview notice. USCIS will endeavor to schedule family groups together, as long as they file their applications at the same time. Note, however that there might be reasons why the application of one family member is delayed so there may be instances where the family cannot be interviewed at the same time.

**Q: How does USCIS expect the new interview requirement will impact the field and in particular, processing times?**

A: Moving forward, on an annual basis, employment-based adjustments will constitute about 17 percent of Field Operations' workload. USCIS has seen an extraordinary number of filings over the past few years, but things are leveling out a bit. Long-term impact will depend on the ability of USCIS to add additional staff, streamline procedures and implement processing improvements. In the short-term, USCIS expects that processing times will be impacted somewhat, particularly in the family-based and N-400 product lines. Employment-based adjustments should not slow down, given the goal of exhausting employment-based numbers each year.

**Q: What are the top ten field offices that will be most impacted by the new workload?**

A: San Jose, San Francisco, Newark, New York, Houston, Seattle, Chicago, Dallas, Atlanta. and Los Angeles. This could change in future fiscal years.

**Q: Will employment-based adjustment cases be added to field office processing time reports?**

A: USCIS is working with the Office of Performance and Quality to add a separate category for employment-based cases to field office processing times reports.

**Q: How will USCIS measure the effectiveness of the new interview process?**

**A:** USCIS will look at internal records (such as number of referrals to ICE, referrals to FDNS, denials, etc.) and other data points to determine whether integrity measures are being met. It is harder to measure deterrence. USCIS will be asking questions it hasn't asked before – someone who is about to obtain the privilege of living and working in the United States for the rest of their lives should be scrutinized. If the person was to go through consular processing, they would be interviewed. USCIS must protect the integrity of the system.

**Q: Have Standard Operating Procedures and other guidance been developed?**

**A:** SCOPS provided checklists and SOPs to Field Operations. Field Operations will adapt them as necessary to meet field office and NBC needs but this will be a standardized process.

**Q: If an application cannot be approved by the field office what will happen to the case?**

**A:** The process will be similar to that which takes place during consular processing. If the field officer believes that an applicant is ineligible for adjustment, the I-485 will be denied and the I-140 will be sent to SCOPS. If the field officer believes that the evidence to support the I-140 is not credible, the I-140 and I-485 will be returned to SCOPS with a recommendation to revoke the I-140. If SCOPS agrees, it will issue a Notice of Intent to Revoke. If revocation grounds are overcome, SCOPS will affirm the I-140 and complete the I-485 adjudication. If SCOPS revokes the I-140, it will also deny the I-485.

**Q: If the field officer has a question about whether a new job is “same or similar,” will the case go back to SCOPS?**

**A:** The intent is to have cases completed at the field office. USCIS wants to avoid transferring cases back and forth between SCOPS and Field Operations. If the field office has questions about particular aspects of the “same or similar” determination or questions about the I-140 adjudication, it can speak with SCOPS and/or USCIS HQ to try and resolve the issue.

**Q: Interview notices indicate the applicant must bring an I-864 with all required evidence to the interview, but an I-864 is not required for most employment based cases. Will the applicant be penalized for failure to submit an I-864 even if it is not required?**

**A:** Applicants will not be penalized if they do not submit documents that are not required. The notice is a generic template, and the checklist is not intended to serve the function of an RFE. USCIS will modify the notice so that it is helpful for employment-based applicants.

**Q: For EB-1 extraordinary ability cases, how will field officers evaluate whether the individual will “substantially benefit prospectively the United States”?**

**A:** Field officers will not readjudicate the I-140 so the applicant will not need to reestablish this. The officer will only seek to validate the evidence included with the I-140.

**Q: Should the applicant bring financial documentation from the employer?**

A: No. That information will be included in the I-140 file. The field officer is not in a position to validate the company financials and will defer to SCOPS. The field officer will focus primarily on the background and intentions of the applicant.

**Q: Where will advance parole and employment authorization applications be adjudicated?**

A: Cases that are working through the system now already have advance parole and EADs. Moving forward, if I-485s go directly to the NBC, the NBC will adjudicate advance parole and EADs and if the I-485 is filed with SCOPS, SCOPS will handle those adjudications.