



U.S. Citizenship and Immigration Services

90/16.45

Interoffice Memorandum

To: Service Center Directors
From: Fujie Ohata (Fujie Ohata)
Director of Service Center Operations

Date: MAR 31 2004

Re: Procedural Instructions for Concurrent Adjudication of Concurrently Filed Form I-140 Immigrant Petition for Alien Worker and Form I-485 Application for Adjustment of Status.

Table with columns: Action, Info. Rows include: DIR, ODIR, AD EOD, AD Mgmt, AD Bus, AD Fgm, AD Res, AD 2nd Shift, AD Status, AD Records, AD IJL, AD ITO, Atty, CAS, Congressional, Ombudsman, File 12690/112

Purpose

This memorandum provides specific instructions and guidance to service center directors on the adjudication and reporting of processing times of concurrently filed I-140 and I-485s.

Authority

On July 29, 2002 an interim rule was published in the Federal Register amending the Services' regulations allowing the Form I-485 to be filed concurrently with Form I-140 when a visa is immediately available. Upon publication, then legacy Immigration and Naturalization Service (INS) and subsequently U.S. Citizenship and Immigration Services began accepting concurrently filed I-140s and I-485s as well as I-485s associated with still pending I-140s.

Procedural Guidance

This memorandum modifies the current adjudicative process for concurrently filed I-140s and I-485s. A concurrently filed I-140 and I-485 will be concurrently adjudicated. For purposes of measuring and reporting local processing time for these forms, the local I-140 processing time will control. A concurrently filed I-485 will no longer be tracked based upon the local I-485 processing time. Concurrently filed Forms I-140 and I-485 is to be considered a separate workload from current stand-alone Forms I-485.

Concurrently filed I-140/I-485 will be processed based upon the I-140 receipt date. However, when a concurrently filed application/petition package is on the Just in Time (JIT) shelf and ready for adjudication, only those concurrently filed application/petition packages in which the I-485 is adjudication ready (fingerprints and name checks have cleared) will be pulled and sent to adjudications.

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Re: Procedural Instructions for Concurrent Adjudication of Concurrently Filed Form I-140
Immigrant Petition for Alien Worker and Form I-485 Application for Adjustment of Status.

If a concurrently filed I-140 requires an RFE, the I-485 should be reviewed as well. If the I-485 requires an RFE, a separate RFE should be issued. Due to potential legal conflicts, an I-140 RFE and an I-485 RFE cannot be combined into one document. However, in the event that both the I-140 and the I-485 have a G-28 in the records and the representative is the same, the RFEs can be mailed together to the attorney or accredited representative of record. The concurrent filing application and petition package will be housed together on the I-103 shelf. If a petitioner fails to reply to the RFE within the prescribed regulatory time, the I-140 and associated I-485 will be denied even if the applicant timely responded. If the petitioner does respond to the RFE within the prescribed regulatory time and the applicant does not timely respond to the RFE, the petition will be adjudicated on the merits and the associated I-485 denied.

This memorandum does not change basic adjudicative practices for any of the affected form types (I-140, I-1485, I-765, I-131). Service Center Directors, in his/her discretion may discontinue to do a prima facie review on concurrently filed cases or modify the scope of the review. All other processes currently in place with regards to prima facie review and the processing of associated files remain in effect.

Effective Date

This memo is effective upon signing; however service centers are allowed a thirty-day start up period to address practical and implementation issues.

Notice

This memorandum sets forth guidance on how the service centers will process concurrently filed Forms I-140 and I-485. This memorandum is intended solely for the guidance of CIS personnel in performing their duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.