



**U.S. Citizenship
and Immigration
Services**

130/2

May 26, 2004

American Immigration Lawyers Association
California Service Center
May Liaison Meeting

GENERAL QUESTIONS

1. Members report that RFEs often request documentation that has already been submitted with the initial evidence (e.g. a credentials evaluation report). Is there any supervisory review of an officer's decision to send out an RFE? If not, what type of quality control mechanisms are used to assure that officers do not request evidence that has already been submitted as initial evidence?

Yes, we have a review and a quality assurance process in place at the CSC. In many cases, we are asking for evidence because the initial submission does not satisfy the requirements of the regulation.

2. Members report that they sometimes receive both the client's and the attorney's copies of the fingerprint notice. Sometimes the client receives both. Applicants who are frequent business travelers may not be home to receive the notice and reschedule the appointment in a timely fashion.

What is the best way to assure that the applicant and the attorney receive their respective copies?

The notices are sent to whatever address has been provided. If the attorney address has been listed in the applicant block on the form and for the G-28, the attorney would receive both copies.

To permit lawyers and clients to monitor this issue, can information about whether and when a fingerprint notice has been issued be posted on the CIS online status report?

You are encouraged to pose this question to HQ.

3. What is the best way to request rescheduling of fingerprint appointments if the client cannot attend? Is there a limit to how many times a client can request rescheduling? Is there a limit to how many times a client can miss a fingerprint appointment before a case is denied?

It is suggested that the applicant do everything possible to keep the assigned appointment. If your client misses his/her appointment he will go to the end of the line and further delay the adjudication of his/her I-485. An adjudicator has no way of distinguishing between a "missed" or "rescheduled" appointment. Therefore, a rescheduled appointment may appear as missed -- after two missed appointments an application will generally be denied.

4. When an embassy sends back a petition to the CSC to be revoked, will the petitioner receive a Notice of Intent to Deny and have the opportunity for rebuttal?

The petitioner will be notified of the pending activity, via an Intent to Revoke, or other appropriate notice will be issued. As previously discussed in AILA meetings, this workload is not a priority.

If there is no opportunity for rebuttal, how will a re-filed petition be affected by the prior revocation?

Petitions and applications are adjudicated based on the merits of the case. Adjudicators may review previously filed petitions. It is suggested that sufficient evidence be submitted to overcome the grounds of the previous revocation if the petitioner feels it may be an issue when the re-filed petition is submitted.

Is there a presumption against approval of any subsequent petition for the same petitioner and beneficiary?

No.

Division I (I-131, I-140, I-485, I-526, I-529)

5. Please confirm in writing the details of the pilot program for newly filed concurrent I-140/I-485 for EB2-1 cases.

This information was previously discussed at the March 2004 AILA meeting. No details have changed.

6. Please confirm the details of the other two I-485 "initiatives": (a) the plan for clearing out already filed concurrent I-140/I-485 for EB2-1 cases and (b) the plan for clearing out rest of I-485 cases.

This information was previously discussed at the March 2004 AILA meeting. No details have changed. As a reminder, we have implemented a plan to bring all I-485s, I-140s and concurrently filed I-485/I-140s within the same general processing times over the next several months.

7. Does the concurrent filing pilot program apply to an EB-2 (non-National Interest Waiver)/I-485 case based on AEC substitution (where the original AEC is enclosed with the filing)?

We are not familiar with an "AEC". As previously discussed, non-national interest waiver cases may be submitted for adjudication as part of the pilot program.

8. Members report receiving RFEs requesting sworn affidavits from previous employers confirming prior work experience. With the downturn in the economy, many companies have ceased doing business. For this and other reasons, this type of evidence is not always available. Under these circumstances, what types of evidence would be acceptable?

This issue has been discussed in previous AILA meetings. The document requested is the most acceptable evidence. If the petitioner is unable to submit the evidence requested they are encouraged to submit whatever they feel would be appropriate to meet the request on the RFE.

9. Where the AAO sustains an appeal reversing the CSC's denial of an I-140 petition (based on ability to pay) and approving the petition, how should members proceed to request that CIS reopen on its own motion the related I-485s, I-131s, and I-765s per the Yates Memo dated February 28, 2003.

If the appeal has been sustained, the petition will be reopened on a service motion upon return of the file to CSC. No action is necessary by the petitioner/beneficiary or the representative. Please allow a reasonable amount of time for us to receive the case back from the AAO before making an inquiry.

10. To avoid confusion in the delivery of Advance Parole and Employment Authorization Documents, make sure the APs and EADs are correct, and confirm that the entire family pack has received its APs and EADs, some attorneys put their own address (as a c/o address) on clients' I-131 and I-765 forms. These members report that in some cases, the EADs were sent to the applicants to a former address, which was on the I-485, despite the fact that a change of address had been submitted on the I-485. When the EAD is returned as undeliverable, the applicant cannot get an interim EAD because the case shows up in the system as "approved."

Where do data entry people obtain mailing address information for applicants for EADs and APs?

From the application.

How is applicant information entered into the system when applications for benefits are received? In other words, does the information on the G-28 or on the application form control?

Data entered on an application or petition is always the controlling information. If a valid G-28 is submitted with a form that information is also entered.

Does the system default to an existing (and potentially outdated) address once it recognizes the individual's name or "A number?"

No.

Is there any reason why attorneys should not permit clients to use their office addresses (as a c/o address) for these benefits?

This issue has been discussed in the past at AILA meetings. An applicant or petitioner may list any address he or she wishes on a form. Any notice related to the form will be sent to whatever address is listed. As a reminder, if an address listed is other than the petitioner or applicant's physical location, it may affect such matters as where an adjustment interview is held or for making an appointment with an Application Support Center.

Division II (I-102, I-129, I-539)

11. Under which of the following circumstances will a person be able to receive a seventh year extension of his or her H-1B status:

A. Labor certification has been filed for more than 365 days and is still being processed at the state level.

Yes

B. Labor certification has been filed and was approved 9 months ago but due to difficulty in assembling the necessary paperwork for adjustment of status, the I-140/I-485 package has not yet been filed.

No.

C. Labor certification which was filed over 365 days ago has been approved, the beneficiary intends to consular process, but has run out of H-1B time.

No.

D. Labor certification was filed and denied after 365 days and an appeal is pending.

Yes.

E. Labor certification was approved after 365 days and a solo I-140 is pending.

Yes.

Division IV (SAW, I-765, I-817, TPS, N-400, Legalization)

(As previously announced, the Form I-751 has moved to Division IV)

12. Please confirm that where an I-751 was previously filed as a joint petition, but subsequently the couple obtains a judgment of divorce, the CSC will accept a new I-751 petition establishing the *bona fides* of the marriage.

As previously discussed, the CSC will accept a new I-751 supported by a final judgement of divorce. The previously filed I-751 will be terminated, consolidated with the new I-751 and relocated to the district office having jurisdiction for interview.

13. On recent N-400 filings members report receiving receipt notices stating:

"Missing Evidence(s)-your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail."

When the cases are interviewed, there turns out to have been nothing missing from the file. This statement is alarming to both attorneys and clients. Has the statement become standard "boilerplate" on all NATZ receipt notices?

The wording on the receipt notices is not within our control at the CSC. Please forward examples through the AILA Liaison and we will forward them to HQ.

Division V (I-90, Waivers I-212/612, I-824, I-881, NACARA)

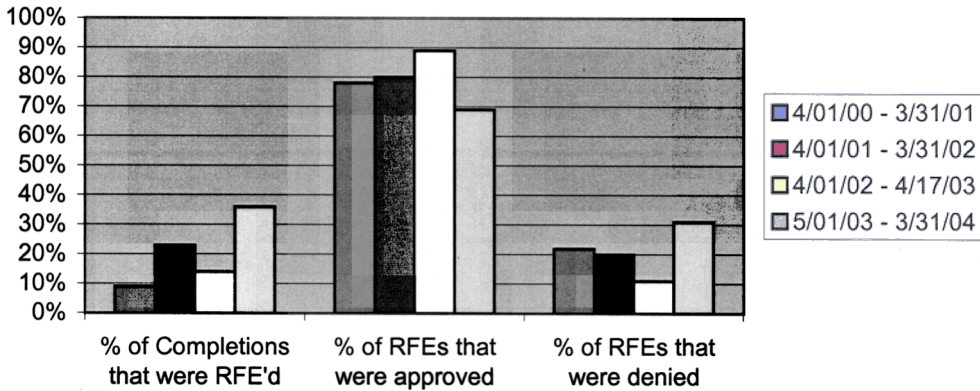
14. What occurs after the CSC approves an I-824 (to notify a consulate of approved I-140)? Is the approval sent to the NVC for processing or directly to the requested consulate? The NVC has indicated that it no longer handles I-824s. This information is contrary to the information on the I-797 approval notices. Please clarify.

When the I-824 is approved, the underlying approved immigrant visa petition (I-140) is forwarded to NVC for processing. Only the I-140 is forwarded to NVC, not the I-824. NVC does not process I-824's.

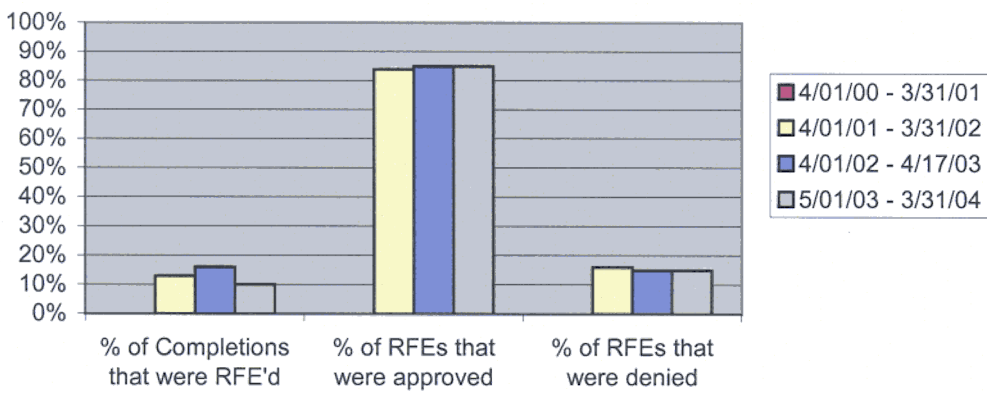
15. Aliens with applications for adjustment of status pending at the Service Center want to move to consular processing but do not do so because of the long wait for the I-824 to be adjudicated. Please confirm the process for withdrawing the I-485 and moving to consular processing without filing an I-824 through the normal process. How long will the informal process take?

There is no informal process at the CSC. An I-824 is required to complete this action. Please refer to the Bi-Monthly Processing Report for processing dates.

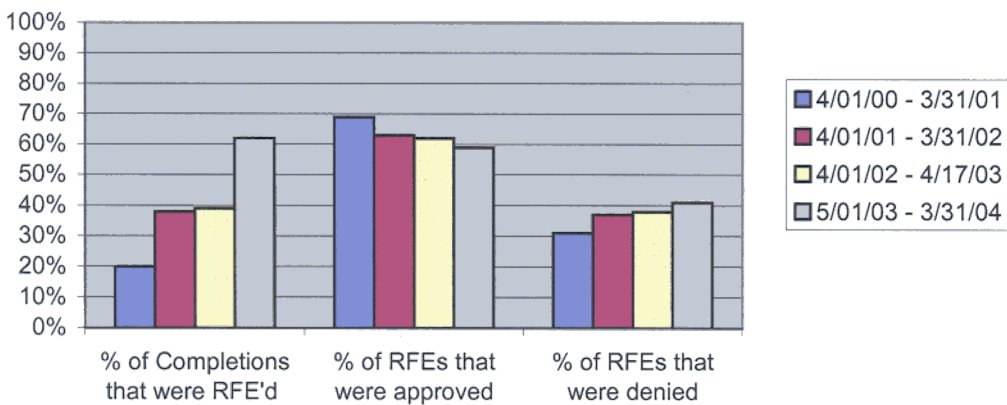
I-129 RFE Rates

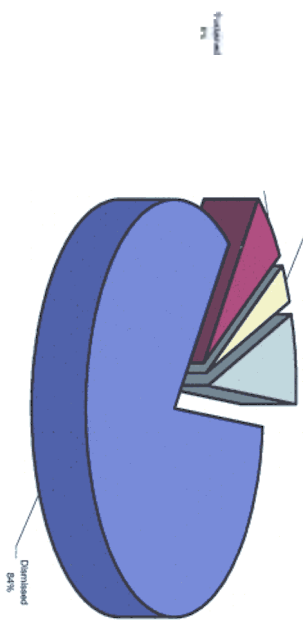


I-129 Premium Processing RFE Rate

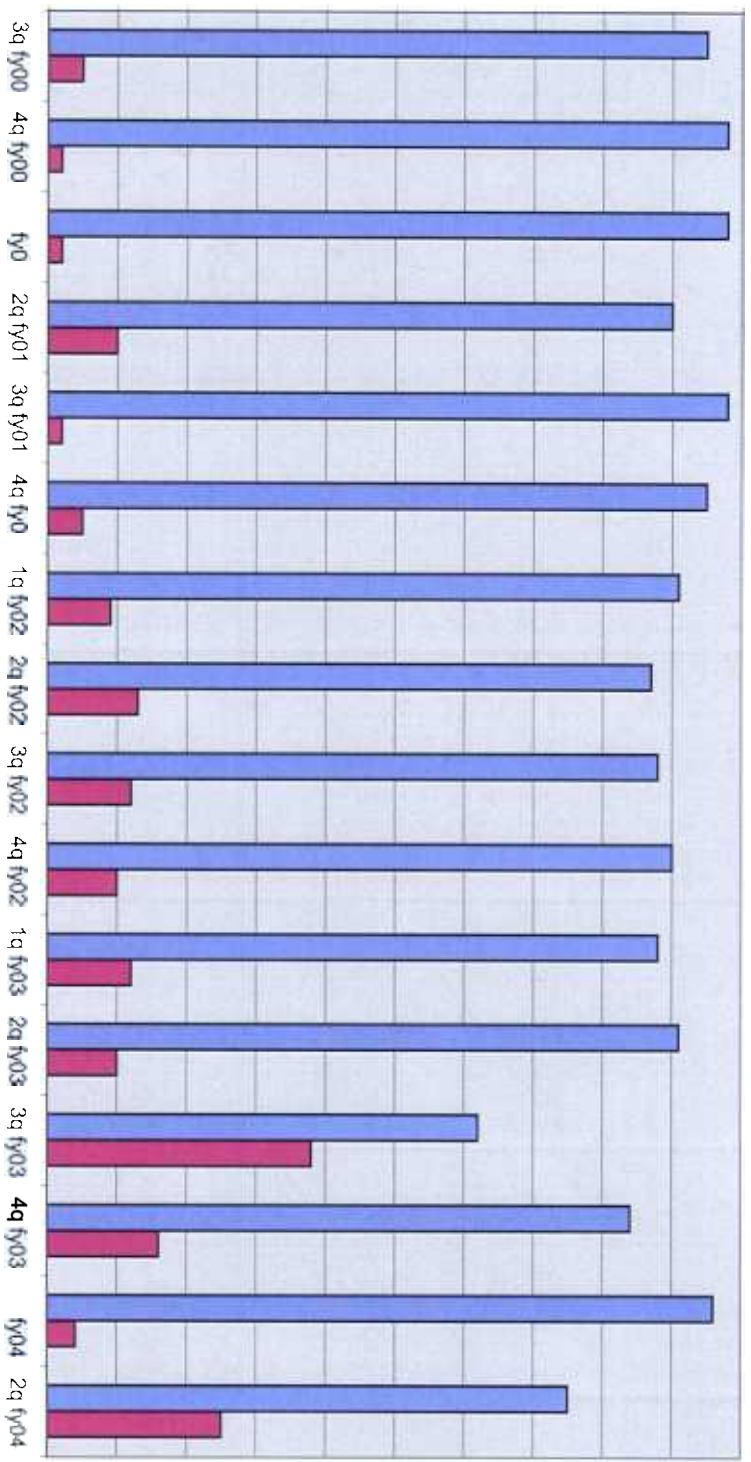


I-140 RFE Rates



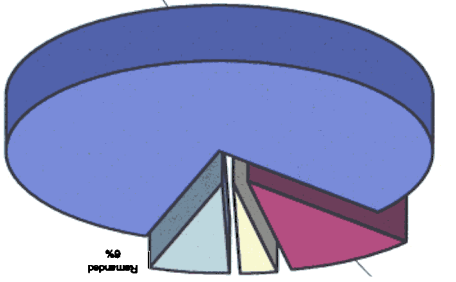


29 Approval and Denial Percentages



- Approval %
- Denial %

**I-140 AAO Decisions
April 02 - March 04**



I-140 Approval and Denial Percentages

