PROPOSED QUESTIONS FOR AILA SMALL GROUP MEETING FOR 03/25/2015

1. We understand that USCIS DFO has new AILA/CBO inquiry process guidelines. We submitted an inquiry and it was rejected on the grounds that we failed to provide a date of birth for the beneficiary. In the interest of time, would the officer handling the inquiry please provide the update with a one time warning for future inquiries? I can provide the response we received on the rejected filing for your review.

   Please follow the inquiry instructions in the AILA/CBO Inquiry Guidelines.

2. What is the correct mechanism to get an adjustment of status package to the DFO for somebody that had their removal proceedings terminated in another state? We would need to recreate an AOS package and get it filed with the DFO. Would it be at the AILA drop box, at an Infopass appointment, or by mail?

   If the applicant had already filed his/her I-485 in immigration proceedings held in another state, he/she should send a request, through correspondence, INFOPASS, or the 1-800 number, to the field office that has the application, to transfer the file to the Dallas Field Office. However, he/she must present proof of current residence in the form of a government issued ID to allow the out of state field office to honor such a request. Visit the USCIS website at www.uscis.gov to locate the office that has jurisdiction over the application.

   In addition you may follow the AILA/CBO Inquiry Guidelines - R1. IJ Terminated Proceedings. This line should be used to make an inquiry on a case involving immigration proceedings that were terminated to seek adjustment with USCIS. If the filing date of the I-485 is outside the DFO inquiry processing times and it has been more than 90 days since the IJ's termination, you may inquire on the case status on this line. You should receive a response within 45 days.

3. I emailed the DFO about their error of putting the street number as 1406 on an envelope but the correct house number was 4106 and 4106 was correct on the notice. But because the envelope said 1406, the couple did not receive the interview notice until like 4 months late. The case has now been denied, and I have to do a Request for a Service Motion to Reopen. Is there some way that the officers with the files can actually get the information from emails on this sort of issue so USCIS can avoid the time in denying a case and I can avoid the time in asking USCIS to reopen a case?

   We have a process in place for interfiling this type of correspondence. Please also see the USCIS policy for expediting review of certain cases affected by specific administrative

errors: http://www.uscis.gov/news/uscis-expedite-review-certain-cases-affected-specific-administrative-inaccuracies.

4. 8 CFR 336.2(b) states that an N-336 Request for a Hearing on a Decision in Naturalization Proceedings will be heard "within a reasonable period of time not to exceed 180 days from the date upon which the appeal is filed." I have a client whose N-336 has been pending for about ten months now. The DFO AILA inquiry cut-off date for an N-336 has now fallen all the way back to December 1, 2013. What is USCIS doing to bring these applications within the time requirements set out in the CFR?

   We are making every effort to render a determination within the 180-day requirement for each N-336 that is timely and properly filed by our customers. We continue to ask for your patience while we focus on making sound decisions and a meaningful naturalization process. You may inquire regarding your case through an InfoPass appointment, case status on-line, or the National Customer Service Center (NCSC) at 1-800-375-5283.

5. Is the DFO processing Matter of Arrabally AOS cases in abeyance for applicants with TPS or DACA who traveled on advance parole?

   Yes, the Dallas Field Office adjudicated these cases in the past. More recently, we were advised to hold such cases in abeyance.

6. What proof does the DFO need furnished to establish legal entry for a AOS case?

   The most probative evidence of admission or parole at a port-of-entry is a Form I-94 with a CBP admission or parole stamp. Also see the response to question 8.

7. Is the DFO able to issue emergency refugee travel documents for applicants with an immediate need to travel due severe illness and death of an immediate family member?

   The Dallas Field Office does not have the capability to produce refugee travel documents. These are produced at a Service Center. You may request expedited adjudication of a request for a refugee travel document per the instructions for Form-131. If you have already filed your application, contact the National Customer Service Center (NCSC) at 1-800-375-5283, or inquire through an InfoPass appointment. Your emergency request will be routed to the Service Center having jurisdiction over your filing.

8. Our office has received a number of denials for Adjustment of Status applications for clients who are wave-through admissions. Most of these clients are entering the U.S. from Mexico using valid Canadian citizenship documents or Canadian passports and are being waved through by CBP officers. Others are Mexican citizens and are entering the

U.S. through a valid port of entry and are similarly waved through without questioning. This is a common CBP practice in our experience. While our clients have presented themselves for inspection for the purpose of lawful admission into the U.S., they have not been questioned and possess no physical proof (I-94 or otherwise) that they entered the U.S. on the date they were admitted. As a result, when trying to adjust status or prove entry or admission, USCIS is stating that they either did not enter the United States legally or were not inspected and admitted. However, INA § 101(a)(13)(A) provides that admission requires a "lawful entry…into the United States after inspection and authorization by an immigration officer". The BIA has held that "admission" only requires procedural regularity. Matter of Quilantan, 25 I&N Dec. 285 (2010). In the Quilantan case, the immigration officer at the port of entry only spoke to the driver of the vehicle and allowed the vehicle to enter based on the driver's declaration of U.S. citizenship. The inspecting official did not question any other occupants in the vehicle. In Quilantan, the BIA found that the adjustment of status applicant presented herself for inspection and admission. This is the situation for many of our clients. We feel it is unfair to deny our clients immigration benefits because the government procedure at the border does not provide them with any proof of their lawful admission. One arm of the government (USCIS) should not be able to claim that foreign nationals must prove their lawful entry because that is the "common practice", when another arm (CBP) does not follow that practice at all, and is inspecting and admitting these foreign nationals in accordance with the BIA decision of Quilantan. Understandably, our clients cannot go back in time and remedy the situation, nor can they provide evidence in most cases other than a sworn affidavit detailing their lawful entry and admission. In most cases, our clients are no longer in touch with the people they traveled to the U.S. with due to the passage of time, and any family members travelling with them at the time of entry are often their children who were too young to remember the event, much less recount specific details. Furthermore, most of our client's entries are more than ten years old, many of them paid cash for travel expenses, and they have no additional proof of their lawful entry other than their own sworn testimony. We respectfully request guidance from USCIS regarding this issue so that we can best articulate and provide supporting evidence to USCIS for adjudication purposes. We feel our clients have been unreasonably prejudiced due to circumstances beyond their control at the time of entry.

Under *Matter of Quilantan*, an individual who presented himself or herself at a port-of-entry was "admitted" if CBP allowed the individual to come into the United States even if the CBP officer did not actually inspect the individual regarding inadmissibility.

But to say what the effect of a "wave through" is, does not say anything about how to prove that one was, in fact, "waved through." An individual cannot simply assert that it happened. In at least 3 unpublished decisions, the Board has cited the "clear and

convincing evidence" standard of INA 204(c)(2)(B) as applying to a *Quilantan* claim. *Matter of Aguirre Escobar*, 2014 WL 3697743 (BIA 2014); *Matter of Fonseca-Haro*, 2014 WL 3697753 (BIA 2014); *Matter of Ramirez*, 2012 WL 3911867 (BIA 2012).

USCIS acknowledges that such admissions have happened. USCIS doubts that it can be characterized as a "common" practice.

The presumption of agency regularity applies in immigration proceedings. *Angov v. Holder*, 736 F.3d 1263, 1276-77 (9th Cir. 2013). The INA requires CBP to inspect every individual seeking admission as an alien, and to make a record of every admission. Even for Canadians, who often are not given a Form I-94, there would still normally be a record of admission.

An applicant should provide as much evidence as may be available to prove a wave through claim. USCIS may be able to confirm a claimed admission through DHS records. If there is no record, the applicant may not be able to establish eligibility for adjustment.