QUESTIONS FOR AILA LARGE GROUP MEETING 9/14/2016

1. Has DFO issued any guidance on Humanitarian Parole-in-place? i.e. who qualifies and what Service would like to be included in the packet. Service, in the past, has provided specific guidance on Military Parole-in-Place and the process currently employed by DFO but we would like to see clarification on the requirements from DFO;

Answer: USCIS HQ has provided detailed guidance related to parole requests that relate to aliens who are present without admission or parole and who are dependents of Armed Forces personnel. No similar HQ guidance exists for other foreign nationals who are present without admission or parole.

The Dallas Field Office has not issued guidance regarding non-military parole in place.

INA section 212(d)(5)(A) authorizes USCIS, on behalf of the Secretary of Homeland Security, to parole into the United States any applicant for admission. USCIS exercises this parole authority on a case-by-case basis. Whether to grant parole is a matter of agency discretion. To exercise this discretion favorably, USCIS must find that parole is justified either by urgent humanitarian reasons or significant public benefit.

By contrast, an alien who was admitted to the United States – whether as an immigrant or a nonimmigrant – and who has not left the United States is not an applicant for admission, even if the period of admission has expired. In particular, requesting parole cannot be reconciled with a claim that one has been admitted in the manner addressed in *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Also, obtaining parole *after* filing a Form I-485 does not satisfy the requirement that one must be eligible at the time of filing.

With those issues clarified, the Dallas Field Office can make some general observations. An alien who is present without admission or parole and is seeking parole should present any and all evidence that the alien believes, supports a finding that parole is warranted, whether on humanitarian or public benefit grounds. Even if the Dallas Field Office finds one of these criteria met, the grant of parole remains discretionary.

A desire to be able to file a Form I-485, by itself, generally would not be sufficient.

2. We were recently informed by Customer Service that there is a new process in place for DACA clients that would require all DACA applicants to create an ELIS account and request ASC appointments for biometrics. Is DFO aware of this? Is there policy guidance on this?

Answer: Applicants may mail their I-821D, fees and supporting documentation to the appropriate USCIS Lockbox.

Beginning February 1, 2016, anyone who submits a DACA request has been able to create a USCIS online account to track and manage his or her case online. If you submit a DACA request, you will receive a USCIS Account Acceptance Notice in the mail with instructions on how to create a USCIS online account but you are not required to create a USCIS online account.

After USCIS receives your complete request with fees, we will send you a notice scheduling you to visit an Application Support Center (ASC) for biometric services. You are also not required to create a USCIS online account to receive an ASC appointment notice. If you fail to attend your ASC appointment, USCIS may deny your request.

The advantages of having an online account, however, are that customers can easily access information about their cases, get real-time status updates, and change their address with USCIS. USCIS will continue processing a case even if a person chooses not to access the online account, and customers (and authorized legal representatives) will continue to receive notifications and updates through the U.S. Postal Service.

3. USCIS recently issued guidance on expansion of provisional waivers for Lawful Permanent Residents. Regulations provide that an individual with a prior removal order (including in absentia order) is eligible to apply for an I-212 waiver and, after the grant, for a provisional waiver. Does DFO have any guidance on how this provision impacts the regulation that prohibits issuance of any benefits for a period of five years to anyone who fails to attend a hearing?

Answer: Section 212(a)(6)(B) of the Act states: Failure to attend removal proceeding. -Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

Under the final rule, inadmissibility under any ground other than section 212(a)(9)(B) of the Act no longer prevents approval of a Form I-601A.

If USCIS approves the Form I-601A, it will be for the consular officer to decide whether the alien is inadmissible on other grounds. There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act. But the consular officer has authority to decide that this ground does not apply, if the consular officer concludes that the alien had reasonable cause for the failure to appear.

4. Recently, the regulations dealing with provisional waivers were expanded. We understand that a person needing an I-212 waiver and an I-601A waiver must first submit the I-212 waiver and upon approval file the I-601A waiver. In that scenario, where should we send the I-212 waiver? Will local USCIS office start collecting the fees for the I-212 waivers?

Answer: If filing Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, with USCIS, the applicant should file with the lockbox. Please see Special Filing Instructions for Form I-212. The Dallas Field Office is restricted on receiving fees locally and has not received instructions to collect fees for Form I-212.

5. What is the Dallas Field Office policy on granting parole in place for someone who is subject to 212(a)(9)(C). I know in some other jurisdictions they will do PIP even if the person is subject to 212(a)(9)(C). The person is not able to adjust; it just places that person in an indefinite parole status. If DFO will do this, will they require some type of extraordinary circumstance to consider

exercising discretion in such cases (i.e. beyond simply being family member of military service member)?

Answer: INA section 212(d)(5)(A) authorizes USCIS, on behalf of the Secretary of Homeland Security, to parole into the United States any applicant for admission. USCIS exercises this parole authority on a case-by-case basis. Whether to grant parole is a matter of agency discretion. To exercise this discretion favorably, USCIS must find that parole is justified either by urgent humanitarian reasons or significant public benefit.

The term applicant for admission includes any arriving alien. INA section 235(b)(1)(A)(i); 8 CFR 1.2. An applicant for admission also includes an alien who is present in the United States without having been admitted or paroled. INA section 235(a)(1). By contrast, an alien who was admitted to the United States – whether as an immigrant or a nonimmigrant – and who has not left the United States is not an applicant for admission, even if the period of admission has expired.

Each case is unique and decisions are made based on the individual facts. Also to clarify, there is no indefinite parole. Parole in place, if authorized, is for a definite time period and at the conclusion of that time period, a re-parole would be necessary in order to remain in the U.S. as a parolee.

Also, paroling an alien after the alien has become inadmissible under INA section 212(a)(9)(C)(i) does not relieve the alien of inadmissibility. No matter how long the alien may be here as a parolee, the alien *cannot* file a Form I-212 under INA section 212(a)(9)(C)(ii) until the alien has left the United States and has remained abroad for 10 consecutive years.

6. Can the DFO clarify its policy on establishing GMC for naturalization when there is a restitution payment plan based on a criminal conviction? How is this matter viewed by the DFO?

Answer: An applicant's compliance with any court-ordered restitution payment plan will be considered on a case-by-case basis when an officer determines whether the applicant has demonstrated that he or she is a person of good moral character.

7. On the N-400, Part 12, #23, the application asks (among other things), if the applicant has been "cited." We have a difference of opinion in our office amongst the attorneys as to whether we have to list traffic tickets (speeding, running a red light, etc.) My personal experience is that 99% of the time, the officers do not inquire about traffic tickets and that traffic tickets are not relevant (unless perhaps the tickets are not paid and a warrant has been issued). So, what is the DFO opinion on this issue?

Answer: The N-400, Part 12, #23, asks if the applicant has ever been arrested, cited, or detained by any law enforcement officer (including any immigration official or any official of the U.S. armed forces) for any reason. All citations are relevant, including traffic citations.

However, please note that the N-400 instructions provide that there is no need to submit documentation for traffic fines or incidents that did not involve an arrest or did not involve drugs

or alcohol, if the only penalty was a fine of less than $500 or points on the applicant's driving record.

8. What is the DFO policy on filing PIP packets? We have an AILA Practice Pointer that says that a PIP package can be hand-filed at an INFOPASS appointment. Again, we have attorneys in our office thinking differently. How does the DFO want these PIP packages filed? By mail or at an INFOPASS appointment or either?

Answer: We accept the military PIP and non-military PIP requests through the mail or an InfoPass appointment.

9. Can the DFO clarify a few issues on the expanded waiver? Pursuant to the new provisional waiver guidelines, technically, an individual with a final order of removal (in absentia) remains eligible for filing provisional waiver provided that he/she requests an I-212 prior. What's the correct interpretation?

Answer: Simply filing Form I-212 is not enough.

Form I-601A Instructions provide the following:

You are not eligible for a provisional unlawful presence waiver and USCIS will deny your application if you are subject to an administratively final order of removal, exclusion, or deportation that has been entered or issued against you (including an in absentia order under INA section 240(b)(5) unless, you applied for, and USCIS has already granted, an application for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act and 8 CFR 212.

If you submit your Form I-601A along with your Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), your application will be rejected and returned to you with the filing fee and biometric services fee.

10. In regards to the continuous residence requirement (N-400), what is the policy of the Dallas Field Office if an applicant is out of the country for 8 months due to a taking up of temporary contract employment but continues to have ties to the U.S. (family members reside in the U.S.) is this enough to overcome presumption of break in continuous residence?

Answer: This question is case specific and will not be addressed in this setting.

11. What is the Dallas Field Office policy if an N-400 applicant is 50 years of age and an LPR for 20 years or more, and the applicant would like to conduct the interview in English but take the civics test in Spanish? He is not able to write in English.

Answer: If an applicant is over 50 years old and has lived in the United States as a lawful permanent resident for at least 20 years, the English requirement is waived. The civics test is required and can be taken in any language the applicant chooses. If the applicant chooses to be interviewed in English, nothing forecloses this election, but the exemption/waiver may be invoked, if an interview in English proves to be counterproductive or too onerous. When, as

here, an applicant is not required to demonstrate the ability to read, write, and speak English, officers have the discretion to allow for the use of an interpreter during the civics test even if the rest of the interview is conducted in English.

12. What is the Dallas Field Office policy regarding an N-400 applicant with over 20 years of LPR status turns 50 on the day his LPR card expires, can one submit a N-400 in lieu of renewing his LPR card understanding that he will most likely not be able to travel because he did not submit his N-400 prior to the expiration of his LPR status?

Answer: No. If an applicant applies for naturalization after his Permanent Resident Card has expired or fewer than 6 months before it will expire, he must renew his Permanent Resident Card.

13. What is the DFO policy when interviewing I-130 beneficiaries who have old removal orders? Is it the practice of the DFO to still conduct the interview or does the DFO proceed with having them arrested? It is very difficult to have removal proceedings reopened without an approved I-130, hence the need to file an I-130 prior to filing a motion to reopen before the Immigration Court or the BIA.

Answer: The age of a removal order has no effect on its enforceability. U.S. Immigration and Customs Enforcement (ICE) have discretion to decide whether, and when, to execute the removal order. Filing an immigrant visa petition does not stay execution of the removal order.

The Dallas Field Office will conduct the interview and adjudicate the Form I-130 on its merits. The existence of an order of removal is not the focus of a Form I-130 adjudication; rather, the focus is upon the validity of the claimed relationship. Whether the beneficiary is apprehended and/or detained due to any order of removal falls within the jurisdiction of ICE. Based on its enforcement priorities, ICE has discretion to decide whether, and when, to execute any such order.