

Exact Content of:  
State Cable 180792

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better legibility.*

**SUBJECT:**

**PROCESSING I-140 PETITIONS FOR  
APPLICANTS RESIDING IN THE U.S.**

1. This is an action message. See paragraphs 8, 9 and 10.
2. **Summary** In July, VO solicited information from IV processing Posts about post procedures for dealing with requests to process i-140 petitions for beneficiaries who are in the U.S. We noted that the INS service centers have a backlog of I-140 petitions in which the beneficiaries had originally filed for adjustment of status in the u.s., but have subsequently requested that their petitions be transferred overseas for processing. This cable provides instructions to posts on processing these cases.  
**End summary.**

**SERVICE CENTER BACKLOGS OF I-824 CASES**

3. The INS service centers have a backlog of as many as several thousand "I-824 cases," I-140 petitions for which the beneficiaries, although now in the u.s., have filed an I-824 "request for transfer of immigrant visa petition" to have their file transferred overseas for processing. In most cases the applicants have sought the transfer because of the inordinately long waiting time for adjustments (up to several years). Unfortunately, these applicants have found the I-824 backlog to be nearly as lengthy, with the Service Centers taking well over a year to move these cases out of the Centers and on to NVC.
4. As a result of this situation, a number of applicants and their attorneys have been approaching posts directly (and indirectly via the visa office) requesting that their cases be processed under posts' discretionary authority to accept cases for persons not resident in those consular districts in "emergent or humanitarian situations." In addition, AILA has brought up this issue with the Visa Office on a number of occasions over the past year. Some posts have been willing to accept these, usually with the stipulation that the beneficiary was last resident in that consular district (see

paragraph 7). Other posts, citing heavy workloads, have been reluctant or have simply refused to accept such cases.

### **POSSIBLE DECLINE IN IV CASES FROM NVC**

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5. This backlog of i-824 cases has developed at the same time that INS has begun shifting its concentration from naturalizations to petition processing, specifically adjustments of status by family members. The result of this shift will be a decline in cases passing through NVC to those countries whose immigrant clientele are in these categories. While we have heard some rumblings that INS may have a decline in i-130 processing early next year, for the short term most IV posts are likely to experience a fall-off in workload. Such an ins-imposed drought has the potential to cause a significant drop in workload over an extended period of time.

6. These two developments have led the visa office to conclude that we should work to eliminate the backlog in i-140 cases for which beneficiaries have filed an i-824 request for overseas processing. The total backlog is extremely small (less than 2,000 cases, per INS figures), and the impact on posts of taking on this caseload would be minimal -- most posts, in fact, are unlikely to see any i-824 cases, as the majority of affected beneficiaries are from only a handful of countries. The results of our informal e-mail poll reinforce our belief that posts could easily absorb this extra workload. Most respondents said that they would be willing to process these cases, if they are not already doing so. Only a handful of posts have reported that their workloads are so great that they cannot take on extra "out-of-district" cases.

### **WHAT IS A NON-DISCRETIONARY CASE?**

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7. The regulations in 9 FAM 42.61(a) state that an alien applying for an immigrant visa "shall" make application at the consular office having jurisdiction over the alien's place of residence. Note n2.1 of that section adds that the last residence abroad is the residence of the applicant for IV processing. A case in which the beneficiary was last resident in the country to which he is applying for visa processing is not "discretionary," but (with specific exceptions) shall be accepted by post

for processing. The FAM defines "discretionary" cases as those of applicants who were not last resident in the consular district.

#### **ACTION REQUEST: NON-DISCRETIONARY CASES**

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8. The visa office requests that posts which process IV's begin immediately accepting i-140 cases for which the beneficiary has filed an i-824 request for overseas processing and was last resident in post's consular district. As noted above, such cases are not discretionary. If post is approached by a beneficiary or attorney requesting such processing, post should first determine if the beneficiary is eligible to have the case processed there. Posts do not have to have the actual approved petition to process, as 9 FAM 42.42 authorizes officers to process immigrant visa petitions on the basis of an I-797 "notice of approval" or telegraphic notification of petition approval. For the sake of consistency as well as to forestall potential fraud, posts must accept these cases only if the beneficiary can supply all of the following items:

- Original I-797 notice of approval of the i-140 petition;
- Copy of the I-140 petition (a certified copy is not necessary);
- Receipt for the I-824 to demonstrate the applicant has requested overseas processing;
- Evidence the applicant was last resident in the host country of the post.

#### **ACTION REQUEST: DISCRETIONARY CASES**

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9. If post is approached by an I-140 beneficiary seeking overseas processing who is not considered resident in that Consular district, post may/may accept the case on a discretionary basis. We encourage posts to accept these cases for applicants who are homeless or facing hardship as a result of long processing delays. Post should still require the original I-797 notice of approval of the I-140 petition, copy of the petition, and receipt for the I-824 before agreeing to accept the case. Post should also be satisfied the beneficiary will be able to remain in the host

country for a period of time sufficient to complete processing of the case.

**ACTION REQUEST:  
POSTS UNABLE TO ACCEPT NEW CASES**

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10. A handful of posts have informed VO that they are unable to take on any additional caseload. We are sympathetic to these concerns and do not wish to place an additional burden on posts already overwhelmed with work. If approached by an I-140 beneficiary seeking overseas processing, these posts should notify the Visa Office (CA/VO/E/P) immediately of their inability to assume extra cases. We will then designate another post or posts to assume the case.

Albright