

Family-Based Solutions in Midst of COVID-19

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This paper will serve as a practice pointer for navigating creative solutions to get USCIS to adjudicate your cases as you file and respond to RFE's in the family-based immigration context. As practitioners, we were forced to modify our practices to continue providing services to our clients. We were faced with tumultuous changes during these unprecedented times. Twenty months later, we are still working remotely, through Zoom, Microsoft Teams and WebEx. Even though the COVID-19 vaccine is now available, with low vaccination rates, we are continuing with remote working and taking precautions to keep ourselves, clients and staff safe. In the same spirit, USCIS has continued some of the policies initiated in March 2020 COVID-19 memos to manage this phase of the pandemic.

1. REINVENTING SUBMISSIONS OF EVIDENCE

Some practitioners discovered creative ways to gather evidence to corroborate their client's petitions. Even prior to COVID-19, a new trend was developing with some attorneys obtaining nontraditional forms of evidence to support petitions. In family-based petitions, a lot of Millennials do not retain the traditional forms of evidence. These new practices are ways that people now conduct their affairs. When handling cases with people who did not maintain traditional forms of evidence, try to think outside the box. Maintaining full-time employment during the pandemic was challenging for many. Some clients were no longer able to provide lease agreements for where they lived because they had moved in with parents, roommates or other couples to be able to ride out these unprecedented times. Practitioners should think about obtaining declarations from family and friends and also include letters of employment termination or layoffs in order to establish the loss of their income and hence, shared residence on paper.

Social media has been a new trend in corroborating meritorious relationships for individuals proceeding with the family-based petitions. Asking your clients to provide their documentation based on what they have on Facebook could be extremely helpful and there are various forms of social platforms including Instagram and Snap Chat. Other ways to collaborate commingling of asset sharing would be by obtaining records from their Carhop, Apple Pay and Zelle. Unfortunately, USCIS has not necessarily caught up with the times, so a practitioner should be prepared to explain why these forms of evidence are sufficient.

Air BNB has become increasingly popular as some people have ceased renting traditional apartments. Now more than ever, individuals are trying to keep their costs at a minimum, and renting a traditional apartment in this market may not be an option. Additionally, some people do not have the proper documentation to rent a traditional apartment. A practitioner should not overlook these types of evidence and again should be prepared to explain why the evidence presented is relevant and credible.

There are several other way to prove the validity of a relationship. Text messages and emails can serve as important pieces of evidence to establish the communication between the couple. Air travel plane tickets and vacations may be paid for in cash, however, counsel can still establish the bona fides by way of obtaining secondary forms of evidence including holiday pictures on social media or other documentation to support that travel. Facebook has a chronological section with dates that can establish that a couple in sharing a life together.

Even with having the perfect case lined up, USCIS is still taking a long time processing these cases. Some of the delay was before the coronavirus of 2019, and it continued to build once lockdown in full force. Between the months of late March 2020 until around July 2020, USCIS did not conduct any in-person interviews nor did it take biometrics for several months further exacerbating an already delayed agency.

2. WHY ARE CASES TAKING SO LONG?

During the last administration, USCIS implemented many new policies designed to restrict legal immigration and delay processing. For example, one policy required USCIS officers to conduct duplicate reviews of past decisions, adding unnecessary work to each case. Another example was the imposition of a fingerprinting requirement for certain I-539 applicants. While the current administration has made some helpful changes, including to the noted policies, the COVID-19 pandemic has contributed to continued slowdowns.

For example, from March through July 2020, USCIS closed its offices for interviews and biometrics appointments, creating a backlog, especially for biometrics appointments. Many applications, like I-765 applications for Employment Authorization Documents (EADs), cannot be adjudicated before biometrics are taken.¹

In response to the coronavirus (COVID-19) pandemic, U.S. Citizenship and Immigration Services is extending the flexibilities it announced on March 30, 2020, to assist applicants, petitioners and requestors who are responding to certain types of requests:

- Requests for Evidence.
- Continuations to Request Evidence (N-14);
- Notices of Intent to Deny; Notices of Intent to Revoke;
- Notices of Intent to Rescind;
- Notices of Intent to Terminate regional centers; and
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5.

In addition, USCIS will consider a Form I-290B, Notice of Appeal or Motion, or Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if: The form was filed up to 60 calendar days from the issuance of a decision we made; and they made that decision anytime from March 1, 2020, through Jan. 15, 2022.²

A. Notice/Request/Decision Issuance Date

This flexibility applies to the above documents if the issuance date listed on the request, notice or decision is between March 1, 2020, and Jan. 15, 2022, inclusive, Response Due Date. USCIS will consider a response to the above requests and notices received within 60 calendar

¹ AILA Doc 19042400 9/22/2021

² USCIS Newsroom Memo Release Date 09/24/2021

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