



Questions and Answers

June 25, 2009

Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker

Background

The Form I-140, Immigrant Petition for Alien Worker, is used to petition U.S. Citizenship and Immigration Services (USCIS) to classify an alien beneficiary as eligible for an immigrant visa based on employment. The employer generally files the Form I-140 on behalf of the alien.

Questions & Answers

Q. What steps can I take to ensure that my Form I-140 petition will not be rejected by USCIS?

A. Be sure to submit your Form I-140 petition with correct information and well-organized supporting documentation or your petition may be rejected or a final decision can be delayed.

Below are tips to ensure that your Form I-140 petition is accepted for processing:

- Use the most current edition of the form, although older editions may be accepted.
- Make sure you follow the instructions carefully in regards to what location to file your Form I-140 petition.
- Select only one visa preference category in Part 2 of the Form I-140. (USCIS will reject the Form I-140 petition if Part 2 is left blank or when more than one visa preference category is selected in Part 2.)
- Respond to all questions and provide information in all of the “answer” and “check” boxes. Please write “none” or n/a in an answer box if a question does not apply to you.
- Print or type information using black ink only. Please do not “highlight” or “background shade” your entries.
- Make sure the petitioner signs the Form I-140.
- Include the correct fee specified in the form instructions. If you file the petition with other related applications for the alien beneficiary, attach the fee to the petition by paper clip or staple, and indicate the name of the applicant on the payment document (i.e., in the memo field).
- Submit one check per application. If more than one petition or application is filed using a single check, and any of the forms are found to be improperly filed, ALL forms will be rejected.
- Submit Form G-28, Notice of Entry of Appearance as Attorney or Representative, if applicable (with original signatures of both the representative and the applicant or petitioner).
- For petitions that are filed electronically, send the supporting documentation to the address identified in the directions for e-filing. Do not submit any other paper-filed applications or petitions with the supporting documentation for the electronically filed I-140.

Q. What if an incorrect visa category is selected in Part 2 of the Form I-140?

A. When USCIS creates the electronic record for the Form I-140 petition it will issue and mail a Form I-797 Receipt Notice to the petitioner or the Form G-28 representative. The receipt notice will indicate the visa category that the petitioner requested on Part 2 of their Form I-140. Make sure this category is correct. If it is not correct (i.e., in cases where either the petitioner or USCIS has made a clerical error), then immediately request a change in visa classification through the USCIS National Customer Service Center [1-800-375-5283, 1-800-767-1833 (TTY)] prior to the adjudication of the petition.

Although you may request a change of classification prior to adjudication to correct a clerical error in Part 2 of the form, the determination regarding whether to change the visa preference classification will be made by USCIS, based on the totality of the record. Denial of the I-140 based upon ineligibility for the visa preference category will result in denial of the Form I-485, Application to Register Permanent Residence or Adjust Status, if one was filed with the I-140. Requests for a change in visa preference category cannot be granted in petitions that have already been adjudicated. A post-adjudication alteration of the requested visa classification constitutes a material change in the petition is prohibited.

Q. What if the petitioner wants to request consideration of multiple visa categories on behalf of an alien beneficiary?

A. If you want to classify the alien beneficiary under multiple visa preference categories, then file a separate Form I-140 petition, with the required fee and supporting documentation for each requested visa category.

Q. What special steps should be taken to file a Form I-140 petition that requires a DOL-approved labor certification?

A. USCIS reviews Form I-140 petition filings in visa categories that require DOL-approved labor certification to verify that the petition is supported by a valid labor certification. In order to be valid at the time of filing of the Form I-140 petition, the labor certification must be submitted with the Form I-140 during the 180-day validity period annotated at the bottom of every page of the labor certification by DOL. Petitions that are not supported by a valid labor certification will be rejected.

Below are tips to help ensure that your Form I-140 petition that requires a DOL-approved labor certification is accepted for processing:

- Package your Form I-140 with the Form G-28, if any, on top, followed by the form itself. Place the original labor certification directly under the I-140 petition, followed by the other supporting documentation.
- In instances where the ending date of the labor certification's validity period expires on a Saturday, Sunday or legal holiday, petitions will be accepted with the labor certification on the next business day. Petitions filed with expired labor certifications filed after the next business day will be rejected.
- DOL-approved labor certifications that are filed electronically with DOL must be signed by the employer, the agent/representative, and the alien beneficiary prior to submission with the I-140 petition. Form I-140 petitions will be rejected if filed with unsigned labor certifications. If an I-140 is inadvertently accepted with an unsigned labor certification, the petitioner will be issued a RFE requesting the required signatures.
- Place a brightly colored piece of paper directly under the Form I-140 petition requesting in large bold font a duplicate labor certification if you need one.
- If the petition that is being filed is an amended petition and the original labor certification has already been submitted with another Form I-140 petition, place a brightly colored piece of paper directly under the petition that indicates in large bold font that the petition is an amended petition and that the labor certification has already been submitted. Also provide the receipt number of the previously filed petition, if available.

Q. When filing my Form I-140, how should I organize the evidence with the petition?

A. Group the various categories of evidence provided in support of the petition according to the area of eligibility that the category of evidence is seeking to establish.

Follow the tips below for how to organize you evidence:

- Provide all required documentation and evidence with the petition when filed. Form I-140 petitions may be denied without issuing a request for evidence in the instances where the required evidence described in the instructions and regulations are not initially provided.

- If providing photocopies of documents, please provide clear legible copies. (Note: Original DOL-approved labor certifications, signed by the petitioner, alien and representative, if any, must be submitted if they are required by the visa category.)
- All foreign language documents must be submitted with a corresponding English translation. The English translation must be certified by a translator who is competent to translate and must verify in writing that “the translation is true and accurate to the best of the translator’s abilities.” It is helpful if the English translation is stapled to the foreign language document.
- If the alien beneficiary may be entitled to an earlier priority date based on a previously approved Form I-140 petition, please provide a statement to that affect, along with a copy of the Form I-797 approval notice for the previous petition. (See 8 C.F.R. 204.5(e))
- If documenting the alien’s publications or citations of the alien beneficiary’s work, please highlight the alien’s name in the relevant articles. It is not necessary to send the full copy of a dissertation, thesis, or research paper written by the alien beneficiary, or one in which the alien beneficiary’s work has been cited. Include the title page and the portion(s) that cite the alien’s work and the “works cited” or bibliography.
- Tab and label the evidentiary exhibits at the bottom of the first page of each exhibit, and provide a list of the evidentiary exhibits and the eligibility criteria that each exhibit is submitted to establish for petitions supported by a substantial amount of documentation. An exhibit that is being provided to meet multiple eligibility criteria should be so identified in the exhibit list.

In the case of:

- **E11, Alien of Extraordinary Ability petitions (Form I-140, Part 2. option a.)**
 - Identify which of the ten regulatory criteria the alien is attempting to satisfy and the relevant evidence for each individual criterion.
 - Provide a statement and evidence that the alien beneficiary is coming to the U.S. to continue to be employed in his/her area of sustained national or international acclaim. (See 8 C.F.R. 204.5(h).)
- **E12, Outstanding Professor or Researcher petitions (Form I-140, Part 2. option b.),**
 - Identify which of the six regulatory criteria the alien is attempting to satisfy and the relevant evidence for each individual criterion.
 - Provide evidence that the alien has at least three years of experience in teaching and/or research in the academic field.
 - Submit a copy of the petitioner’s actual job offer issued to the alien beneficiary. This letter or contract must set forth the title, terms and conditions of the position offered.
 - Send documentation as outlined above for each position if the beneficiary has changed positions since s/he was initially hired. (See 8 C.F.R. 204.5(i).)
- **E13, Multinational Executive or Manager (Form I-140, Part 2. option c.)**
 - Provide evidence and a cover letter that describes the name of the foreign employer, the position offered in the U.S., the position held abroad and the years of employment as well as the date the beneficiary transferred to the U.S. State the claimed relationship between the foreign employer and the U.S. petitioner, i.e. affiliates, subsidiary, joint venture etc.
 - Provide evidence that the U.S. employer has been doing business for at least one year prior to the filing of the petition. (See 8 C.F.R. 204.5(j).)
- **E21, Alien of Exceptional Ability (Form I-140, Part 2. option d. or i.)**
 - Identify which of the six regulatory criteria the alien is attempting to satisfy and the relevant evidence for each individual criterion.
 - Provide evidence that the alien beneficiary meets the minimum education and experience requirements specified in the supporting labor certification if filing under Form I-140 Part 2. option d. (See 8 C.F.R. 204.5(k)(3).)
- **E21, Member of the Professions Holding an Advance Degree or an Alien of Exceptional Ability, requesting a National Interest Waiver (Form I-140, Part 2. option i.)**

- Identify how the alien qualifies for classification as a member of the professions with an advanced degree (e.g. the alien holds an advanced degree, the alien holds a Bachelor’s degree in addition to five years of progressive experience, or the alien qualifies as an alien of exceptional ability).
- Identify each of the three criteria (e.g. intrinsic merit, national scope, and national interest) that must be satisfied and provide the evidence needed to satisfy each criteria. (See 8 C.F.R. 204.5(k) and Matter of New York State Department of Transportation (NYSDOT), 22 I&N Dec. 3363, Int. Dec. 3363 (Act. Assoc. Comm. 1998).

Q. How can a petitioner request the withdrawal of a Form I-140 petition?

A. The petitioner or the Form G-28 representative may send a letter requesting to withdraw the I-140 petition to USCIS.

Withdrawal requests should include:

- A statement indicating that the Form I-140 petitioner wishes to withdraw the petition;
- The Form I-140 petition receipt number;
- The name, address and phone number of the petitioner;
- The name of the alien beneficiary;
- The alien registration number of the alien beneficiary, if known;
- The petitioner’s signature or the Form G-28 representative.

Q. How can an alien beneficiary submit a request to change employers?

A. The alien beneficiary or the Form G-28 representative for the Form I-485 application must send a letter from the new intended permanent employer specifying the job title and duties of the offered position, the minimum educational or training requirements, the date the alien beneficiary began (or will begin) employment and the offered salary or wage. The letter must be issued and signed by the appropriate authority within the new employer’s organization who is authorized to make or confirm an offer of permanent employment. In addition, a copy of the Form I-140 approval notice or receipt notice and a copy of the Form I-485 receipt notice should be provided to locate the alien’s beneficiary’s case file and to confirm that the application has been pending for at least 180 days.

Q. Where do I mail Form I-140 petition withdrawal requests and AC21 106(c) portability requests?

A. The Texas Service Center (TSC) and the Nebraska Service Center (NSC) have established a dedicated U.S. Post Office Box for the submission of:

1. Form I-140 petition withdrawal requests, and;
2. AC21 106(c) portability requests.

The use of the Post Office Box addresses is limited to the submission of Form I-140 petition withdrawal requests and AC21 portability requests. The submission of correspondence that is unrelated to this will be sent to the Service Center’s General Correspondence Unit.

If the Submission is...	For a...	Then the Submission should be Mailed to...
A Form I-140 Withdrawal Request	Form I-140 Petition that is pending or was approved at the TSC	USCIS Texas Service Center PO BOX 851745 Mesquite TX 75185
	Form I-140 Petition that was approved at the Vermont Service Center (VSC)	
An AC21 106(c) Portability	Form I-485 Application that	

Request	is pending at the TSC	
A Form I-140 Withdrawal Request	Form I-140 Petition that is pending or was approved at the NSC	USCIS Nebraska Service Center PO BOX 87105 68501-7105
	Form I-140 Petition that was approved at the California Service Center (CSC)	
An AC21 106(c) Portability Request	Form I-485 Application that is pending at the NSC	
Unrelated to a Form I-140 Withdrawal Request or an AC21 106(c) Request		An address other than the addresses noted above. Please go to www.uscis.gov to determine the correct USCIS mailing address.