



May 2 Policy Manual Update: One Small Step for I-829 Filers; Some Giant Leaps Left for USCIS to Take

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USCIS has announced that it has amended the Policy Manual to clarify that people awaiting adjudication of Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, are entitled to *evidence* of their continuing permanent residence. That is one small step in the currently lousy process of getting such evidence routinely into the hands of faithful investors.

[On May 2, 2018, USCIS announced](#) the second round of changes to the USCIS Policy Manual that it had published in late 2016. The earlier announced changes of June 2014 had amended numerous sections to clarify the agency's requirement that investors "sustain their investment," which I explained in an [article](#).

The May 2, 2018 change only adds section D to [Chapter 5 of the Policy Manual](#), which confirms that USCIS will continue to issue evidence of permanent residence for as long as I-829 is pending and even after I-829 is denied until a final order of removal. This aligns the Policy Manual with instructions the former Adjudicators Field Manual had provided to USCIS officers, and it aligns with similar policy still in the [Section 25.1 of the USCIS Adjudicators Field Manual](#), following INS General Counsel Opinion 96-12, as to immigrants who are the subject of an I-751 filing to remove conditions that come with a marriage-based green card. Evidence of immigration status is increasingly necessary in the U.S., whether for work, travel, driver license, apartment rental, etc. It is not acceptable for the Government not to provide this evidence at all times.

People in Proceedings. When USCIS published the Policy Manual section on Investors in late 2016, it invalidated the prior EB-5 section of the Adjudicators Field Manual, so there was no published policy about the requirement of USCIS officers to issue temporary green card evidence to an investor awaiting I-829 adjudication or awaiting completion of removal proceedings following an I-829 denial. When an I-829 petition is denied, the investor and family should be placed in removal proceedings where they can challenge the USCIS denial before an immigration judge, whose denial can be appealed to the Board of Immigration Appeals (followed by petition to a U.S. Court of Appeals). Some investors and family in such proceedings had experienced difficulty obtaining the interim documents and had no internal USCIS policy document to point officers to for their entitlement. IIUSA and AILA members on numerous occasions in writings and in USCIS stakeholder meetings had asked USCIS to re-issue such policy, and I must hail John Pratt with Kurzban, Kurzban, Wainger, Tetzeli & Pratt P.A. for his ceaseless advocacy on this point. USCIS representatives had stated that they would look into this, and this May 2, 2018 action shows USCIS following through on a reasonable commitment.

Inadequate Receipt Notices. But for people simply awaiting I-829 adjudication in the first place, the issue has not been in policy execution but operational execution. Form I-829 cannot



be filed more than 90 days before the end of conditional residence when their I-551 green card expires. The I-829 receipt notice programmatically recites that the applicant's green card is automatically extended for one year from the expiration date on the card. But I-829 adjudications have been taking routinely more than two years, which means almost every I-829 applicant (investor and each family member) ends up with nothing issued to them to show that they are a permanent resident. USCIS instructs such people to make an [Infopass appointment](#) with a local USCIS office where they can present the expired I-551 and I-829 receipt and receive a "temporary I-551 stamp" in their passport. Such stamps typically are issued valid for only a year at a time, which means many I-829 petitioners must make more than one Infopass visit before receiving I-829 approval and a new unconditional I-551 green card valid for 10 years (and extendable after that using Form I-90 if the person does not become a naturalized citizen first). This is an unreasonable "run-around." Sometimes a local office has zero appointments within the next two weeks shown. And someone who happens to be outside the U.S. at the time of I-829 filing has no Infopass location to visit. A consular officer might be willing to issue a "boarding foil" for such a person to board a carrier back to the U.S. using 9 FAM 202.2-7(C), but there is no guarantee of anything but a hassle to request it.

As long as the processing times remain longer than one year, USCIS should issue the receipt notices auto-extending the I-551 cards for two or three years at a time.

Non-Existent Receipt Notices. For a long time USCIS has done a terrible job issuing timely individual receipt notices for the family members of the investor who join with the investor in the I-829 and pay their respective biometrics fees. The family members need their own individual evidence of status to function freely in this country. For years we have had to send emails to the USCIS Investor Program Office requesting the family member receipt notices, and IPO has been pretty good about getting it done. But now in the last few months USCIS has started showing unacceptable delay in issuing even the investor's receipt notice, and USCIS IPO responds to email inquiries with this language:

Thank you for your inquiry. Due to a system conversion, I-797 Receipt notices and ASC appointments for beneficiaries of new I-829 filings have been delayed but continue to be issued. Please allow 90 days from the date of filing to receive the I-829 receipt notice for both the petitioner and associated derivatives. Furthermore, evidence pertaining to the current immigration status of a petitioner and their associated derivatives can still be obtained through an INFOPASS appointment with their local field office. Please go to USCIS' website uscis.gov for more information regarding how to obtain an INFOPASS appointment. Unless it is an emergent situation, we request that you allow the full 90 days to elapse before seeking an INFOPASS appointment. The Immigrant Investor Program Office (IPO) is working to issue I-797 Receipt Notices, which provides evidence of the petitioner's and their derivatives' current status as quickly as possible. We appreciate your continued patience.

It's good that USCIS is doing a "conversion" of whatever archaic systems it has been using to issue receipt notices and process I-829 petitions. But it is not acceptable for USCIS to leave I-829 filers with no proof of their permanent residence for even 90 days and to make them go



spend a day at a USCIS office to beg for interim evidence. Sure, investors can file Form I-829 up to 90 days before their I-551 card expires, but sometimes they must wait for the new commercial enterprise and regional center to provide the necessary proof about their sustainment of investment and job creation. The requirement is to file by the date of I-551 expiration, not 90 days before. And with a filing fee of \$3,750 for I-829 plus \$85 per person biometrics fee, USCIS should have officers processing the receipt notices by hand if necessary.

Conclusion. This kind of treatment is a sorry welcome to people who have sustained their investment of at least \$500,000 and created 10 jobs for American workers. USCIS should immediately start issuing all I-829 petitioners, including family members, timely receipt notices valid for longer than the agency's normal processing time of adjudication.

Today's amendment of the Policy Manual makes sure USCIS officers in local offices know the law and its practical implications for their action. But USCIS should take emergency and immediate steps to get continuing evidence of permanent residence in the hands of faithful investors without making them and their representatives go to loads of trouble with worried minds.