



U.S. Citizenship  
and Immigration  
Services

## Interoffice Memorandum

**TO:** Field Leadership  
**FROM:** Donald Neufeld  
Acting Associate Director  
Domestic Operations

HQ 70/5.5, 70/23.10, 70/35

**DATE:** MAY 06 2008

**SUBJECT:** Field Guidance for Processing Form I-485 and Form N-400 Cases  
Pursuant to Settlement Agreement, *Kaplan, et al. v. Chertoff, et al.*, CV  
06-5304

### ***I. Purpose***

This memorandum provides field guidance to all U.S. Citizenship and Immigration Services (USCIS) Field Offices and Service Centers about their responsibilities regarding expedited processing, adjudication of fee waiver requests and return mail procedures for eligible cases under the *Kaplan, et al. v. Chertoff, et al.*, CV 06-5304 settlement (Kaplan Settlement).

### ***II. Background***

USCIS has entered into a settlement agreement based on a national class action, *Kaplan, et al. v. Chertoff, et al.*, CV 06-5304, which was filed in the U.S. District Court for the Eastern District of Pennsylvania on December 4, 2006. The suit was brought by non-U.S. citizens who had lost their eligibility for Supplemental Social Income (SSI) based on a statutory seven year limit, 8 USC §1612(a)(2)(A), and who were unable to become naturalized U.S. citizens before the loss of SSI benefits. Class Members are comprised of non-U.S. citizens who are receiving or have received SSI and are or may be subject to termination or suspension of SSI pursuant to 8 U.S.C. §1612(a)(2)(A), prior to a final decision on their current or future Application for Naturalization, Form N-400, and oath ceremony to become a United States citizen. In addition to the Department of Homeland Security (DHS) and USCIS, the Federal Bureau of Investigation (FBI) and the Social Security Administration (SSA) were named as defendants and class certification was

sought. The settlement took effect March 5, 2008 and will remain in effect until February 5, 2011.

As part of the settlement, USCIS has agreed to institute procedures to expedite the processing of all *current and future* Class Members' applications for adjustment to lawful permanent resident status (Form I-485) and applications for naturalization (Form N-400) during the existence of this stipulation. USCIS and SSA are working together to determine the population of applicants who have had SSI benefits suspended or terminated or who are in danger of having their SSI benefits suspended or terminated in the future. Two data shares will be established: the first to determine those persons who have had SSI benefits suspended or terminated, and the second to determine those persons currently receiving SSI benefits but are in danger of having those benefits suspended or terminated.

### ***III. Field Guidance***

As part of this settlement, USCIS will expedite Form I-485 and Form N-400 applications of Class Members if those applications have been pending with USCIS for more than six months. Expedited processing will include processes associated with FBI Name Check procedures as well as any USCIS internal processes such as scheduling of interviews.

USCIS will work with the SSA to identify Class Members who have lost or who will lose their SSI benefits within the next year and who already have a Form I-485 or Form N-400 pending with USCIS. These data matches will be performed at USCIS HQ. USCIS will expedite the processing of these cases even if the applicant has not requested expedited processing.

#### **A. Expedited Processing Under the Kaplan Settlement**

The term "expedite" or "expedited processing" refers to the process by which USCIS provides priority action on processes within the control of USCIS. USCIS currently has policy guidance in effect to address expedited processing. The current USCIS Expedite Criteria are available at:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=38a127720928f010VgnVCM1000000ecd190aRCRD&vgnnextchannel=a9243529fdb7e010VgnVCM1000000ecd190aRCRD>.

For clarification, expedited processing for cases that fall under the Kaplan Settlement will include:

1. providing and/or requesting priority action on any pending or future security checks for the current application;
2. providing priority action on any internal processing within USCIS;
3. providing Class Members priority for the earliest available appointment; and

4. administering or scheduling the Oath of Allegiance at the next available opportunity.

Each Class Member may request expedited processing of his or her pending I-485 or N-400 at any time, irrespective to the timing of the loss of SSI benefits. However, unless the application is identified in one of the data matches with SSA, USCIS will not implement expedited processing of a Class Member's application until it has been pending without a decision for six months.

B. Applicant Requests for Expedited Processing Based on the Kaplan Settlement

Class Members who have a Form I-485 or Form N-400 pending can alert USCIS as to their SSI recipient status via the following means:

1. through the USCIS National Customer Service Center at 1-800-375-5283;
2. by appearing in person at the local USCIS Field Office;
3. by including a written request with the filing of their application; or
4. by mailing their request to the office where the I-485 or N-400 is currently pending.

The Class Member may request expedited processing at any time, however, USCIS will not start the expedite process until the application has been pending for six months. Each office should track expedited requests that are received prior to six months of filing the Form I-485 or Form-400 in order to initiate the expedite after the six month mark.

EXCEPTION: The six month rule will not apply to cases identified from the two data shares between USCIS and SSA. All cases identified in the two data shares with the SSA will be expedited immediately. USCIS will not await a request from an applicant to take the steps necessary to initiate expeditious processing for cases identified in the data share process.

USCIS may verify that the individual is a Class Member by requesting the individual to produce a copy of SSA correspondence addressed to the individual showing their SSI benefits have been terminated under the seven-year rule or that they are currently receiving SSI benefits.

C. Expedited FBI Name Check under the Kaplan Settlement

Under the Kaplan Settlement, USCIS HQ will promptly notify the FBI of the need for priority processing of the pending FBI name check separately from other USCIS generated priority processing requests. When a Kaplan based expedite is sent to HQ it should clearly be marked as "Kaplan" or "SSI".

D. Fee Waivers

USCIS staff is reminded that pursuant to the policy memorandum “Field Guidance on Granting Fee Waivers Pursuant to 8 C.F.R. 103.7(c)” dated March 4, 2004, and Chapter 10.9 of the Adjudicator’s Field Manual, an applicant who receives or has received a federal means-tested public benefit in the last 180 days; has a household income at or below the poverty level; is age 65 and over; or is disabled is likely to show that he or she is unable to pay the fee.

Applicants in the Kaplan Class receive or have received Supplemental Security Income (SSI-a federal means-tested public benefit); and generally have household incomes at or below the poverty level, are age 65 and over, or disabled. Thus, they will likely establish eligibility for a fee waiver.

Class members will be asked to put a large notation “Kaplan” on the outside of the mailing envelope containing the I-485 or N-400 and fee waiver request.

E. Returned Mail

1) Class Members with Terminated or Suspended SSI Benefits

USCIS and SSA will jointly prepare and USCIS, through the Nebraska Service Center, will mail a distinctive letter to the terminated members notifying them, among other things, 1) to file their I-485 or N-400 if needed, 2) to be aware of the fee waiver application process, and 3) to advise them of the expedited processing for those who have applications pending with USCIS.

Any letters returned within 90 days of the mailing will be promptly researched by USCIS to identify updated addresses for those individuals using current return mail procedures. If an updated address is found, USCIS will resend the letter to the updated address. USCIS is currently working with the SSA to determine the best method for determining the most up-to-date address. At the end of the 90-day period, USCIS will provide Class Counsel with the mailing list of the individuals with updated addresses in paper and electronic format.

Six months after these letters have been sent, SSA will provide USCIS with identifying information for all terminated members who have not had their SSI benefits restored. Within three months thereafter, USCIS will attempt to match the SSA identifying information with information in USCIS’ systems, in order to identify terminated members with pending applications. USCIS will expedite the processing of all terminated members’ I-485s and N-400s where USCIS has positively identified these members through this matching process, even if the application has not been pending for more than six months.

2) Class Members Whose SSI Benefits Will Terminate or Be Suspended

In or about May or June of 2008, SSA will provide individual notices to those SSI beneficiaries who face potential termination or suspension of their SSI benefits in the next 12 months starting July 1, 2008, notifying them, among other things, 1) to file their I-485 or N-400 if needed, 2) to be aware of the fee waiver application process, and 3) to advise them of the expedited processing for those who have applications pending with USCIS.

Any letters returned to SSA within 90 days of the mailing will be collected by SSA and provided to USCIS to identify updated addresses for those individuals through current return mail procedures. Where an updated address is found, USCIS will resend the letter to the updated address. At the end of the 90-day period, USCIS will provide Class Counsel with the mailing list of the individuals with updated addresses in paper and electronic format.

Three months after the SSA has sent the individual letter to class members whose SSI benefits will terminate or will be suspended, SSA will provide to USCIS identifying information for all the pending members. Within three months thereafter, USCIS will attempt to match the SSA identifying information with information in USCIS' systems, in order to identify pending members with pending applications. USCIS will expedite, without the need of an applicant request, the processing of all Forms I-485 and N-400 of pending members where USCIS has positively identified pending members through this matching process, even if the application has not been pending for more than six months.

F. Point of Contact

Questions regarding these guidelines or their implementation should be directed through local supervisory channels to Cherie Lombardi, HQ Office of Field Operations or Deanna Garner, HQ Service Center Operations.

Distribution List:

Office of Field Operations  
Service Center Operations  
Regional Directors  
District Directors  
Service Center Directors  
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