



Practice Pointer

Your Client's Case Has Been Rejected: Now What?¹

It is always difficult for a practitioner to see a yellow legal size envelope arrive in the mail with a petition or application rejected by the U.S. Citizenship and Immigration Services (USCIS). The first question often is why did the rejection occur? Did the practitioner make a mistake, or did USCIS reject it improperly? Increasingly, a second question arises, is there time to refile and still obtain the immigration benefit desired for the client?

When the delay caused by the rejection has not resulted in your client being substantively or procedurally ineligible for the benefit sought, the simplest solution may be to refile the erroneously rejected application or petition directly with the Lockbox, with a clear (and often brightly highlighted) explanation as to why the rejection was improper. In fact, this may be the default option for many practitioners in this scenario, particularly if the client cannot wait several weeks for a potential resolution of the issue by directly emailing the USCIS Lockbox. AILA is aware of reports from members who have successfully refiled applications that were erroneously or improperly rejected by the Lockbox.

This Practice Pointer addresses options when simply refiling with the Lockbox will not be possible and reviews strategies, and several remaining unanswered questions, that arise with rejections. In particular, this Practice Pointer provides suggestions regarding steps that practitioners can take to attempt to get a rejected application or petition accepted by USCIS and provides a suggested approach for resolving erroneous or improper rejections by the USCIS Lockbox. Specifically, the Practice Pointer suggests two measures: first, contacting the USCIS Lockbox by email to request a review of the erroneous/improper rejection; and subsequently, if necessary, seeking case assistance from the Office of Citizenship and Immigration Services Ombudsman (CIS Ombudsman) or AILA National.

Reasons Why an Application or Petition Might Be Rejected

Rejections can result from a variety of reasons - incomplete forms, improper signature, incorrect filing, etc. USCIS policy on reasons for rejections is discussed in section 10.1(a)(2) of the Adjudicator's Field Manual (AFM), which explains that filings must be rejected if not properly signed, forms are not properly completed, or the proper fee is not included per 8 CFR section 103.2(a)(7)(2).² This is echoed on the [USCIS Lockbox webpage](#).

¹ Special thanks to AILA members Dan Berger, Jordan J. Gonzalez, William A. Stock, Michael Turansick, and David Wilks for their contributions to this practice pointer.

² See also USCIS Policy Manual, Chapter 6 – Submitting Requests, <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6>.

Under previously issued guidance, applications and petitions sent to the wrong USCIS Service Center or Lockbox should be forwarded by USCIS to the proper filing location, but more recently the USCIS policy is that an application or petition will only be forwarded within the USCIS Lockbox system.³ This appears to be *ultra vires*, beyond the reasons for rejections set forth at 8 CFR 103.2(a)(7)(2). At least one federal court action has been successful in having USCIS accept the original filing date in such a situation.

In recent months, AILA National has received widespread reports from members of applications and petitions being rejected by USCIS for a myriad of reasons, including lack of a signature, lack of a form, lack of supporting document, inadequate filing fee, or a blank question on the form [such as leaving blank boxes 9.a. and 10 on the Form I-485 for derivative beneficiaries](#), among other reasons. Notably, many members report that they indeed included the signature, form, or supporting document that USCIS purports to be missing. In order to better understand the issue of USCIS rejections, AILA is [collecting examples](#) from members of applications and petitions that have been rejected by USCIS to better understand the issue and for purposes of further engagement with USCIS, the Ombudsman, Congress, and the media on the issue.

Note that AILA has recently been made aware that [USCIS will be reaching out to stakeholders in the coming days](#) whose I-485 applications were rejected for failure to complete boxes 9.a. and 10 in Part 2 of the Form I-485 with instructions on how to refile their application with USCIS. AILA does not have more information to share at this time regarding the resubmission process, however, AILA will share more details as soon as more information becomes available.

Steps to Consider for Refiling a Rejected Petition or Application

Below are a series of steps that practitioners could consider taking in response to applications and petitions rejected by USCIS.

Step 1: Intake and Initial Summary of Rejection

When a rejection from USCIS is received, the law firm may want to designate an individual to receive rejected cases, preferably a legal professional who understands the elements of a rejection notice and can analyze the stated reason for rejection. This intake person should review the rejection and e-mail the responsible attorney, potentially copying the responsible partner if applicable, to provide a summary of USCIS's reason for rejecting the filing and include a copy of the rejection notice as well as key information relating to the form type, petitioner and beneficiary/applicant.

³ See *Lockbox Filing Information*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/about-us/organization/directorates-and-program-offices/management-directorate/office-of-intake-and-document-production/lockbox-filing-information> (last updated Nov. 25, 2020).

Step 2: Administrative Processing

The person processing the rejection should then prepare a scan of the complete rejection package, including any notices, all forms and documents. It is critically important that this scanned copy capture clear images of the USCIS stamps and writing on the forms and documents and save them into the firm's case management system with a conspicuous naming convention (e.g., "[Date] [Form -] Rejection Package: [Company] and [Foreign National]).

Step 3: Attorney Review and Assessment

The responsible attorney should next review the rejected filing and determine whether the case was erroneously rejected by USCIS. If the case was rejected due to a reason other than USCIS error, the responsible attorney should determine the best communication plan with the client, again conferring with the responsible partner if appropriate. For time sensitive cases, such as when a delay in refile may affect eligibility, the practitioner may, if appropriate and proper, wish to correct the error and refile promptly while simultaneously communicating the decision to the client.

Step 4: (Optional): Erroneous USCIS Rejection - Review with Litigation Attorney/Group

If the responsible attorney anticipates that working with litigation counsel may be necessary to resolve the erroneous rejection, the attorney may wish to contact counsel as soon as practically possible to advise him/her of the nature of the potential matter. (AILA members considering litigating against USCIS directly may wish to consult with a litigation mentor from the AILA Administrative Litigation Taskforce Mentor Directory and consider whether retaining litigation co-counsel is advisable.) Alternatively, if the attorney is employed at a firm that has a litigation practice, the attorney may want to send an e-mail to the litigation group within their firm describing (a) the date of filing, (b) the date of rejection, (c) the reason for the rejection, and (d) an explanation as to why the rejection is erroneous.

The litigation attorney/group should review the responsible attorney's email to verify the responsible attorney's assessment and determine whether the matter may be appropriate for litigation. The responsible attorney should note that the summary written to the litigation attorney/group may be used later in connection with statements made to DHS or in a federal complaint. In this regard, the responsible attorney should be reminded to provide a clear, concise and fully accurate description of the situation.

Step 5: Communicating with Client

If it is determined that the rejection was the result of USCIS error, the responsible attorney should communicate as soon as possible with the client contact to discuss taking the following corrective actions: (1) contacting the USCIS Lockbox to request a review of the erroneous or improper rejection, and (2) contacting the CIS Ombudsman or AILA National

for case assistance if the Lockbox is unresponsive. Potential language to the impacted client may include the following:

Dear [X],

We have just received notification that the Form [Insert Form Type] filing made on behalf of [Foreign National(s) Name] has been rejected by United States Citizenship and Immigration Services (USCIS). We have reviewed the reasons USCIS has provided for the rejection. We believe USCIS's rejection to be in error, and as such, we will be taking the following corrective actions:

- *We will contact the USCIS Lockbox that rejected the application and request that they review the basis for the rejection and accept the filing as initially submitted given that the rejection was improper. If they agree, we will resubmit the filing with a copy of the Lockbox's instructions. We anticipate that we will receive a response to our communication within approximately four (4) weeks.*
- *If we do not receive a response within four (4) weeks, or if the Lockbox declines to accept the refiling, we will submit a case assistance request with the CIS Ombudsman. We anticipate the Ombudsman will respond to our request within approximately five (5) weeks.*
- *If neither of the above actions are successful, we will contact you immediately to discuss further legal options with you.*

Please be assured that we will work as quickly as possible to correct this issue, and we will act as soon as you authorize us to do so.

Step 6: Lockbox Rejections - Contact USCIS Lockbox

Once the client and foreign national have approved the practitioner's intervention, the responsible attorney should email to the USCIS Lockbox. Provided below is some sample suggested language to include in an email to the Lockbox which can be customized as appropriate.

To: lockboxsupport@uscis.dhs.gov

Cc: [All pertinent parties]

Subject: USCIS Lockbox Erroneous Rejection: [Rejection Notice #] [Form I-], [Corporate Client Name] – [Principal Foreign National Last Name, First Name]

Dear USCIS Lockbox Facility,

My name is [X], an attorney at [law firm]. Our firm is registered as the law firm of record for the above-referenced case. The attorney of record form (Form G-28) is copied to this e-mail. Our firm is contacting you to report an erroneous rejection of the above-referenced matter by the [Dallas/Phoenix/Chicago Lockbox Facility]. A copy of the rejection noticed is attached for your reference. We respectfully request that your office rectify the erroneous rejection and accept a refiling of the above-referenced matter as initially submitted.

[Insert a very brief fact summary and why you believe the application or petition was erroneously rejected (e.g., USCIS claims filing fee was inadequate yet filing fee was proper, etc.)]

Based on the above facts, we ask that your office accept our refiling of this matter. In receipting this case, we respectfully request that your office indicate the original filing date of this application, which is [X], on the receipt notice.

Thank you in advance for your consideration of this request, and I look forward to your response as well as instructions for refiling this application.

Again, for time sensitive cases, the practitioner may wish to consider refiling promptly.

If the filing is rejected a second time, the Lockbox response would be particularly valuable in connection with further liaison or litigation efforts. The responsible attorney should calendar a reminder for approximately four (4) weeks from the date of the Lockbox contact to prompt further action.

For filings rejected by a USCIS Service Center, if the case involves clear government error, the Vermont Service Center informed AILA in 2005 that petitions resubmitted after an initial improper rejection should have a brightly colored coversheet marked “Att: CRU Supervisor” and “Case Improperly Rejected” in large block letters.⁴ Orange is a good color, as some other colors have historical significance, such as blue for Form G-28. In addition to the coversheet, the refiling should include a letter similar to the sample provided above setting forth the reason(s) why the case was improperly rejected. This advice remains sound for all USCIS Service Center rejections based on clear government error.

Step 7: Requesting Case Assistance from the Office of the CIS Ombudsman or AILA

If the Lockbox or USCIS Service Center does not accept the filing, does not respond, or declines the request, the responsible attorney should consider filing a request for case assistance with the CIS Ombudsman’s office or AILA. Note that in general, the CIS Ombudsman require that individuals seeking case assistance must first try and resolve the

⁴ VSC Implements New Procedure for Resubmitting Petitions after Initial Improper Rejection, AMERICAN IMMIGRATION LAWYERS ASS’N (Dec. 6, 2005), <https://www.aila.org/infonet/vsc-procedure-for-resubmitted-petitions>, AILA Doc. No. 05120662.

issue directly with USCIS prior to approaching the CIS Ombudsman for assistance.⁵ Similarly, AILA has required steps that members must take before submitting a request for case assistance to AILA.

AILA Case Assistance

For more information on AILA’s case liaison assistance program and the steps involved to request case assistance, please see the following AILA resources:

- Case Liaison Assistance: <https://www.aila.org/advo-media/agency-liaison/case-liaison>
 - Please note that in order to request case assistance from AILA regarding an application or petition that was improperly rejected by the Lockbox, members must first email the Lockbox and wait 30 business days for a response before AILA can intervene.

Ombudsman Case Assistance

To submit a request for case assistance to the Ombudsman, the request can be made electronically via Form 7001 which can be found at the following link: <https://www.dhs.gov/topic/cis-ombudsman/forms/7001>. While the majority of the Ombudsman’s request form asks for biographical information, practitioners should keep the following in mind:

- i. If the rejections are based on a single erroneous decision by USCIS, the practitioner should submit one inquiry using the principal foreign national’s name, and insert the case numbers for the principal and all derivatives in the online inquiry form;
- ii. List the case number on the principal foreign national’s request form;
- iii. On Section 7, please check the boxes: “I am facing a problem that was not resolved through the normal processes provided by USCIS;” “I am incurring or am about to incur significant and unusual costs;” and “I have received an action or decision that involved clear errors of fact or gross and obvious misapplication of the relevant law by USCIS” options; and
- iv. For Section 8, sample language is provided below, however please customize accordingly to your unique situation.

Dear CIS Ombudsman,

⁵ See *CIS Ombudsman – Case Assistance*, U.S. DEPARTMENT OF HOMELAND SECURITY, <https://www.dhs.gov/case-assistance>.

I am the attorney of record for the above-referenced case. I am reaching out to report an erroneous rejection of the above-referenced case. I am requesting your assistance in getting USCIS to accept the refiled petition and/or application listing a date of filing corresponding to the date this application was originally filed.

[Insert a very brief fact summary and why you believe the application or petition was erroneously rejected (e.g., USCIS claims filing fee was inadequate yet filing fee was proper, etc.)]

I previously attempted to correct this issue with the Lockbox/Service Center but have been unsuccessful to date. [insert a brief summary of steps you have taken]

I am attaching a PDF copy of all of documents relevant to our request for assistance, including the rejection notice.

Based on the above facts, I respectfully request your office's assistance in working with USCIS to get my client's application or petition accepted by USCIS and receipted in with a receipt date corresponding to the date of the initial submission.

Thank you in advance for your assistance, and I look forward to your response.

Prior to sending, expand all sections of the form and take a PDF copy of the request using the print screen function. Save a file copy of all screen shots for future reference.

Once the responsible attorney has submitted the request for case assistance to the Ombudsman's office, he or she should wait approximately five (5) weeks for the inquiry to process. The responsible attorney should set a calendar reminder to prompt further action.

After the refiling is accepted, it may be worth considering submitting a request for expedited processing after the refiling is receipted, particularly if the delay is significant, such as when an EAD is delayed and may result in job loss. USCIS error is one basis for requesting an expedite.⁶

Step 8: Refile without Service Center/Lockbox or Ombudsman Assistance

If all requests for assistance are unsuccessful, the responsible attorney and partner should meet with the corporate client, foreign national, and, if applicable, a litigation attorney, to

⁶ *How to Make an Expedite Request*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request> (last updated Dec. 23, 2020).

discuss refiling the case and review other options to compel the agency to accept the filing, including federal court litigation.

Thinking the Unthinkable - Options for when the Rejection was Proper

There are cases where there was a mistake by the preparer and the rejection was proper, such as when the filing fee check was wrong, or the form was not completed or signed. In many cases, the case can just be refiled with the mistake fixed. Recently, extremely long delays in USCIS rejecting or receipting cases may result in the case missing a filing window. In these situations, the practitioner could consider requesting a discretionary *nunc pro tunc* acceptance based on a situation that is not the fault of the beneficiary or applicant.⁷

Below is one hypothetical example of a request for such *nunc pro tunc* acceptance:

Based on the extraordinary circumstances beyond the applicants' control, we respectfully request the *nunc pro tunc* acceptance for filing of the underlying Forms I-485. The failure of the principal applicant to properly sign the Form I-485 at Part 10, item #6.a. was **solely due to counsel's error** in preparing and filing the application. The applicant relied upon counsel to review the application thoroughly to ensure that all instructions were properly followed and that there were no material omissions or errors. Further, the applicant would not have reasonably known that a single error in an application packet, comprised of over 100 pages, would result in the rejection of the application as well as all related and derivative applications and supporting documentation on behalf of herself and her family. Most significantly, she would not have reasonably known that visa retrogression in the employment based third preference category would render her ineligible to refile the applications by the time the rejected applications were returned.

If the applications had been reviewed and processed by USCIS in a timely manner, it would have been possible to simply re-file the Forms I-485. If the USCIS had returned the applications at any point prior to December 30, 2020, the omission would have been easily and promptly rectified. As demonstrated in the attached excerpts from the Department of State's Visa Bulletin, **the applicant's priority date was current throughout November and December 2020** but then became unavailable in January and remains to this date.

The **more than 3-and-a-half-month delay** in returning the rejected Forms I-485 is unreasonable and the applicants should not be unfairly prejudiced as a result. As a result of such an inadvertent error committed by counsel combined with the significant delay on the part of the USCIS in returning the Form I-485 applications, the applicants now face significant hardship, insofar as they are not able to pursue the filing of their I-485 applications and their priority dates are highly unlikely to become current again in the foreseeable future. We respectfully request that the USCIS accept these late filings on a *nunc pro tunc* basis given the extraordinary

⁷ See 8 CFR § 245.1(d)(2)(i).

circumstances and the irreparable harm caused to the applicants if they cannot pursue their lifelong dream of becoming lawful permanent residents of the U.S.

Unanswered Questions

One potential situation created by excessive delays at the mailrooms is the possibility of stale checks. For example, if a filing fee check has a 3-month expiration and the filing is not receipted in for over three months, can it be properly rejected? AILA has reached out to USCIS about this issue and is seeking confirmation that filing fee checks will be deposited regardless of check issuance date (up to 1 year, in accordance with 8 C.F.R. 103.2(a)(7)(ii)(D), 106.1(c)).⁸

A second situation is when it is unclear where the fault lies for a filing fee that is perceived as deficient. For example:

1. Filing fee check rejected because \$410 filing fee may look like \$470 using the European “1” with an extra line at the top (even though text “four hundred ten” is correct).
2. Concurrent I-140/485 filing where I-485 was separated and rejected for not having the I-140. Will the Lockbox scan show the I-140, or was that separated before scanning?
3. Mailroom believes that signature was not original or scanned of wet original? Will the Lockbox scan clarify this?

AILA will continue to track and monitor issues regarding rejections by the Lockbox and USCIS Service Centers and provide updates to members as soon as more information becomes available.

Related AILA Resources:

- [Practice Alert: USCIS to Invite Certain Applicants to Resubmit I-485 Applications That Were Previously Rejected](#) (AILA Doc. No. 21010510).
- [Practice Alert: Expiring Filing Fee Checks and USCIS Delays in Issuing Receipt Notices](#) (AILA Doc. No. 20111936).
- [Call For Examples: Sympathetic Stories of Individuals Affected by USCIS Receipt Notice Delays or Who were Rejected Months after Filing](#) (AILA Doc. No. 21020135).

⁸ *Practice Alert: Expiring Filing Fee Checks and USCIS Delays in Issuing Receipt Notices*, AMERICAN IMMIGRATION LAWYERS ASS’N (Feb. 19, 2021), <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-receipt-notice-delays-for-i-485>, AILA Doc. No. 20111936.