



## U.S. Citizenship and Immigration Services

### Agenda

### **USCIS Asylum Division Quarterly Stakeholder Meeting**

Friday, November 16, 2018

Tomich Center

111 Massachusetts Avenue, NW

Washington, D.C. 20001

2 – 4 pm EST

#### **I. Welcome and Introductions**

#### **II. Asylum Division Updates**

- a. Regularly Provided Statistics (posted on [uscis.gov](http://uscis.gov))
  - Affirmative Asylum Statistics (July 2018 – September 2018)
  - NACARA Statistics (June 1999 – September 2018)
  - Credible and Reasonable Fear Statistics and Nationality Reports (July 2018 – September 2018)
  - Unaccompanied Alien Children Statistics (July 2018 – September 2018)

*We publish the regularly provided statistics on [uscis.gov](http://uscis.gov) before the quarterly engagement so you can review them prior to the meeting and print a copy if you choose.*

#### **III. Statistics**

- a. Can you provide defensive and affirmative grant rates for the last fiscal year? Can you provide the overall rates and the rates by jurisdiction? Can you also provide the average case processing time and a breakdown of grant rates by country of origin?

**Response:** The approval rate for affirmative asylum applications for FY18 was 28%. The other statistics on affirmative asylum applications are not publicly available. Please contact the Department of Justice Executive Office for Immigration Review for statistics on defensive cases.

- b. Can you please provide the credible fear and reasonable fear grant rates for each month since June?

**Response:** Please see the regularly provided statistics on [www.uscis.gov](http://www.uscis.gov). Rates may be calculated by dividing fear established by total decisions.

#### **IV. Scheduling of Asylum Interviews/Processing Times**

- a. How long does the Form I-589 adjudication process take? Who can an applicant contact for status updates? What are the scheduling priorities for cases?

If an asylum application is filed in a circuit ride location and the case falls in Priority 2 but there is no circuit ride scheduled, will the case automatically be put in Priority 3?

**Response:** For asylum applications filed on or after April 1, 1997, the Immigration and Nationality Act (INA) states that the initial interview should generally take place within 45 days after the date the application is filed. A decision should be made on the asylum application within 180 days after the date the application is filed, unless there are exceptional circumstances. See section 208(d)(5) of the INA.

On January 29, 2018, the Asylum Division started scheduling interviews in the following priority order:

- First priority: Applications that were scheduled for an interview but the interview had to be rescheduled at the applicant's request or the needs of USCIS;
- Second priority: Applications that have been pending 21 days or less since filing;
- Third priority: All other pending affirmative asylum applications will be scheduled for interviews starting with newer filings and working back towards older filings.

Workload priorities, including those related to border enforcement, may affect our ability to schedule all new applications for an interview within 21 days.

Asylum office directors may consider, on a case-by-case basis, a request to be scheduled for an interview outside of the priority order listed above. Please submit any urgent interview scheduling requests in writing to the asylum office with jurisdiction over your case. Go to the [USCIS Service and Office Locator page](#) for contact information. You can also contact the asylum office with jurisdiction over your case for status updates. For asylum applicants who live far from an asylum office or sub-office, asylum offices schedule interviews at USCIS field offices ("circuit ride" locations) as resources permit. Please contact the asylum office with jurisdiction over your case for more detailed information.

- b. In the last quarterly stakeholder meeting on August 7th, you reported that only 51% of the cases filed between February 1, 2018 and May 31, 2018 were interviewed within 43 days of filing. What is the percentage of cases from the change in policy to present that are scheduled within 21 days and therefore stay out of the backlog? What percentage of cases placed in the backlog are UAC (PRL) applications?

**Response:** Approximately 34% of cases filed during the time period from the return to last in first out (LIFO) scheduling were interviewed within 43 days of filing, about 29% were interviewed after 43 days, and 37% were not interviewed. Approximately 82% of

the cases that were filed during this time period but were not interviewed were UAC (PRL) cases.

- c. What is the procedure for coordinating between the Nebraska Service Center (where UAC affirmative asylum applications are filed) and the local service center (where non-UAC affirmative asylum applications are filed) to determine priority for purposes of the new last in first out scheduling policy?

**Response:** There is no manual coordination process for interview scheduling among the service centers. Once cases are entered into Global, the asylum case management system, they receive a priority level. Offices may either manually schedule cases or allow Global to schedule cases automatically based on the priorities. UACs are considered with all other cases based on filing date and are no longer a separate priority.

- d. Will there be any public announcement or notification when the Asylum Division begins regularly scheduling backlog cases for interviews?

**Response:** The Asylum Division has no plans for a public announcement or notification when we begin regularly scheduling backlog cases for interviews.

- e. Given that the presidential determination for admission of refugees is 30K, can you speak to what this means for the pace of adjudication for pending affirmative asylum cases?

**Response:** Decisions about whether refugee officers will be assigned to the Asylum Division will be made on a quarterly basis.

- f. Are there any processes being put into place to increase the adjudication of pending affirmative asylum cases by USCIS?

**Response:** There are not currently any processes being put into place to increase the adjudication of pending affirmative asylum cases. The number of backlog cases the Asylum Division is able to schedule depends on the number of new filings at each office and the number of officers available to adjudicate cases either at local offices or in circuit ride locations.

- g. An immigration judge recently stated that the Asylum Division no longer schedules interviews for children who are over 18 due to a policy change at USCIS. Can you confirm there is no such policy?

**Response:** We are still reviewing the BIA decision in *Matter of M-A-C-O-* and its impact on our processing. We hope to provide more information in the near future.

## V. Unaccompanied Alien Children (UACs)

- a. Can you confirm that the May 28, 2013 memorandum on initial jurisdiction over asylum applications filed by UACs and related June 2013 policy documents remain in effect?

**Response:** The May 28, 2013 memorandum on initial jurisdiction over asylum applications filed by UACs and the related June 2013 policy documents remain in effect.

- b. Will the May 28, 2013 memorandum on initial jurisdiction over asylum applications filed by UACs and the related June 2013 policy documents remain in effect if the proposed rule on the Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children is implemented as currently proposed?

**Response:** The proposed rule will not affect the Asylum Division's procedures for determining jurisdiction over asylum applications filed by UACs while USCIS coordinates to review its procedures in accordance with presidential and secretarial directives.

- c. If a UAC receives an in absentia removal order, will the Asylum Office adjudicate the asylum application? If so and asylum is granted, will the Asylum Office work with the ICE Office of Chief Counsel to rescind the in absentia order?

**Response:** The issuance of a removal order does not affect the Asylum Division's jurisdiction over an asylum application filed by a UAC. In such a situation, USCIS coordinates with ICE to manage removal proceedings to allow USCIS to exercise its initial jurisdiction as mandated by the TVPRA.

- d. In instances in which an Asylum Office does not comply with the policies in the May 28, 2013 memorandum, if not resolved by the Asylum Office Director, can the applicant or his/her attorney contact Asylum Headquarters to request compliance with the UAC initial jurisdiction policy?

**Response:** Yes. Please raise such concerns to Asylum Division Headquarters.

## **VI. Employment Authorization Documents**

- a. How can attorneys ensure they are able to represent a client with respect to automatically-issued asylee EADs? We have had several cases where there were issues with asylee EAD processing, but we were not able to inquire because we only had a Form G-28 submitted for the Form I-589.

**Response:** Please inquire with the asylum office that granted asylum. Asylee EADs are produced through an automated process, and there is no physical Form I-765 application to match with a Form G-28.

- b. What is the purpose of the new question on the Form I-765 requesting criminal history information specifically for (c)(8) applicants? How should we approach this question for clients who were arrested in their home countries for reasons directly related to their

claim for asylum, particularly since many of these arrests are extrajudicial and/or not documented? In what circumstances would a Form I-765 be denied on grounds related to an asylum applicant's past arrests or convictions? Could an applicant who is not statutorily barred from asylum but has a criminal record be denied an EAD on discretionary grounds?

**Response:** USCIS has not changed its practice or policies with regard to how arrests and criminal convictions affect approval of employment authorization applications for asylum applicants. USCIS inadvertently added a note to the section of the Form I-765 Instructions detailing special filing instructions for individuals with pending asylum applications and is working with OMB to remove it, as it does not apply to asylum seekers. The aim of including the direction regarding arrest and conviction records was to reduce the agency's and the applicant's RFE burden.

USCIS is required by regulation to evaluate any arrests and convictions by asylum applicants in determining eligibility for employment authorization since asylum applicants who are aggravated felons are ineligible for employment authorization based on a pending asylum application. Due to this requirement, if the applicant was arrested or convicted and did not submit relevant records with their Form I-765, USCIS would issue a request for evidence (RFE), review the submitted document(s) to determine whether the arrest or conviction relates to an aggravated felony, and make a final determination on eligibility. The RFE process causes additional delays to the Form I-765 applicant. The upfront request for arrest and conviction records with the Form I-765 reduces the likelihood of a subsequent RFE due to an arrest or conviction and hence removes potential future delays for the applicant.

USCIS is not changing its existing practice or policy in requiring the listed certified documents. If evidence is not obtainable, 8 CFR 103.2(b) governs agency procedure. The current RFE template states "You must provide certified disposition documents from the court(s) for all of your criminal arrests or charges." It also states that if records are unavailable, the applicant must provide information about the arrest and evidence demonstrating that such records are unavailable under the law of the particular jurisdiction. The applicant should continue to provide the required documents (or an explanation where documents are unavailable) so that a final eligibility determination can be made by USCIS.

- c. In applying for an EAD, why are asylum applicants not exempt from the instruction to enclose a copy of a "government-issued identity document (such as a passport) showing your picture, name, and date of birth; a birth certificate with photo ID; a visa issued by a foreign consulate; or a national ID document with photo and/or fingerprint?"

**Response:** The current Form I-765 instructions require submission of a government-issued ID if there has been no prior EAD issued. Information about providing secondary evidence when a required document is not available is outlined under "Evidence" in the General Instructions section of the Form I-765 instructions.

## **VII. Matter of A-B-**

- a. Since the last quarterly stakeholder meeting, has the Asylum Division issued any new guidance regarding adjudications under Matter of A-B-?

**Response:** The Asylum Division has not issued any new guidance regarding adjudications under Matter of A-B- since the last quarterly stakeholder meeting in August.

- b. Since the last quarterly stakeholder meeting, which aspects of Matter of A-B have been the subject of additional training for asylum officers?

**Response:** Since the last quarterly stakeholder engagement in August, headquarters has not issued new training or guidance on Matter of A-B-.

- c. Is the decision in Matter of A-B associated with a decrease in asylum grants?

**Response:** The Asylum Division has not conducted a large scale review to determine factors that are affecting the decrease in asylum grants.

## **VIII. One-Year Filing Deadline**

- a. How will USCIS adjudicate an asylum application filed by an individual after several years in the United States because the individual did not know about asylum?

**Response:** Asylum officers will interview the applicant on the reason for not knowing about asylum. In general, lack of knowledge about asylum does not constitute an extraordinary circumstance that could support a finding that an exception to the one-year filing deadline is warranted. Asylum officers must, however, elicit testimony as to why the applicant lacked knowledge of asylum to determine whether the applicant's lack of knowledge may have been a result of an extraordinary circumstance. There may be events or factors that, depending on the facts of the case, constitute extraordinary circumstances.

## **IX. Notices to Appear (NTAs)**

- a. On June 28, 2018, USCIS issued a Policy Memorandum (PM) entitled Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens. Pursuant to this PM, "an asylum applicant issued a denial while in lawful immigration status may request that the Asylum Office issue an NTA after he or she falls out of lawful immigration status." Page 8, Part VI(B)(2). For current TPS holders or others in lawful nonimmigrant status who apply affirmatively with USCIS but whose cases are denied, can they contact USCIS once their status is terminated or once their final TPS period ends to request the issuance of an NTA so they can renew their request for asylum in removal proceedings? Is there a specific

procedure to make these requests and what factors USCIS will take into account in determining whether to issue an NTA?

**Response:** Applicants may ask that an asylum office issue an NTA to them if they have received a final denial from the Asylum Office and have subsequently fallen out of status. The request must be made in writing and submitted to the asylum office having jurisdiction over the applicant. Any supervisory asylum officer may issue NTAs at his or her discretion based on office resources and the evidence of removability of the requestor. For more information, persons who wish to request issuance of an NTA may contact their local asylum office.

## **X. Global**

- a. Please provide an update on the new Global case management system and the online case status functioning for asylum applications. Will clock information be available in the new case status system?

**Response:** The affirmative asylum version of the Global case management system has been implemented in all asylum offices as of November 2, 2018. Global houses information about the 180-day asylum EAD clock for cases pending with USCIS. Case status online will display information from Global; therefore, only clock information for cases pending with USCIS will be displayed in case status online.

## **XI. Untimely Filing and Optional Waiver of Asylum Interview**

- a. How many applicants have been issued the Notices of Untimely Filing and Waiver for those who filed more than 10 years after entry? Please provide a breakdown based on timeframes of notice issuance. How many of these applicants waived interview and how many have been scheduled for interviews? How many of those cases were referred after the first interview on the one year filing deadline and how many were granted relief? The notices indicate that if the applicant signs the notice to waive interview that an NTA will be issued. However, the local office indicated that signing the notice is only waiving an interview on the one-year filing deadline (OYFD) and that if applicants sign to waive the OYFD interview the application can still be reviewed based on the record for an exception to the OYFD, potentially still moving forward with an interview on the merits if the office determines from the written record that the applicant meets an exception. Can you please clarify the purpose and process of these interview waivers?

**Response:** In the winter and spring of 2018 in the first phase of the pilot program about 1500 notices were sent, and slightly over 21% of the applicants elected to waive their asylum interviews and were issued Notices to Appear. In August 2018, in the second phase of the pilot program, the Asylum Division issued an additional 5000 notices. Approximately 26% of those notices resulted in the return of a signed waiver.

Applications with signed interview waivers are not separately scheduled for interviews for consideration of the OYFD and other legal elements of the asylum claim. The

OYFD, however, as one of the bars to applying for asylum, is a threshold issue for every applicant. Thus, if an applicant who filed an untimely application is offered and accepts an interview waiver, the applicant will not be scheduled for an interview and a determination regarding the OYFD will be entered based on any relevant evidence in the record, including the applicant's date of entry listed on the Form I-589 and the filing date of the Form I-589. The purpose of the waiver process is to allow the Asylum Division to move those applicants who only want to seek cancellation of removal in immigration court out of the Asylum Division's backlog while conserving program resources for bona fide asylum seekers. If an applicant declines to accept the offered waiver, the applicant will be scheduled for an asylum interview. Like all applicants, any applicant who does not establish that he or she filed within a year of arrival would have to establish an exception to the OYFD (with credible testimony and any other relevant evidence) as well as meet the definition of a refugee and not be barred from a grant of asylum in order to become an asylee.

## **XII. Miscellaneous Questions**

- a. Our Refugee Resettlement Office has had multiple cases recently in which there are errors made on the Judge's Order. The common mistake is that the names are reversed. This results in the I-94 having the correct names but the Judge's Order having the incorrect name. As a result, asylees are denied their Social Security cards, and have additional delays in being able to receive other essential identity documents. Please provide guidance as to the best and most efficient way to correct mistakes on Judge's Orders.

**Response:** The Asylum Division contacted the Executive Office for Immigration Review, which recommends contacting the court administrator of the immigration court(s) involved. The link to the list of individual courts and contacts may be found [here](#).

- b. There is no definition of the term "indefinite period" in the Immigration and Nationality Act. Can the term "indefinite period" be interpreted as a permanent period? Can the DHS entry stamp in a passport which states "Admitted for an indefinite period as a returning asylee/dependent of an asylee under section 208(b) of the Immigration and Nationality Act" be considered as evidence of lawful admission for permanent residence?

**Response:** Admission or parole for an indefinite period means that it does not automatically expire by the passage of time. Admission of a returning asylee for an indefinite period is not admission for permanent residence. The individual would need to adjust status to that of a permanent resident under section 209 or 245 of the Immigration and Nationality Act.

- c. Which countries are on the preference list to obtain asylum?

**Response:** There is no preference list to obtain asylum. Asylum applications are adjudicated on a case by case basis.



- d. What are the conditions for American asylum for Egyptians affected by living in Egypt?

**Response:** There are no specific conditions for Egyptians applying for asylum. Asylum applications are adjudicated on a case by case basis.

- e. Can the family of an asylum applicant come to the United States on advance parole and, if yes, how much time is required for this process?

**Response:** Please see the USCIS webpage on humanitarian and significant public benefit parole located at <https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states>.

- f. InfoPass appointments at local offices are becoming almost impossible to obtain. With the transition to a new automated system, will USCIS consider implementing through an online request or a separate appointment system a process to initiate a request for proof of relief granted by an Immigration Judge, such as an asylum Form I-94?

**Response:** If an applicant cannot get an InfoPass appointment, the applicant may call the USCIS Contact Center at 800-375-5283 to generate a request to the relevant office. If the applicant meets the expedite criteria listed at <https://www.uscis.gov/forms/expedite-criteria>, the case will be considered for expeditious processing. There are no plans to use a separate system for appointments. Individuals granted asylum by immigration judges must file a Form I-765 to receive the 2-year asylee EAD.

- g. What is the process to escalate inquiries if we get no response from NCSC or the Service Center (such as for defensive asylum biometrics inquiries) now that we have been instructed that the SCOPSSCATA email is no longer in service?

**Response:** If an individual had a service request generated by submitting an [online request](#) or calling the USCIS Contact Center and has not received a response within 30 days (15 days for expedites), the individual can submit another online request or call the Contact Center to have the inquiry elevated. This elevation allows the service center or office to immediately identify any outstanding inquiries and allows for tracking of such inquiries. All five service centers are currently on target with timely completions of service requests, and there is a very low volume of untimely responses from service centers. If the inquiry relates to rescheduling a biometrics collection appointment, individuals should check the box requesting a rescheduled appointment on the original appointment notice, and mail the notice to the Biometrics Processing Unit (BPU), Alexandria ASC, Suite 100, 8850 Richmond Hwy, Alexandria, VA 22309-1586.