



U.S. Citizenship
and Immigration
Services

JUL 31 2010

Memorandum

TO: January Contreras
Citizenship and Immigration Services Ombudsman

FROM: Alejandro N. Mayorkas
Director

A handwritten signature in black ink, appearing to read "A. Mayorkas", written over the printed name of the Director.

SUBJECT: Response to Recommendation 44, Emergent or Denied Refugee Applications:
Expediting Cases, Articulating Reasons for Denial, and Issuing Guidance for
Requests for Reconsideration

Executive Summary

USCIS appreciates the thoughtful review of the U.S. Refugee Admissions Program (USRAP) conducted by the CIS Ombudsman's Office. We welcome the opportunity to engage with our governmental and nongovernmental partners and stakeholders to improve the USRAP as a whole and enhance our ability to serve refugee applicants worldwide. USCIS believes that the recommendations outlined in the report seek to achieve this goal as well as the overall mission of USCIS to process immigration benefits with efficiency, transparency, and integrity. The following provides a brief summary of each recommendation and the USCIS response. Minor technical corrections can be found in Appendix A.

Recommendation 1: Present on the USCIS website and to stakeholder groups the criteria by which it expedites certain emergent refugee cases and how to access that process.

USCIS Response: USCIS concurs with this recommendation and has already begun working with the Department of State (DOS) to implement it.

Recommendation 2a: Identify with particularity potentially adverse determinations arising during the interview to enable the applicant to address, at that time, any potential grounds for denial.

USCIS Response: USCIS partially concurs with this recommendation.

Recommendation 2b: Articulate in the "Notice of Ineligibility for Resettlement" clear and case-specific information regarding the grounds for denial.

USCIS Response: USCIS partially concurs with this recommendation.

Recommendation 3a: Provide a tip sheet on relevant supporting documents with the "Notice of Ineligibility for Resettlement" outlining the information applicants could include.

USCIS Response: USCIS concurs with this recommendation and has already begun working with the DOS to implement it.

Recommendation 3b: Publish mailing address(es) for "Requests for Reconsideration."

USCIS Response: USCIS concurs with this recommendation and has already begun working with the DOS to implement it.

Recommendation 4: Acknowledge receipt of each "Request for Reconsideration" submitted.

USCIS Response: USCIS concurs with this recommendation and will develop a mechanism to implement it.

USCIS Response to Recommendations

Although the Ombudsman's report focuses primarily on refugee applicants from Iraq, USCIS has considered each recommendation in the context of the USRAP as a whole, a program that admitted more than 74,000 refugees representing 69 nations last fiscal year.

1. Present on the USCIS website and to stakeholder groups the criteria by which it expedites certain emergent refugee cases and how to access that process.

USCIS Response: USCIS concurs with the Ombudsman's recommendation and will update our website to provide information to the public on how to request expedited processing for a pending refugee case. USCIS has already contacted our program partners to begin developing the necessary information, which will advise refugee applicants seeking to have their case expedited to contact either (1) the United Nations High Commissioner for Refugees (UNHCR), if they have not yet received a referral to the USRAP, or (2) the Overseas Processing Entity (OPE), if their case has already been referred to the USRAP for resettlement consideration. The OPE is in the best position to assess which program partner has the ability and authority to expedite a given case and to contact that partner, depending on which steps in the process remain outstanding. USCIS will also include on our website examples of the exceptional circumstances that might warrant expedited processing, such as cases where an applicant is facing imminent harm in the country of asylum, is at risk of *refoulement*, or has a serious medical condition that cannot be treated locally.

Discussion: USCIS communicates and works cooperatively with our program partners to expedite¹ especially vulnerable cases, within the authority and capacity of each entity. Because the USRAP involves multiple entities which are responsible for different parts of the resettlement process, USCIS cannot establish criteria on our own for expediting urgent refugee cases, but rather must coordinate closely with program partners. Depending on where a case is in the resettlement process, a different entity will take the lead in attempting to expedite a case.

¹ Note that in some situations, expediting a case is outside the control of DOS, UNHCR, or USCIS. For example, some required security checks are conducted by other agencies, and while the USRAP can request that these agencies expedite the checks, DOS and USCIS cannot compel these agencies to complete their screening within a certain timeframe. Furthermore, by statute, certain medical conditions such as tuberculosis require that treatment be completed prior to travel.

The primary USRAP program partners involved in the overseas resettlement process are the UNHCR, DOS's Bureau of Population, Refugees, and Migration (PRM), and organizations under cooperative agreements with PRM known as OPEs. DOS has overall management responsibility for coordinating USRAP activities, including identifying the groups of applicants who are qualified for resettlement consideration, and USCIS has the critical role of interviewing refugee applicants to determine whether they are eligible for refugee status.

Given that all refugee applicants seeking resettlement face risks and hardships, the USRAP operates under the philosophy that all applicants should be processed as expeditiously as possible. The program recognizes that expediting certain cases may result in delays for other applicants in the processing queue as processing capacity of all program partners overseas is finite. Thus, the decision to expedite any particular application over another is based on an assessment of case-specific factors and a general assessment that the applicant (or his or her accompanying family members) is qualitatively more vulnerable than other refugee applicants who also face hardships. Cases deemed to warrant accelerated processing typically involve extraordinary circumstances, including, for example, where an applicant faces imminent harm in the country of asylum, is at risk of *refoulement*, or has a serious medical condition that cannot be treated locally.

The identification of cases in need of expedited processing is generally done by the USRAP program partners themselves, including UNHCR, the OPE, or a Refugee Coordinator or other DOS official. In some instances, a USCIS officer may learn during the refugee interview that an applicant is in a situation that requires immediate attention. The interviewing officer will notify UNHCR² or the OPE to have the case expedited, with consideration given to any additional security or protection requirements. Because the USRAP program partners have a comprehensive view of the full refugee caseload within a region, they are well-equipped to assess the need to expedite the most vulnerable individuals.

Given that the majority of refugee applicants encountered in the USRAP generally do not obtain legal representation or assistance from advocates, it is critical that USRAP program partners continue the practice of actively identifying individuals facing extraordinary protection or medical needs. At the same time, we agree that there should be a clear mechanism for applicants or their representatives to notify the USRAP directly if they have such concerns.

2A. Identify with particularity potentially adverse determinations arising during the interview to enable the applicant to address, at that time, any potential grounds for denial.

USCIS Response: USCIS partially concurs with the Ombudsman's recommendation to notify the applicant of any ineligibility identified during the interview. USCIS officers are trained to gather testimony and facts carefully to support their analysis of the applicant's eligibility and to provide applicants with an opportunity to clarify, correct, or provide explanations for inconsistencies or issues of concern. USCIS is committed to ensuring that this practice occurs through ongoing

² If a case is particularly urgent, UNHCR may choose to refer the applicant to another resettlement country that is better equipped to handle urgent requests, such as countries that accept refugee cases on a dossier basis.

training as well as supervisory and quality assurance reviews. However, given that there may be security issues or additional case review needed in order to finalize a refugee case decision, notifying each applicant of all possible ineligibilities during the interview may not be possible or appropriate in every case.

Discussion: USCIS officers are trained to carefully gather testimony and facts to support their analysis regarding the applicant's eligibility and to provide applicants with an opportunity to clarify, correct, or provide explanations for inconsistencies or issues of concern. In cases that present credibility issues, for example, the Refugee Officer Training Course (ROTC) instructs officers that they are required at the time of interview to advise applicants of any credibility concerns that arise and provide applicants an opportunity to explain any inconsistency, implausibility, or lack of detail that is identified. This practice has been standard since the creation of a formal training regime for refugee adjudicators in 2001. ROTC lesson plans also instruct officers to take into account age, culture, language, prolonged discrimination or harm, and a host of other factors that may affect an applicant's ability to testify or have bearing on a credibility determination. Once the officer has addressed the issue and given the applicant an opportunity to explain any discrepancies, the applicant's response is recorded in the interview notes and taken into account in the officer's decision.

As part of their required pre-departure training, all officers deployed on refugee processing circuit rides are reminded of the procedures for addressing credibility issues and their duty to elicit all relevant information from the applicant. In addition, in January 2010, the Refugee Affairs Division (RAD) provided all Refugee Officers with formal refresher training on credibility and eliciting testimony. The training reiterated the importance of providing applicants an opportunity to explain any discrepancies or credibility issues identified. Officers were also reminded that not only must they provide applicants with an opportunity to address such concerns, but they must also document it fully in their notes, and – absent adequate documentation – reinterview the applicant when warranted.

In addition, in Fiscal Year 2009, USCIS piloted a new quality assurance (QA) program for refugee adjudications, including the review of a statistically valid sample of refugee cases. Once finalized and fully implemented, this QA program will provide USCIS with a quantitative measure over time to determine whether refugee applicants are being given appropriate notice of potentially adverse decisions during their interviews.

It is important to note, however, that USCIS officers do not issue final decision notices at the conclusion of the interview, nor is the applicant informed of the officer's recommended decision at that time. There are a number of reasons for this including 1) the need to finalize security checks in many cases, which might reveal additional grounds of ineligibility, 2) the need to conduct supervisory review of all refugee case decisions, and 3) given the complexity of refugee adjudications, the need to conduct further research or higher-level review by USCIS headquarters.

2B. Articulate in the “Notice of Ineligibility for Resettlement” clear and case-specific information regarding the grounds for denial.

USCIS Response: USCIS partially concurs with the Ombudsman’s recommendation. Based on previous feedback received from stakeholders, USCIS issued a new Notice of Ineligibility for Resettlement, in October 2009 that, while maintaining a checkbox format, provides more detailed information regarding the reasons an applicant has been found ineligible. USCIS believes the revised Notice achieves the Ombudsman’s goal to provide clear and transparent information to refugee applicants and stakeholders on case decisions while ensuring that USCIS can maintain quality control and processing efficiencies. USCIS will assess the efficacy of the revised Notice throughout the year and will reconsider the Ombudsman’s recommendation after the assessment is complete.

Discussion: USCIS is committed to providing refugee applicants with clear information on the reasons they were found ineligible for refugee resettlement. To this end, USCIS revised its Notice of Ineligibility in October 2009 by providing greater detail regarding the specific reasons for denial. For example, the information in the “Credibility” section of the Notice has been expanded to include the reasons the applicant was found not credible, including which eligibility requirements, as outlined under INA Section 207, were implicated by the finding. The Notice also includes a section to record how the credibility issues were identified (e.g., internal inconsistencies in the applicant’s testimony). We believe that the new Notice is an improvement over the previous notice, as it provides more detailed information to denied refugee applicants, while maintaining an efficient and consistent format for reporting the reasons for denials.

USCIS has requested and welcomes feedback from refugee applicants and stakeholders on the new Notice of Ineligibility for Resettlement. In addition, we plan to undertake a QA review of Requests for Review (RFRs) received before and after issuance of the new Notice by the end of Fiscal Year 2010. As part of this review, USCIS will evaluate whether applicants were better able to address the specific grounds of denial in their RFRs based on the information contained in the newly designed Notice. After considering stakeholder feedback as well as the results of the QA study, USCIS will assess whether additional changes should be made to the Notice of Ineligibility for Resettlement in Fiscal Year 2011.

3A. Providing a tip sheet on relevant supporting documents with the “Notice of Ineligibility for Resettlement” outlining the information applicants could include.

USCIS Response: USCIS concurs with this recommendation and expects to issue a standardized “tip sheet” on RFRs that will be distributed with the Notice by the fourth quarter of Fiscal Year 2010. This “tip sheet” will also be posted to the USCIS.gov Internet website.

Discussion: As noted in the recommendation, some OPEs have created their own cover sheets to provide information to denied refugee applicants regarding the RFR process. USCIS is currently working with DOS to standardize a “tip sheet” that will be provided to all denied refugee applicants explaining the RFR process, how to write and submit an RFR, and what to expect from the review.

In addition to the general recommendation to develop an RFR information sheet, the report specifically suggests that the tip sheet list the types of documentary evidence USCIS considers pertinent to RFR decision-making. A list of these pertinent documents is included in Figure 2 (page 12). USCIS notes, however, that in the refugee context, applicants may not be required to submit documents where they do not exist or cannot reasonably be obtained, and credible testimony alone may be sufficient to establish eligibility for classification as a refugee. Thus, inclusion of such exemplars on the tip sheet may suggest to applicants that they *must* provide such documents in order to be approved, which would be erroneous. If a specific document is needed to corroborate a claim, USCIS officers will issue the applicant a deferral notice requesting that document.

3B. Publish mailing address(es) for "Request for Reconsideration."

USCIS Response: USCIS agrees that mailing and/or email addresses for submitting RFRs should be published. The appropriate mailing address will be included as a customized field in the forthcoming tip sheet and on the USCIS website.³

4. Acknowledge receipt of each Request for Reconsideration submitted.

USCIS Response: USCIS agrees that applicants should be provided with an acknowledgement of receipt of their RFRs.

Discussion: USCIS is developing a case management system to track overseas adjudications, including RFRs, and the capability to generate notices of receipt will be included in the system. The receipt notices will also include an estimated timeframe for processing of the RFR. As part of this development, USCIS will coordinate with DOS to establish location-specific protocols for receiving RFRs and updating the case management system to ensure receipt notices are produced consistently and efficiently. In addition, the process for providing applicants with a receipt notice either in person, through standard mail, or via electronic mail will be considered.

³ In that Figure 3 illustrates only locations where the bulk of refugees interviewed are Iraqi nationals, USCIS notes two additions: (1) RFRs from Algeria, Bahrain, Egypt, Iraq, Jordan, Libya, Morocco, Oman, Saudi Arabia, Tunisia and Qatar may also be sent to the OPE, the International Organization for Migration, in Amman, Jordan. (2) RFRs from Turkey should be sent to the Athens, Greece field office.

Appendix A: Technical Corrections

USCIS would like to clarify the following items in the report:

- Executive Summary, second paragraph: 74,654 is the total number of refugees admitted to the U.S. in Fiscal Year 2009, not the number approved.
- Footnote 4: USCIS does not “admit” refugees to the United States. The authority to admit refugees is delegated to U.S. Customs and Border Protection. Further, 18,833 Iraqi refugees were admitted to the United States in Fiscal Year 2009, while USCIS approved 20,587 Iraqi refugee applicants throughout the fiscal year.
- Footnote 14: The majority of Afghans have not fled to Jordan and Syria.
- Footnote 16: One out four refugees under UNHCR’s mandate – 2.8 million – is from Afghanistan. Afghans are the second largest group of refugees in the world, and Iraqis are the third largest group of refugees. Palestinians are the largest group of refugees in the world at 4.7 million.
- Footnote 21: PRM supervises all refugee processing activities conducted by OPEs and the initial resettlement period in the United States through cooperative agreements with voluntary agencies that provide initial housing and other support. The Department of Health and Human Services Office of Refugee Resettlement funds longer-term support for refugee arrivals.
- Footnote 24: This footnote states that USCIS’s Notice of Ineligibility for Refugee Resettlement “is not a formal denial letter,” unlike denial letters issued to applicants and petitioners filing for other immigration benefits. However, the Notice of Ineligibility is an official agency denial, indicating that the applicant has been denied classification as a refugee.
- Pages 10-11 and Footnote 53: The Asylum Procedures Manual does not discuss a mechanism for release of Asylum Officer interview notes in the affirmative asylum context, as suggested by citing the procedures manual in the footnote. In addition, interview notes are not routinely released to applicants. Notes from an affirmative asylum interview are considered part of the officer work product and are generally not released to applicants or their representatives, although there have been occasions when they have been provided as part of a Freedom of Information Act request. Officer notes may be released during court proceedings as part of the defensive asylum process if they have been introduced as evidence.
- USCIS notes that the “Expedite Criteria” listed in Figure 1 (page 10) do not accurately reflect the actual factors USCIS takes into account in considering whether to expedite a refugee case. These criteria have not been formally established by DOS or USCIS in any publication or guidance, and the Ombudsman’s office did not validate them with USCIS after the referenced “discussions” with PRM.
- USCIS would like to clarify that the acronym “RFR” represents “Request for Review” not “Request for Reconsideration” as is listed in the report.