



March 21, 2011

Agenda Items

USCIS Asylum Division Quarterly Stakeholder Meeting

January 25, 2011

20 Massachusetts Avenue, NW

Washington, DC

2:00pm to 4:00pm

1. Asylum Division Updates

a. Staffing updates

The Asylum Division has a few staffing updates. Our new Deputy Chief is Ted Kim. Arlington Asylum Office (ZAR) Director Ann Palmer is now working at the USCIS Office of Transformation and ZAR Deputy Director Mike Brown has retired. Ted Kim is filling in as Acting Director at ZAR until a Director is hired. Joyce Stadnick is the new head of the Refugee Asylum and International Operations (RAIO) Training Unit, which is a new unit at the RAIO level that is creating a basic training program for all RAIO officers. The new combined training will occur this summer. Rebecca Tanner is now working at the DHS Office of General Counsel and Bijal Shah is working at the Executive Office for Immigration Review's (EOIR) Office of General Counsel.

b. New disability accommodation request procedures

Effective Monday, February 7, 2011, asylum applicants follow new procedures to request disability accommodations for their asylum interviews. This change will bring the Asylum Division's procedures into line with procedures for requesting disability accommodations for other USCIS appointments. Under the old procedures asylum applicants were instructed to contact asylum offices directly to make disability accommodation arrangements. Beginning February 7, asylum applicants will receive a flyer with their fingerprint notices instructing them to call the National Customer Service Center (NCSC) at 1-800-375-5283. This change will enable Asylum HQ to monitor office responses to requests for accommodations. Offices must respond to requests received via the NCSC hotline in a short time frame and the new procedures will not delay interview scheduling.

c. Memo: Revised Reasonable Fear Quality Assurance Review Categories

Please see the attached memo.

This memo modifies the categories of reasonable fear determinations that must be sent to the Asylum Division Training, Research, and Quality (TRAQ) Branch for quality assurance (QA) review prior to the issuance of a final determination.

The number of Reasonable Fear (RF) interviews doubled in FY 2010 which is causing a delay in RF determinations. Moreover, a high number of all positive determinations submitted for review receive TRAQ concurrence. In light of these facts, HQ Asylum will no longer review 100% of RF cases. HQ Asylum will continue to review all negative RF determinations, RF determinations in which the alien is subject to a Final Administrative Removal Order, all requests to withdraw from the RF process, and any cases that a Supervisor, Deputy Director, or Director believes should be reviewed by TRAQ.

Asylum HQ will continue to monitor and evaluate a random sampling of positive reasonable fear determinations. Individual cases sent to the Immigration Judge in error will not be affected by this review process.

2. Statistics

- a. Affirmative Asylum statistics: Oct – Dec 2010
 - i. Asylum Office Workload
 - ii. Asylum Applications Filed
 - iii. Top Ten Nationalities
 - iv. Asylum Interviews Conducted
 - v. Asylum Cases Completed
 - vi. Asylum Applications Pending
- b. NACARA statistics: Oct – Dec 2010
- c. Credible Fear statistics: Oct – Dec 2010
 - i. Credible Fear Workload Report Summary – Total Caseload
 - ii. Credible Fear Workload Report Summary – POE Caseload
 - iii. Credible Fear Workload Report Summary – Inland Caseload
 - iv. Credible Fear Completions by Month
- d. Reasonable Fear statistics: Oct – Dec 2010
- e. Monthly CF and RF Nationality Report – Top 5 Nationalities
- f. Afghanistan and Iraq statistics: Oct – Dec 2010
 - i. Asylum Applications Filed by Nationals of Afghanistan (by month)
 - ii. Asylum Applications Filed by Nationals of Afghanistan (FY93 – FY10)
 - iii. Asylum Applications Filed by Nationals of Iraq (by month)
 - iv. Asylum Applications Filed by Nationals of Iraq (FY93 – FY 10)
- g. UAC statistics

UAC statistics will be posted once our report format has been finalized. We are in the process of combining several reports which contain most commonly requested statistics on UACs. There is nothing notable in the affirmative asylum statistics. The approval rates have been steady for the past five years. The credible fear (CF) receipts are increasing; on average we receive 874 receipts per month. RF case receipts increased substantially from 1109 in FY09 to 2060 in FY10. In FY11 Q1 we received 624 cases

which is a considerable increase in our workload. NACARA statistics continue to remain flat. We do not receive many applications filed by nationals of Afghanistan or Iraq.

We were unable to provide UAC stats at the meeting because we did not have time to compile them. We are in the process of creating regularized reports that pull together the most commonly requested UAC statistics.

- 3. Contact with Asylum Offices and HQ.** AILA recommends that Asylum HQ consider instructing all asylum offices to provide names, telephone numbers, and email addresses for all staff and contact personnel, and also to designate a contact in Asylum HQ for cases transferred to headquarters.

Background: Some asylum offices provide AILA attorneys (and other relevant stakeholder/attorney organizations) with a list of particular contact people within the asylum office including a list of asylum officers and their supervisors with contact information. For example, the Chicago Asylum Office provides attorneys with contact information for the Director and the four supervisors. The Director and supervisors are also very willing to discuss particular cases with attorneys. Other asylum offices, however, will not provide this contact information. Lack of relevant personnel information is not in alignment with the practices of most asylum offices and the overall commitment to transparency of USCIS divisions, and can create problems with obtaining case status information.

We have given our offices the latitude to respond to customer inquiries in different ways. However, this question has prompted us to consider standardizing a single customer service policy for all eight asylum offices and headquarters. We will begin drafting a national procedure that will be customer friendly and straightforward but also maintain confidentiality protections. Please send your suggestions to Elizabeth Hahn at Elizabeth.Hahn@dhs.gov. Our goal is to draft procedures by the next asylum stakeholder meeting.

- 4. EAD Eligibility.** AILA asks the Asylum Division to commit to working with this committee and other stakeholders to develop in concert with EOIR instructions and procedures to correct application of the EAD regulations to asylum applicants.

Background: Asylum applicants whose cases are pending before EOIR have traditionally experienced and continue to experience seemingly insurmountable problems in establishing EAD eligibility. This problem arises in large part from the manner in which EOIR keeps track of the number of days an asylum application has been pending for EAD purposes. With the lengthy delays in EOIR proceedings now typically extending to years rather than months, these problems have become exacerbated. Although these cases are pending before EOIR, this population - asylum seekers - and the relevant regulations (at 8 C.F.R. 208.7) remain the concern and responsibility of USCIS Asylum Division.

The Asylum Division controls the clock during the time that we have jurisdiction over the asylum case. Once the asylum case has been transferred to EOIR the Asylum Division no longer has jurisdiction over the clock. When we transfer jurisdiction of the case to EOIR we record: 1) how many days the clock has run; and 2) whether the clock is running or is stopped. USCIS does not consider the EAD clock to be permanently stopped – it is just a snapshot of whether or not the clock was running at the time we transferred jurisdiction to EOIR. We will look into adding something to the Affirmative Asylum Procedures Manual (AAPM) to clarify.

Please contact the asylum office if you have a question regarding the clock when the case is pending before an asylum office. We will provide an updated list of asylum office clock POCs. For additional information on the Asylum Division's clock procedures please consult the AAPM. The entire AAPM, including appendices, is available on the USCIS website. The clock procedures for UAC cases are complicated. Please contact us if you have specific questions relating to the clock and a UAC.

We will be reviewing our clock procedures in the upcoming year. Additionally, USCIS is conducting a comprehensive policy review on the I-765 and an HQ Asylum subject matter expert participates in the Working Group. She will ensure Asylum's equities are addressed.

- 5. Domestic Violence and Gender-Based Asylum Cases.** What is the status of the regulations on domestic violence cases that were proposed in 2000, but which have never been finalized? Can we expect any movement on this issue in the near future? Has any guidance been issued to asylum offices on gender-based claims after the Ninth Circuit decision in *Perdomo v. Holder* (611 F.3d 662 (9th Cir. 2010)) finding that Guatemalan women could constitute a particular social group for asylum purposes? Is any such guidance planned?

The regulations are being worked on at the DHS and USCIS level. The 9th Circuit remanded Perdomo to the Board of Immigration Appeals (BIA) and we are waiting for the BIA decision.

- 6. Lesson Plans.** Can you provide a list of all the current lesson plans for asylum officers? Will the Asylum Division post all current lesson plans for asylum officers online? If not, would you please explain why not?

Most, but not all, of the lesson plans are on the uscis.gov website. There are a few lesson plans that are not posted online due to their sensitive content. All of the Asylum Officer and Refugee Officer lesson plans are currently being combined into one RAIO training manual. We will look into posting the RAIO lesson plans online.

- 7. Asylum Officer Notes and Assessment Memos.** Will the Asylum Division consider making Asylum Officers' notes and assessment memos available to asylum applicants and their representatives upon request and without the need for a FOIA request or an Immigration Court subpoena?

Background: Currently, asylum officer notes and assessment memos are only obtainable via a FOIA request, or if a trial attorney introduces them as evidence in a removal hearing. Access to these notes and memos would greatly assist attorneys and asylum seekers alike in assessing the viability of a particular claim, and preparing for a removal hearing, without the need to seek a continuance when a trial attorney produces these notes and memo in the middle of a trial.

This question has been asked at previous stakeholder engagement meetings. The Asylum Officer notes and assessment memos are not available through FOIA. They are exempt because they are considered part of the deliberative process per the Office of Chief Counsel. Notes and assessments will only be made available if they are introduced by a DHS attorney in court.

- 8. Material support to Tier III terrorist organizations and INA §212(a)(3)(B)(i)(VI) Exception.** What are the guidelines for determining whether an alleged Tier III member qualifies for the INA

§212(a)(3)(B)(i)(VI) exception? Can asylum officers be made aware of these guidelines and fill out a similar report to the duress exception, so that during the asylum interview the applicant may be afforded an opportunity to demonstrate that he or she did not know, and should not reasonably have known, that the organization was a terrorist organization?

Background: When an asylum applicant is connected to a Tier III terrorist organization, at the end of the interview process the asylum officer occasionally fills out a “duress” exception form to determine if the applicant qualifies for this waiver. However, asylum officers do not question the applicant to determine whether he or she qualifies for the Tier III exception under §212(a)(3)(B)(i)(VI), namely whether “the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization.”

Because the asylum officers do not question the applicant to determine whether the applicant whether he or she qualifies for the §212(a)(3)(B)(i)(VI) exception, thousands of applications of alleged Tier III members are held up at headquarters without resolution for an indefinite amount of time. Moreover, it is unclear who is making the determination that the applicant is connected to the Tier III terrorist organization, and in addition, it seems likely there is no subsequent consideration whether that person qualifies under the §212(a)(3)(B)(i)(VI) exception.

TRIG issues generally are handled at a separate meeting but we will address this question here. The knowledge requirement is part of our training materials and many of these cases come to Asylum HQ for review. However, we have not seen the knowledge issue come up more than one or two times so we do not believe it is a common issue among Asylum Officers. If you believe an AO made an improper decision, please raise the issue with the local asylum office. If you do not receive a response please raise your inquiry to HQ. If you have specific examples we will be happy to take a look at them.

9. Refugee Travel Documents. Consider extending the period of validity of refugee travel documents from 365 days to four or five years. This period of time is too short for its price (\$400) and it is very expensive to renew it every year. Green card holders need to use the Refugee Travel Document to travel overseas in case of emergencies.

The Asylum Division does not adjudicate the I-131, which is the application for a Refugee Travel Document as well as certain other travel documents, so this question has been submitted as an agenda item for the upcoming USCIS Quarterly National Stakeholder Meeting. USCIS is undertaking a comprehensive policy review of travel documents and Asylum is represented on the working group. We will raise this question and explain the background at the working group.

The price of a Refugee Travel Document (RTD) has been lowered to \$135 to reflect the cost of a US passport. The lowered price is based on a passage in the Convention and Protocol Relating to the Status of Refugees, available at: <http://www.unhcr.org/3b66c2aa10.html> (p. 40). RTD applicants age 14 to 79 must also pay the \$85 biometric fee if they reside in the United States at time of application, but that fee may be waived for individuals who can demonstrate an inability to pay the biometric fee. See www.uscis.gov for additional fee waiver guidance.

Please submit any follow up or additional questions regarding an asylee’s use of a travel document versus a passport for the next Asylum Stakeholder Meeting.

10. Decision Letters. We received one question that was not included on the agenda because it was specific to an attorney who did not receive a copy of a decision letter from a field office.

We followed up with the field office and resolved the question with the attorney. If you have a question dealing with a specific case please contact the local asylum office. If you do not receive an answer from the local office please raise your question with HQ.

The next Asylum Stakeholder Meeting is tentatively scheduled for April 12, 2011.