



U.S. Citizenship
and Immigration
Services

Questions and Answers

USCIS Asylum Division Quarterly Stakeholder Meeting

December 6, 2012

20 Massachusetts Avenue, NW

Washington, D.C. 20529

2:00pm to 4:00pm ET

1. Asylum Division Updates

- **Hurricane Sandy.** Hurricane Sandy impacted three asylum offices – Arlington, New York, and Newark. Our New York and Newark Asylum Offices were the most seriously affected by Sandy. Those offices have been reaching out to applicants who missed their interviews during the storm. New York and Newark have a very flexible scheduling policy in the aftermath of Hurricane Sandy. Please bring any concerns you have to the attention of Director Menges or Director Raufer.
- **New Hires.** We are pleased to make the following hiring and personnel announcements: Kim Aguilar (Miami Asylum Office Deputy Director); Julie Lelek, Reza Naushad and Jose Pitti (Presidential Management Fellows); Alex Trumbull (Student Intern); Sunil Varghese, Erin McEvoy, Anjali Zielinski, and Kathy Valerin (HQASM TRAQ Asylum Officers); Christina Fabian (HQASM TRAQ Management and Program Analyst); Anthony Donald (HQASM Senior Administrative Specialist); and Mary Margaret Stone (Acting Deputy Chief, Asylum HQ).
- **Refugee, Asylum and International Operations (RAIO) Combined Training.** 45 participants completed the first RAIO Combined Training last month. 38 new Asylum Officers graduated November 20th. (Six new Refugee Officers graduated and one Asylum Officer completed the RAIO segment and will attend the next Asylum Division Officer Training Course (ADOTC) in January 2013.)
- **Asylum Customer Satisfaction Survey Results.** During FY 2012, the USCIS Refugee, Asylum and International Operations Directorate partnered with the Research and Evaluation Division of the USCIS Office of Policy and Strategy to design and implement a customer satisfaction survey for asylum applicants. The focus of the survey was to evaluate the customer's experience with the asylum interview as well as with the overall asylum office visit. Results from the survey are now available. Here are some highlights:
 - A total of 933 survey responses were collected across all eight U.S. asylum offices.
 - The survey was translated and made available in the top 12 languages used by asylum applicants, including Arabic, Amharic, Chinese, English, French, Gujarati, Haitian Creole, Nepali, Punjabi, Russian, Spanish, and Tigrinya.

- The overall Customer Satisfaction Index for USCIS Asylum Offices as a whole was 87 out of 100—about 20 points higher than the latest federal government average for citizen satisfaction.
 - Asylum officer satisfaction had the highest impact on overall customer satisfaction. The aggregate satisfaction rating for asylum officers was very high (89 out of 100).
 - The front desk staff was rated very highly (90+) at all eight asylum office locations.
 - We will publish the full results of the survey on our website when available and will issue a message to stakeholders when the full results are available for viewing.
- **Office of Refugee Resettlement (ORR) update – National Asylee Information and Referral Line no longer in service.** An ORR update with the new link to the ORR asylee benefits website (with translations in eight languages) was issued to asylum offices to be inserted with the asylum approval package.
 - **Asylee Benefits Orientation.** The International Rescue Committee (IRC) has worked with our San Francisco and Los Angeles Asylum Offices to provide asylee benefits orientations on a monthly basis. San Francisco also posts notice of orientations at the immigration courts. The Arlington Asylum Office is the third office to coordinate benefits orientations on a regular basis. The IRC, Hebrew Immigrant Aid Society (HIAS), and possibly others are also looking to work with remaining offices. The New York Asylum Office has been in contact with IRC and HIAS to discuss future orientations.
 - **Recently Issued Memoranda:**
 - **Asylum Division National Customer Access Standards.** The Memorandum establishes a dedicated email box, phone number, and walk-in hours and provides templates for common inquiry responses. We appreciate the valuable suggestions and feedback we received from stakeholders towards creating these standards. The asylum offices were directed to implement the new standards in the first quarter of the fiscal year. Information for a number of the offices will soon be found on the office locator site (USCIS website).
 - **Confidentiality Fact Sheet.** The seven-page fact sheet lays out the federal regulation at 8 CFR section 208.6 protecting the confidentiality of asylum applicants and provides guidance on the disclosure to third parties. The October 2012 document is an update to the 2005 original.
2. **Statistics.** Please provide statistics from July, August, and September 2012 on Affirmative Asylum workload; NACARA workload; Credible and Reasonable Fear workload; Iraq, Afghanistan and Libya receipts; and Unaccompanied Alien Children (UAC).

Response: The requested statistics are attached.

3. **Telephone Participation for Asylum Quarterly Stakeholder Meetings.** Please explain the reasoning behind the HQ Asylum decision to not allow telephone participation for the Asylum Quarterly Stakeholder meetings.

Response: We understand the desire to be more inclusive. The in-person dynamic has been effective for many years and the phone participation changes this dynamic. All eight of our asylum offices hold local stakeholder meetings on a periodic basis and perform community outreach. The regular local meetings provide a channel for stakeholders to communicate

concerns and suggestions to the asylum offices. Further, the nature of asylum and issues covered require a heightened level of sensitivity and a need to safeguard the information discussed.

4. **TRIG Exemption.** Does USCIS have any updates in regard to the implementation of the new broad-based TRIG exemption, announced in the August 17, 2012 Federal Register? Which groups, if any, have been determined to be exempt under this policy? Is USCIS reviewing all cases on hold to determine if they meet the requirements for this exemption? If so, when does USCIS expect to complete its review of the cases on hold?

Response: Implementation continues for the Limited General Exception (LGE). The TRIG working group meets regularly and is reviewing groups for LGE eligibility, as the LGE contains group based qualifications, including qualifications that limit the exemption to groups not engaged in a pattern or practice of use of child soldiers, torture or genocide. Concerning the review process, as a general matter groups with the highest number of cases on hold or those with litigation concerns are prioritized for review. The review is ongoing, and new groups are added on a continual basis.

USCIS does not publish a list of groups determined to be eligible or not eligible for the LGE, since each determination is ultimately made only in the context of a specific case, and could change in any subsequent adjudication if additional information affects the determination. Inquiries submitted via the TRIG website will receive a response on a case-by-case basis. USCIS Service Center Operations (SCOPS) also has a web address for inquiries. SCOPS releases cases when a determination is made.

5. **CBP's Proposed Elimination of I-94 Cards.** CBP has announced that they plan to eliminate the paper I-94 cards issued at ports of entry sometime in the future. Has CBP consulted with USCIS regarding the effects that this change might have on USCIS's practices? Obviously, USCIS relies heavily on I-94 cards for a number of benefits applications. Additionally, there are a number of ways that asylees and refugees might be affected by this change. For instance, without an I-94 card, it may be more difficult for an asylum applicant to prove entry for purposes of meeting the one year filing deadline. Is USCIS planning to work with CBP on this proposed change to ensure that asylees and refugees are not negatively impacted?

Response: Several parties have lobbied CBP to keep using the paper I-94 for benefits purposes. USCIS Asylum and other USCIS components have participated in biweekly working group meetings with CBP over the past year. USCIS has been very vocal about our program needs, and CBP has been responsive.

CBP estimates that the process of eliminating the paper I-94 and moving entirely to an electronic system will take one year. In addition to operational changes, the elimination of the paper I-94 may require regulatory changes. Until the paper I-94 is completely eliminated, CBP will continue issuing the paper I-94 card to asylees. The printed number on the paper I-94 will be crossed out, and CBP will write the correct electronic number in its place. CBP is also developing a simple process for customers to obtain their electronic I-94 number.

Even after the paper I-94 cards are eliminated completely, asylum officers will be able to query DHS systems to obtain the I-94 number by using an applicant's passport number or other biographic information. The Asylum Division is also exploring options for proof of benefit for asylees.

6. **Work Authorization.** When an asylum candidate is granted an EAD which is terminated when his appeal is denied, will the EAD be renewed when the case is reopened?

Response: We are unable to provide information about employment authorization and related procedures due to ongoing litigation.

7. **Immigration Court Proceedings.** Is there ever any circumstance where an individual can seek that their asylum claim be heard directly in immigration court, bypassing the affirmative process? The specific situation we have in mind is the following: Individual files an asylum claim while in status, received NOID and final denial, but no referral to immigration court. When that individual falls out of status, is there any way they can go straight to court rather than re-filing with the appropriate service center and undergoing an interview at their local asylum office?

Response: If an individual falls out of status after receiving a Notice of Intent to Deny (NOID) and final denial, a request to be issued an I-862, Notice to Appear, may be submitted to the local asylum office. The Asylum Office Director has the discretion to grant the request.

8. **Nunc Pro Tunc.** There appears to have been an apparent “unofficial” decision that if the principal asylee naturalizes, the unadjusted derivative asylee has to go through the Nunc Pro Tunc (NPT) process. As a result, our office has begun filing NPT I-589 applications. In Jacksonville, FL, where an asylum officer comes up each week from Miami to do asylum interviews (including NPT interviews), nunc pro tunc interviews have been held. However, the decisions on these cases are taking a considerable period of time – one in question has been pending for almost 3 months at this point. (Many years ago, a typical NPT application in Jacksonville might take 2-4 weeks max for a decision.)

- i. Is this processing time abnormal and due to staffing issues relating to the interview workload or staffing issues that have delayed the processing of background checks?
- ii. Is there any priority given to shortening the processing time for NPT applications vs. other I-589 applications given the relatively “simple” nature of NPT decisions vs. other asylum cases? If no priority, can the Service consider prioritizing these NPT cases?
- iii. What would be the procedure now for requesting expediting of a particular NPT case given the probable cut off of SSI before the applicant is even able to file for US citizenship? (In many cases, because the adjustment date for an asylee’s I-485 is only rolled back one year from the date they are approved for their green card, asylees are cut from SSI before they have met the 4 years/9 months time required for filing for USC. Since the CIS Service Centers take the position that the NPT grant of asylum has to occur prior to the filing of the I-485, applicants whose NPT applications are delayed must wait for a long time to even get their green cards.)

Response: The frequency of the circuit rides to Jacksonville depends on the number of receipts. Typically these circuit rides are scheduled once every other month. If there is a special need for a case, contact the local asylum office. Following the issuance of the Asylum Division’s new customer access standards memorandum, phone numbers, email addresses, and walk-in hours for each office will soon be found on the office locator site (USCIS website).

9. **Syrian Applicants.** Can you provide any statistics on Syrian asylum seekers?

Response. Statistics have been provided in the handouts.

10. Reasonable Fear and Credible Fear Interviews. Please provide an update of the most recent statistics relating to RFIs and CFIs. Specifically, please provide any statistics on the average wait time for both RFIs and CFIs, nationally and broken down by field office.

- i. Please also provide any updates on any trends your office has seen relating to RFIs/CFIs. Specifically, advocates continue to hear of long wait times relating to RFIs and are interested in whether the most recent guidelines on RFI completion goals have had time to have an impact on these wait times.
- ii. In cases where the RFI/CFI adjudication completion expectations are not yet being met, how do asylum offices plan to work to bring wait times down to the target times, or even lower?

Response: The Asylum Division has seen a 60% increase in asylum receipts over the last three years and we are projected to receive 48,000 during the next fiscal year. In addition to increasing affirmative asylum receipts, we are also experiencing unprecedented numbers of credible fear and reasonable fear receipts.

In looking more specifically at the increasing affirmative asylum receipts, China continues to rank as the number one nationality for asylum receipts and even a small increase in the percentage of claims from China translates into a significant number of additional receipts. The volume from Mexico has also risen. While we have seen a mix of drug cartel, LGBT, and journalist claims from Mexican applicants, approximately 40% of Mexican applicants do appear for the asylum interview. A review of these cases reveals that certain Mexican applicants may be using the asylum process to be placed into EOIR proceedings where they can then apply for cancellation of removal. It appears that cancellation approval rates with the Immigration Judges are higher than expected. We have seen the same trend for Ecuadoran asylum applicants. The asylum process continues to be a magnet for those looking to apply for cancellation of removal. The Arab Spring has also led to increased receipts from this region of the world, especially from Egypt and Syria.

Credible fear receipts have exploded from 5,000 a year to almost 14,000 in FY 2012, the highest number since its inception. Our Houston Asylum Office processes most of these cases, which are mainly from Central American nationals. Detailees have been sent on a regular basis to assist as Houston does not have enough staff to process the unprecedented volume. Reasonable fear receipts have also jumped dramatically. In the past, 700 a year was considered high while in FY 2012 reasonable fear receipts totaled approximately 5,000. This increase may be due to the expansion of the Secure Communities initiative to more jurisdictions and other increases in immigration enforcement.

Previously we have been able to shift staff between affirmative, credible fear and reasonable fear caseloads to address spikes in receipts without adversely impacting overall productivity. Making this shift is more difficult when all three caseloads are experiencing surges simultaneously. The Asylum Division has designated credible fear as our first processing priority so that individuals who may be eligible for asylum and who are in detention are expeditiously processed. Our second processing priority is affirmative asylum. Our third processing priority is reasonable fear. Timely processing of these cases is tied to the integrity of the asylum system. From our program's experience, backlogs result in problems with the integrity of the overall affirmative and CF/RF processes.

In the past, we have shifted resources from various offices to the offices most impacted by surges, but can no longer rely on this model when all offices are stretched thin. We are currently working within the USCIS budget process to acquire additional staff. Last fiscal year, the Asylum Division requested and received 41 new asylum officers. This year we significantly increased our request for new officers.

The Los Angeles Asylum Office traditionally has the largest volume of overall total receipts (affirmative, credible and reasonable fear, and NACARA). The number of staff has already increased in Los Angeles and we expect to add more officers in the future.

Specifically concerning the question about credible and reasonable fear processing times, nationwide, the clock-in (receipt date) to decision service date for FY 2012 credible fear cases consistently averaged 12 days. For reasonable fear the clock-in (receipt date) to decision service date averaged 113 days. Our goal is to process 85% of reasonable fear cases within 90 days.

The Houston Asylum Office typically encounters the majority of detained cases. We did experience a delay in processing in Houston during the month of November due to inability to shift resources to that office. We are working diligently to improve processing timelines in Houston.

- 11. Asylum Office Delays.** AILA Members report ongoing delays in processing of asylum applications at the New York and Los Angeles Asylum Offices. Does USCIS have any updates in regard to its efforts to reduce the backlog and decrease processing times for asylum applications at these offices?

Response: See response for #14.

- 12. ZLA Scheduling Delays.** At the Los Angeles Asylum Office this year, staffing shortages have resulted in that office's inability to reschedule cases in a timely manner. AILA members in the San Diego Chapter have reported waiting six months and longer for their cases to be put back on the office's calendar after they have requested that an interview be rescheduled. When a rescheduling request is made, the EAD processing KLOK is stopped and does not start again until the applicant appears for interview. When there is such a long delay, it is a hardship on the applicant not to accrue time toward EAD eligibility. Frequently, an attorney is forced to request rescheduling because the asylum interview falls on the same day as a previously scheduled immigration court hearing and there is no way for the attorney to be in both places at the same time.

- i. When the reschedule request is made for this reason and the attorney sends proof of the conflict (i.e., the court hearing notice), would it be possible to restart the KLOK after a reasonable period of time (30-60 days) if the asylum office is not able to reschedule the case in a timely manner?

Response: See response for #14.

- 13. ZNY Scheduling Policies.** Can you please clarify the New York Asylum Office operations, specifically regarding their scheduling policies?

Response: See response for #14.

- 14. ZNY Backlog and Reschedule Delays.** The New York Asylum Office continues to experience not only significant delays in processing and scheduling of cases for interview, thus leading to a "backlog" of cases, but has now actually stopped scheduling certain cases completely, until such time

as the “backlog” has cleared (this is according to the notes from the July 2012 local asylum liaison meeting). Thus, a significant number of new cases are now simply never scheduled for an initial interview. Other cases, in which a request is made to reschedule an initial interview, are likewise removed from the interview calendar, and a new interview is not scheduled. Meanwhile, there is no plan to reschedule these cases for interview until the backlog of accumulated cases has been cleared. Unfortunately, there is no realistic plan to reduce the backlog within the near future. On the other hand, some newly-filed cases are scheduled for interview promptly, within a couple of weeks, while cases that have been filed over a year ago are not scheduled at all. Related to this, it can now take up to a year for a case to be rescheduled for interview. Many times, a request is made to reschedule because of the attorney’s scheduling conflict, which the asylum office will not accommodate. Although the New York Asylum Office takes the position that the scheduling system does not allow for this, other asylum offices routinely take attorney’s availability into account when scheduling an interview. While we appreciate the pressures of an ever-increasing caseload, simply removing certain cases indefinitely from the interview calendar is not a satisfactory solution, for many reasons (it is arbitrary, unfair, and would seem to violate the regulatory and statutory mandates that asylum cases be adjudicated within a specific time frame). A number of institutional service providers and NGOs have been discussing potential legal action against the asylum office to compel scheduling of interviews and adjudication of cases.

- i. What steps does the Asylum Division plan to take to address these two problems: the removal of cases from the interview calendar completely, and the failure to reschedule interviews in a timely manner?
- ii. Would the Asylum Division consider requiring all cases to be dealt with on a first-in, first-out basis, and if not, why not?
- iii. Would the Asylum Division consider requiring all cases in which an initial reschedule request is made to be rescheduled for interview within a reasonable time, and if not, why not?
- iv. Would the Asylum Division consider requiring the availability of the attorney to be taken into account in either initial scheduling or rescheduling of interviews, and if not, why not? Facilitating attorney’s availability when scheduling – or rescheduling – an interview would go a long way toward ensuring that repeated reschedule requests are not made, and possibly vastly reduce the need for such requests in the first place. It would also, quite possibly, improve the quality of competent representation of applicants at asylum interviews.

The problem with excessive caseload and interview delays at the New York Asylum Office are longstanding, and clearly related to the size of their case load relative to the size of that office. One possible long-term solution to this would be to redraw the jurisdictional boundaries for the Newark and New York Asylum Offices, either on a temporary or permanent basis.

Currently, the New York Asylum Office has jurisdiction over cases arising in Brooklyn, Queens, Staten Island and Long Island (Kings, Queens, Richmond, Nassau and Suffolk counties). The Newark Asylum Office has jurisdiction over cases arising in the rest of New York, and all of New Jersey, Pennsylvania, Massachusetts, and all of New England, but it has traditionally had a far lighter caseload than the New York Asylum Office. Conventional wisdom is that one of the main reasons the New York Asylum Office has such a heavy caseload relative to the size of its catchment area is because asylum applicants want to be within the jurisdiction of the New York

immigration court, in the event their cases are referred, a factor which is unlikely to change. Thus, re-drawing the jurisdictional boundaries so that cases from certain zip codes in Brooklyn and Queens are assigned to the Newark Asylum Office would, at the very least, spread the load more evenly between the two offices.

v. Would the Asylum Division consider such a solution, and if not, why not?

Response: The Asylum Division has been looking at these issues very closely. The Affirmative Asylum Procedures Manual (AAPM) refers to two scheduling categories, rescheduled cases and new cases that have never been scheduled. Rescheduled cases are the top priority and this is consistent with asylum reform. The new cases that have never been scheduled are processed by a last-in, first-out principle. Once cases are pending 180 days, those applicants, as long as otherwise eligible, may be eligible to receive an EAD. When receipts exceed capacity, some cases may remain in the backlog longer if cases with a higher scheduling priority are received. We are aware and concerned that our New York and Los Angeles Asylum Offices are accumulating backlogs. For both offices, the case scheduling system will continue to follow the scheduling priority categories. However, regardless of the described processing/scheduling priorities, if there is an urgent need, the Directors have created a process for applicants and representatives to bring those cases to their attention.

At the Los Angeles Asylum Office's June 2012 meeting with AILA, the Los Angeles Asylum Office provided the following information:

“All requests to reschedule must be made by the applicant in writing by either sending a letter to the Asylum Office or completing a Case Reschedule History (AAPM Appendix 9) at the Asylum Office. Asylum Office staff will not honor a request to reschedule received telephonically. All attorney inquiries and reschedules should be sent to Mary Winkler at Mary.L.Winkler@uscis.dhs.gov or via fax at 714-808-8155 or 714-635-9136. Any written reschedule request should be submitted as early as possible, and must be received within 15 days after the interview date. You may request rescheduling confirmation from Ms. Winkler. In the event that Mary Winkler is on vacation or otherwise out of the office, you may send interview reschedule requests to Lead Supervisory CIS Assistant Kristi Cottrell at Kristi.L.Cottrell@uscis.dhs.gov or via fax at 714-635-8707 or by phone at 714- 808-8222. For urgent requests, you may contact Asylum Office Deputy Director David Radel at David.M.Radel@uscis.dhs.gov or via fax at 714-635-9136 or by phone at 714-808-8206.”

The New York Asylum Office will also review requests for scheduling and rescheduling based on exigent circumstances. Written requests may be submitted to Director Menges by fax, letter or walk-in and must include an explanation of the exigent circumstances.

Generally, scheduling is automatically processed by the Asylum Division's electronic case management system. The asylum offices receive a high volume of rescheduling requests. Due to the electronic scheduling and the high volume of requests, it is very difficult to take attorney availability into account. Please note that a first reschedule request may be based on a variety of reasons, including the lack of availability for the attorney. However, the second request must establish good cause and most often a conflict with the attorney's schedule does not rise to that level.

Regarding jurisdictional boundaries, two years ago HQ Asylum reviewed the jurisdictional caseloads of the eight asylum offices, including a review of the New York and Newark Asylum Offices. We examined the option of shifting cases from Brooklyn to Newark but determined that this change would result in a tripling of the commute time for applicants, to which we anticipated strong

resistance. Our increased staffing request should result in assistance for the New York Asylum Office in handling the increased receipts without necessitating jurisdictional changes.

We want to emphasize that we appreciate the concerns about the backlog and that we are aware of the significant ripple effect that results from lengthy delays in scheduling interviews. Last fiscal year we could hire new officers in January and wait approximately three months for new officers to enter on duty, complete training, and start interviewing by the fourth quarter. This year, USCIS is slightly behind that schedule. If our Asylum Division staffing request is approved we will work to hire and train new officers as quickly as possible.

The next meeting is scheduled for Tuesday, March 19, at 2:30pm.