



U.S. Citizenship
and Immigration
Services

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HQASM 120/10.19

Memorandum

TO: All Asylum Office Staff

FROM: John Lafferty, Chief

SUBJECT: Issuance of Revised Procedures Regarding Failure to Appear and Reschedule Requests

I. Purpose

The purpose of this memorandum is to issue revised procedures governing an applicant's failure to appear for an asylum interview and the submission of requests to reschedule an asylum interview. The revised procedures describe the process of determining whether an applicant demonstrated "exceptional circumstances" after an applicant failed to appear at an asylum interview.¹ The revised procedures also provide improved information and notification of 180-day asylum EAD clock information as it relates to an applicant's case. The revised procedures attached to this memorandum replace the content in the following sections of the Affirmative Asylum Procedures Manual (AAPM):

- III.I, *Failure to Appear*
- III.T, *Reschedule Requests*

II. AAPM changes

The following contains descriptions of the major changes to the AAPM listed by relevant section in order of appearance in the manual.

III.I., Failure to Appear: After an applicant misses a scheduled interview and provided that the Asylum Office has not received an excuse or a request to reschedule from the applicant or representative, Asylum Office personnel will mail the *Failure to Appear Warning* (Appendix 74) to the applicant and representative, if any.

¹ See 8 CFR 208.7 (specifying that applicants who fail to appear for scheduled interviews may not be granted employment authorization unless the applicant demonstrates that the failure was due to exceptional circumstances); 8 CFR 208.10 (providing that failure to appear at an interview will be excused if the applicant demonstrates that the failure was the result of exceptional circumstances).

III.I.1, Asylum Interview – Applicant Submits Excuse Prior to Interview Date: For reschedule requests received within a reasonable period prior to the interview date, Asylum Offices should strive to complete the request and provide notice as soon as practicable and before the scheduled interview date.

III.I.2, Asylum Interview – Applicant Submits Excuse on or After Interview Date: The Asylum Office will not issue a decision until 45 calendar days have passed after the first missed interview date. Previously, the Asylum Office did not issue a decision for 15 days after the missed interview. (Also changed in **III.T, Reschedule Requests**).

III.I.2.a, Excuse Submitted Before Issuance of Referral (for Applicants without Valid Status) or Dismissal (for Applicants in Valid Status): Requests to reschedule must be completed as soon as practicable after receipt. If the request is denied, personnel must issue the new *Denial of Asylum Interview Reschedule Request* notice (Appendix 73). If the Asylum Office honors an in-person request, it should complete the revised *In-Person Reschedule Request* form (Appendix 9) and provide a copy to the applicant and representative, if any. (Also changed in **III.T, Reschedule Requests**).

III.I.2.b, Excuse Submitted on or after day 46 / Issuance of a Referral and Charging Document (for Applicants without Valid Status): On day 46, the Asylum Office will issue the new *Referral Notice for Failure to Appear* (Appendix 68), the charging document, and the new *Joint Notice* (Appendix 78) to the appropriate parties.

III.I.2.b.ii, Examining “Exceptional Circumstances.” If the applicant wishes to demonstrate “exceptional circumstances” for failure to appear where a referral by the Asylum Office was issued, he or she must follow the instructions on the referral notice to notify the Asylum Office in writing as soon as possible after receiving the referral notice. The adjudicating individual will examine the written explanation and any supporting documents and record the determination using the new *Determination of “Exceptional Circumstances” Worksheet* (Appendix 69). The determination requires Supervisory Asylum Officer concurrence. The Director, Deputy Director, or designee has the discretion to schedule the applicant for an interview concerning exceptional circumstances or issue a request for additional information using a *Request for Additional Information (“Exceptional Circumstances”)* (Appendix 75) to the applicant and representative, if any. Upon making the determination, the adjudicating individual will issue the new *Determination of Failure to Demonstrate “Exceptional Circumstances”* notice (Appendix 70) or the new *Determination Demonstrating “Exceptional Circumstances”* notice (Appendix 71) to the applicant and representative, if any. Asylum Office personnel will also enter whether exceptional circumstances were established and the date upon which the determination was made on the new Exceptional Circumstances screen (EXCI) in RAPS. Asylum Office personnel will also notify ICE of the determination.

III.I.2.b.iii, Immigration Court Proceedings: If the Immigration Judge dismisses removal proceedings based on the Asylum Office’s determination that the applicant’s failure to appear at the Asylum Office for the interview was due to exceptional circumstances, ICE will notify the Asylum Office so that the case may be rescheduled. To expedite the

rescheduling of the asylum interview, the applicant is advised to fax, email, or mail a copy of the immigration judge's decision order dismissing removal proceedings to the Asylum Office. If the immigration judge denies the applicant's request to dismiss proceedings, jurisdiction over the asylum application remains with the immigration court.

III.I.2.b.iv, Post-Decision Processing: Once the immigration judge dismisses removal proceedings, per locally developed procedures, ICE OCC will notify the local Asylum Office point-of-contact and send the A-file back to the Asylum Office for interview scheduling. If the applicant notifies the Asylum Office of the decision before ICE OCC does, personnel will request the A-file, reopen the case and reschedule the interview.

III.I.2.c, Excuse Submitted on or after Day 46 / Issuance of Dismissal (for Applicants in Valid Status): The Asylum Office will administratively close an application and issue a dismissal letter for an in-status applicant on day 46, where no excuse has been submitted prior to the expiration of the 45-day period. The application may be reopened if USCIS made an error, RAPS automatically reopens the case or the applicant requests the application be reopened and establishes exceptional circumstances.

III.I.2.c.ii, Applicant Asks for Re-opening After Issuance of Dismissal of Asylum Application – Failure to Appear If the applicant requests in writing that his or her case be reopened after the 45-day period passes, the adjudicating individual should examine the letter for exceptional circumstances and complete the *Determination of "Exceptional Circumstances" Worksheet* (Appendix 69). If the adjudicating individual does not find exceptional circumstances, then he or she should issue a new *Determination of Failure to Demonstrate "Exceptional Circumstances" [In-Status]* (Appendix 77) or *Determination of Failure to Demonstrate "Exceptional Circumstances"* (Appendix 70) and charging document if the applicant is no longer in-status. If the adjudicating individual finds exceptional circumstances, he or she should issue a new *Determination Demonstrating "Exceptional Circumstances" [In-Status]* (Appendix 76) and reopen the case.

III.I.3, Asylum Interview – Applicant Fails to Submit Excuse: The Asylum Office will not issue a decision until 45 days have passed after the first missed interview date. Previously, the Asylum Office waited 15 days after the missed interview before issuing a decision. If the failure to appear is caused by the applicant, the Asylum Office will issue a *Referral Notice for Failure to Appear* (Appendix 68) or the revised *Dismissal of Asylum Application – Failure to Appear* (Appendix 31).

III.I.4, Failure to Appear at a Pick-up Appointment: If an applicant fails to appear for the pick-up appointment and the case is a referral, the Asylum Office issues the decision letter, charging document and the new *Failure to Appear to Pick-Up Your Asylum Decision* notice (Appendix 72).

III.T Reschedule Requests: Reschedule requests should be completed within a reasonable period of time and as soon as practicable. If the Asylum Office honors a request received in-person, it should complete a revised *In-Person Reschedule Request* form (Appendix 9) and provide a copy to the applicant and representative, if any. If the Asylum Office denies a

request to reschedule, either received in person or by mail, it must issue a new *Denial of Asylum Interview Reschedule Request* (Appendix 73).

III.T.1, Requests to Reschedule Interview: If a request to reschedule an interview is made on or up to 45 days after the interview date, or if the interview has already been rescheduled on one (1) occasion, the applicant must establish that the request for a rescheduling is due to “good cause.” If the request to reschedule is made on or after 46 days after the interview and after a charging document or dismissal by the Asylum Office has been issued, the applicant must establish “exceptional circumstances” for failure to appear.

III.T.1.b, Abuse of Rescheduling Policy: If Asylum Office personnel determine that USCIS will not honor a future excuse and request for a rescheduling of the asylum interview, the Asylum Office should use the revised *Rescheduling of an Asylum Interview* letter (Appendix 32). In accordance with Appendix 32, the Asylum Office will not grant future reschedule requests after the *Grant of a Reschedule Request of an Asylum Interview* (Appendix 32) letter is mailed unless the applicant establishes “exceptional circumstances” for a request.

III.T.2, Rescheduled Due to Interpreter Problems: This brief new section was added with a reference to II.J.4.a.v, Abuse of the Interpreter’s Role.

III.T.3, Reschedules Due to Asylum Office Geographical Jurisdiction: This brief new section was added with a reference to III.L.2, Asylum Office Geographic Jurisdiction.

III.T.4, Applicant Requests to Reschedule Pick-up Date and III.T.5, Canceling a Pick-up Date at the Fault of USCIS: If the Asylum Office makes a mistake in RAPS and must request a change to the party at “fault” for the pick up cancellation, personnel must contact the HQASM RAPS program manager for a correction.

III. AAPM appendices changes

In total, the following letters or forms were amended or added to the Appendices (and are included as attachments):

9. *In-Person Reschedule Request*
31. *Dismissal of Asylum Application – Failure to Appear*
32. *Grant of Rescheduling of an Asylum Interview*
68. *Referral Notice for Failure to Appear* (new)
69. *Determination of “Exceptional Circumstances” Worksheet* (new)
70. *Determination of Failure to Demonstrate “Exceptional Circumstances”* (new)
71. *Determination Demonstrating “Exceptional Circumstances”* (new)
72. *Failure to Appear to Pick-Up Your Asylum Decision* (new)
73. *Denial of Asylum Interview Reschedule Request* (new)
74. *Failure to Appear Warning* (new)
75. *Request for Additional Information Regarding “Exceptional Circumstances”* (new)
76. *Determination Demonstrating “Exceptional Circumstances” [In-Status]* (new)

77. *Determination of Failure to Demonstrate "Exceptional Circumstances" [In-Status]*
(new)

78. *Joint Notice* (new) (to be issued upon final clearance)

IV. RAPS changes

A new Exceptional Circumstances (EXCI) RAPS screen has been created to record the submission of an exceptional circumstances request and the exceptional circumstances determination. In addition, appendices 31, 68, and 70-71, 74, 76-77 are generated by selecting the "No Show" button on the RFGM box after verifying the information on the Print Decision Letter screen (DELP).

These newly revised procedures become effective November 7, 2013 and will be incorporated into the AAPM on the ECN.

If you have any questions regarding the guidance in the attached procedures, please contact the HQASM Operations Branch.

Attachments (15)