



**U.S. Citizenship  
 and Immigration  
 Services**

**JAN 27 2014**

To: Asylum Office Directors/Deputy Directors  
 Supervisory Asylum Officers  
 Quality Assurance/Training Asylum Officers  
 Asylum Officers

From: John Lafferty  
 Chief, Asylum Division

RE: Changes to Case Categories Requiring Asylum Headquarters Review

The Asylum Division is revising the categories of affirmative asylum cases that require Headquarters (HQ) review, effective immediately. The revisions are outlined in the following table and explained in greater detail below.

Old Categories	Change	New Categories
Gender cases (all)	Dropped	
Contiguous territory and Visa Waiver Program (VWP) cases (grants only)	Revised	VWP cases (grants only), grants from countries with which U.S. has Safe Third Country agreement, and contiguous territory grants involving novel legal issues or criminal activity by the applicant (in U.S. or abroad)
Cases involving National Security (NS) Concern (grants only) (NS concern not resolved through the established agency NS vetting process)	Unchanged	Cases involving National Security (NS) Concern (grants only) (NS concern not resolved through the established agency NS vetting process)
TRIG <sup>1</sup> cases (grants, referrals, and NOIDs where an exemption is or may be available)	Revised	TRIG cases (all cases that would be granted but for TRIG bar, regardless of whether exemption available)
Persecutor-related issues (grants; referrals/NOIDs when case may be publicized nationally or applicant danger to others)	Clarified	Persecutor-related issues (grants; all referrals/NOIDs of credible applicants )
Discretionary denials/referrals	Unchanged	Discretionary denials/referrals
Likely to be publicized (has already been publicized or is likely to be publicized nationally)	Unchanged	Likely to be publicized (has already been publicized or is likely to be publicized nationally)
Diplomats	Unchanged	Diplomats
Juveniles (principal applicant was under 18 years of age at the time of filing or is a UAC under the TVPRA)	Revised	Only juvenile referrals, NOIDs and denials
Cases with a Prior Denial by EOIR (grants/referrals/NOIDs)	Revised	Cases with a Prior Denial by EOIR (grants only)
Asylum Office Director requests review	Unchanged	Asylum Office Director requests review
	Added	Cases that would be granted but for the firm resettlement bar
	Added	Safe-Third Country Agreement: All cases in which evidence indicates the STC agreement may apply and whether or not the applicant is eligible for an exception; and all STC dissolutions

<sup>1</sup> Terrorism-Related Inadmissibility Grounds

The categories designated for HQ review in the affirmative asylum program have not been revised since 2007. In May 2013, HQ surveyed the field offices for views on possible amendments to the current review categories, including views on which categories benefited most from HQ review. HQ also solicited suggestions for categories for which HQ review may no longer be warranted and suggestions for any new categories that might benefit from HQ review.

The field offices indicated that some categories were particularly appropriate for review. One office thought "Discretionary Referrals/Denials" was an appropriate HQ review category, and two believed "National Security", "Likely to be publicized, and "Persecutor-Related Issues" cases are appropriate for review. The field identified some categories that no longer needed review. Four offices agreed that review of "Gender" cases is no longer necessary and that the "Juvenile" category could be eliminated or restricted in scope. Two offices indicated that "Contiguous Territory Grants" submitted to HQ should no longer include Mexican LGBT cases, and that "Diplomat" cases should be more restrictively or clearly defined.

Considering the responses from the field and the experience of the HQ reviewers in reviewing the various categories of cases, the Asylum Division has decided to make several changes regarding the HQ review categories.

First, gender cases are being removed from the list of cases that require HQ review. HQ has been reviewing gender-based particular social group (PSG) cases for over 15 years. At this point, the training provided to our officers has been refined through many years of work on this topic. Officers, Supervisors and QA/Ts in the field are comfortable with the analysis surrounding gender-based PSGs, and both HQ and the field agree that HQ review generally results in few, if any, substantive changes to these cases. Therefore, cases involving a gender-based PSG no longer need to be submitted for HQ review unless they fall into another HQ review category.

Second, contiguous territory grants will no longer require HQ review unless the case involves a novel legal issue or the case involves any serious criminal activity by the applicant in the U.S. or abroad (the criminal activity does not need to have been prosecuted or have resulted in a conviction). Also, cases that fall into another HQ review category (i.e. national security, likely to be publicized, etc.) will still require HQ review. Further, HQ will continue to review grants of nationals from Visa Waiver countries and from countries with which the United States has a Safe Third Country agreement.

Third, the TRIG category will be slightly broadened. TRIG cases are complicated and nuanced and many adjudicators do not routinely analyze TRIG issues. Accordingly, instead of only reviewing grants, referrals, and NOIDs where "an exemption under 212(d)(3)(B)(i) is or may be available," HQ will review all cases that would be granted but for the TRIG bar to asylum eligibility, regardless of whether the applicant appears to be eligible for an existing TRIG exemption.

Fourth, with regard to persecutor-related issues, HQ will update the QA referral sheet to reflect the current practice. Specifically, HQ will continue to review grants of cases where evidence indicates that the applicant may have ordered, incited, assisted, or otherwise participated in persecution of others on account of any of the five grounds, and the applicant is found to have met his or her burden of proof to establish that he or she should not be barred as a persecutor. Additionally, HQ will continue to review all

NOIDs and referrals when an applicant is found to be credible and found to be barred as a persecutor. This will help identify cases that involve issues of duress. Pending finalization of guidance relating to the issue of voluntariness and the persecutor bar, HQ will put any case where there is evidence of duress on Hold.

Fifth, the juvenile category is being narrowed to include only referrals, NOIDS and denials of juvenile cases. The category of juveniles was added to the QA referral list in 2003. At that time, HQ determined that a juvenile category was necessary to ensure that the Children's Guidelines were being followed and to look for trafficking concerns among UACs. The Asylum Division has significantly enhanced the resources available to Asylum Officers regarding human trafficking over the last couple years by developing a comprehensive lesson plan and formally implementing new procedures. The Asylum Division will serve our goal of ensuring that the Children's Guidelines are being followed by continuing to review the referrals, NOIDS and denials. The field, however, is no longer required to submit grants of juveniles for HQ review, unless they fall into another HQ review category.

Sixth, cases involving a prior denial by the Executive Office for Immigration Review (EOIR) only need to be sent to HQ for review if the case is being recommended for approval.

As for the other existing categories, HQ review remains appropriate for "National Security" cases, "Discretionary Referrals/Denials", "Publicized or Likely to be Publicized", "Diplomats" and "Asylum Office Requests Review." There is agreement that the category of "Diplomats" could be better defined on the QA referral sheet. The referral sheet has been updated to indicate that grants, referrals, and NOIDS of applicants who fraudulently obtained a diplomatic visa should be reviewed by HQ. After discussing this issue further with our partners at the Department of State, we will provide additional written guidance regarding this review category.

In addition to the existing categories, one office requested the addition of cases that are referred/denied based on the issue of firm resettlement. HQ agrees and has added a new category of cases, namely cases that would be granted but for the firm resettlement bar.

The issue of firm resettlement is complex and our guidance has undergone some recent changes that could make HQ review helpful to the field as they perform the analysis on these cases. The new category would be limited only to cases that are referred/denied on the basis of the firm resettlement bar. We intend to review this category for one year and then to reassess the inclusion of this category.

We are also adding a non-asylum category, the Safe-Third Country (STC) Agreement cases, to the category of cases requiring HQ review. All cases in which evidence indicates the STC agreement may apply and whether or not the applicant is eligible for an exception, as well as all STC dissolutions, are now required to be sent to HQ for review prior to decision issuance.

**All gender cases, contiguous territory cases not involving novel legal issues or criminal activity, and juvenile grants currently on hold with HQ will be returned to the field without review. Upon receipt of these returned cases, the asylum offices will be free to continue processing the cases to final completion. For any cases falling into these categories that were previously sent back to the field for revision, asylum offices are still required to resubmit the cases for HQ review prior to issuance of a final decision.**

## Changes to Case Categories Requiring Asylum Headquarters Review

Page 4 of 4

A revised Quality Assurance Referral Sheet that reflects all the changes outlined in this memo is also being issued as an attachment. When submitting a case to HQ for review, you must submit a completed referral sheet. In completing the QA Referral Sheet, you must complete the following:

- Fill in the heading section at the top of the sheet with the requested information;
- Check the applicable category(s);
- Check the appropriate box(es) in the National Security section for every case; and
- Provide the names and dates of the relevant individuals involved in processing the case in the section at the bottom of the sheet.

The required documents relevant to the case must also be attached to the QA Referral Sheet. A list of the required documents for each type of case submitted to HQ for review is attached to this memo.

Please contact the QA Chief or e-mail the Asylum QA – Affirmative mailbox if you have any questions.

Attachments – Quality Assurance Referral Sheet (rev. 01/13/2014)

Documents Required for HQ Asylum Submissions (01/22/2014)