

USCIS ASYLUM DIVISION STAKEHOLDER MEETING

June 8, 2010

20 Massachusetts Avenue, NW

White Oak Conference Room

2:00 – 4:00 pm

Agenda Items

1. Asylum Division Updates

This is the first Asylum Division stakeholder meeting organized under the new procedures that included an invitation to the meeting posted on uscis.gov. We will post the agenda questions and answers online following the meeting. Future meeting announcements will be posted on the uscis.gov website under the “Outreach” tab.

We would like to hold future meetings at the beginning of every quarter, instead of just before the start of a new quarter, so we can provide the previous quarter’s statistics at the meeting. A later date also will allow us to provide monthly statistics for the previous month.

2. Requested Statistics

- a. Most recent statistics on Credible Fear Interviews (CFIs) and completions since the last meeting (March 2, 2010)
 - i. Since the last meeting, the overall CFI passage rate and by asylum office.
 - ii. The number of those referred for a CFI as a result of internal pickups due to the expansion of the expedited removal program.
 - iii. Top 5 nationalities of those referred for CFIs since the last meeting.
- b. The same statistics for Reasonable Fear Interviews (RFIs).
- c. Timeframe for completion of CFIs and RFIs in the last quarter and a breakdown of what those timeframes are indicating (referral to interview v. interview to decision v. referral to decision, etc.).
- d. Please provide:
 - i. Statistics on Afghan and Iraqi adjudications for the last 3 months.
 - ii. Charts for the last 10 years on Iraqi and Afghan cases bringing it up to date for this fiscal or calendar year.

Please refer to the attached statistics.

We have provided statistics through the end of April 2010. There are no major changes in the affirmative asylum program statistics. The volume of credible fear referrals is increasing but we haven’t experienced any processing delays.

We have provided the requested breakdown of the timeframe for completion of credible fear interviews at various points in the process but do not have a similar breakdown for

reasonable fear cases. When we report on the timeliness of credible fear completions we look at the date we received the case (the referral or clock-in date) and the date the case is completed. We strive to have 85% of the cases completed within 14 days and normally report on the percentage of cases completed within that timeframe. The attached statistics further breakdown the time between clock-in to interview, interview to decision, and clock-in to decision. Cases that are pending are included in the “indeterminate” timeframe because they do not yet have a completion date.

“Non INL” refers to port-of-entry cases. These are individuals who claim fear at a port of entry to a CBP officer. Inland cases (“INL”) are individuals who are encountered by CBP within 100 air miles of the US border and 14 days of illegal entry. We also receive referrals from ICE for individuals who are detained awaiting removal under an expedited removal order and claim fear of return to their home country while in detention.

We are working with ICE and CBP to examine our credible fear procedures in order to improve our efficiencies without adversely affecting the quality of the decision.

- 3. Question.** Please outline the proper procedure and timeframes for requesting and adjudicating reasonable fear interviews. Clients in some locations report waiting an average of four to five months for a reasonable fear interview.

The Asylum Division does not have an official timeframe for completing reasonable fear interviews at this time. It is our goal this year to reexamine the timeframes for completion and establish a timeliness goal for these cases. Once the goal is established our offices’ performance will be measured against this goal.

Generally, reasonable fear cases should be interviewed within a month. Be aware that we have seen a dramatic increase in reasonable fear cases this year, which may affect our ability to quickly interview these cases. If more than a month has passed and the individual has not had a reasonable fear interview please contact the director of the local asylum office that has jurisdiction over the case. If you do not receive a satisfactory response after contacting the local office please elevate your concern to Asylum Division HQ.

- 4. Question.** How widespread is the use of telephone and video credible fear interviews? Is USCIS taking measures to ensure that the interviews are conducted in person whenever possible?

We analyzed our statistics and found that 42% of credible fear interviews are conducted in person, about 3% are conducted telephonically, and 55% of interviews are conducted through video. Our goal is to conduct interviews in the most efficient and effective way possible. We completed an analysis about a year ago to see if there was a discernable statistical difference between conducting interviews in person and using the video and did not find a difference in credible fear final determination between the two methods. Video interviews can be more efficient and cost-effective because they can be scheduled sooner and AOs do not need to travel.

Asylum officers may conduct telephonic interviews. If the determination is positive the AO can move forward with the determination. However, if the AO finds that the interview is

moving towards a negative determination the AO must terminate the phone call and re-interview the applicant in person or over video. This extra step is necessary to ensure that cultural or other communication problems do not result in a negative credible fear determination.

If the applicant does not speak English or does not feel comfortable speaking English during the interview a government contracted interpreter is always used regardless of interview type.

- 5. Question.** Does USCIS have a notification prepared on reasonable fear rights and procedures that ICE and CBP use? What type of training to ICE and CBP is provided, if any?

Please refer to the attached handout which contains information on the reasonable fear interview (Form M-488). This form is provided to anyone who is being ordered removed under an order of reinstatement or administrative removal order and who expresses a fear of return and an intention to seek protection. The form is read to the individual expressing fear in the individual's language. The interpreter must certify on the back of the form that he/she interpreted the form and the individual appeared to have understood the interpretation.

Please follow up with ICE and CBP for more specific information on what types of training they provide to their officers who encounter and handle reasonable fear cases. Outreach is important to the Asylum Division and asylum offices regularly engage in outreach with our colleagues in ICE and CBP. This outreach often focuses on credible and reasonable fear issues. ZHN in particular does a lot of outreach with CBP and ICE on these issues. We are seeking to increase asylum office engagement on the affirmative process as well as credible and reasonable fear.

- 6. Question.** LIRS would like to convey our appreciation to the Asylum Office for your support for NGO programs to provide representation to asylum-seekers to their credible or reasonable fear interviews. Several NGOs around the country are seeking to replicate the program successfully established by the Capital Area Immigrants' Rights Coalition. These NGOs have contacted Asylum Offices in Newark and Miami, and plan to make contact with the Los Angeles Asylum Office as well, and in some cases, NGO partners have reported that it is difficult to reach Asylum Office personnel to discuss these efforts. Who in the Asylum Office Headquarters should serve as our point of contact for questions or concerns about implementing the CFI/RFI representation programs locally?

Thank you for bringing this to our attention. We have spoken with our asylum offices to see if they have been contacted and three offices (ZCH, ZHN, and ZLA) said they have not been contacted. The other offices have established programs or are in the process of establishing them. The exception is ZMI who had been approached by Catholic Charities and FIAC regarding this issue and has not heard from them since April. ZNK recently conducted a telephonic conference call with PIRC to explore a possible program at the York Detention Center and has invited an HQ employee who worked on the CAIR program at ZAR to assist with developing the program.

Please feel free to reach out to the asylum office directors directly to discuss these efforts. The directors are concerned that applicants in the credible/reasonable fear process are not

represented and are very interested in establishing representation programs with NGOs. If you continue to have problems reaching the directors, please feel free to reach out to Mary Margaret Stone, Operations Branch Chief, at Asylum Office HQ.

- 7. Question.** Asylum applicants continue to experience significant difficulties in establishing eligibility for employment authorization, despite the relatively clear procedures set forth in the regulations at 8 C.F.R. Section 208.7 and 1208.7. Because the majority of asylum applications are disposed of by the asylum office within 180 days of filing, most EAD eligibility issues for asylum seekers arise in the context of removal proceedings rather than the affirmative asylum procedure. While the manner in which clock decisions are addressed in immigration court is properly within the province of EOIR, EOIR's policy determinations about an applicant's employment eligibility should be aligned with and take the lead from USCIS Asylum HQ positions.

Eligibility for employment authorization for asylum seekers is an issue that is properly the province of USCIS, and not EOIR, whose sole function is to keep track of the number of days an asylum application is pending. Because it is not always clear that the USCIS and EOIR stop and start the employment authorization clock according to the same underlying positions on eligibility for employment, the need for additional guidance from USCIS on this issue is critical. We believe EOIR would welcome input and guidance from the Asylum division within RAIO on this issue.

To that end, we are seeking your participation in inter-agency discussions, involving EOIR and Asylum HQ, with a view to resolving the recurring and significant problems with the asylum clock.

We work with EOIR on clock issues as appropriate and have points of contact in each of the asylum offices that deal specifically with EAD issues. At the HQ level, we often receive inquiries that relate to a certain case and its clock. We look at each inquiry and work with EOIR to make corrections when appropriate. USCIS and EOIR are governed by the same regulations concerning EADs. We control the clock when USCIS has jurisdiction and EOIR controls the clock when the case is in their jurisdiction. When there are errors we work with them to correct the clock and work with the USCIS Service Centers to ensure the errors are resolved. Most commonly, questions regarding the clock focus on whether the delay is due to the government or the applicant and those implications. Operationally, the clock must be controlled by the entity that has jurisdiction.

We have reached out to EOIR to set up a meeting with them to discuss clock issues and are in the process of identifying agenda items. It is likely that this meeting will be ongoing and will be a forum for us to work with EOIR on a more consistent basis. Please send us any items you think should be addressed.

Additionally, please provide us with any concrete examples you have of applicants who do not receive their EAD card in a timely fashion or you believe that Service Center improperly denied the I-765. We will use these examples to engage with Service Center Operations. The EAD will not be generated until the clock has been running 180 days.

- 8. Question.** A pro bono attorney in Los Angeles filed an I-589 with the Nebraska Service Center pursuant to the TVPRA provisions for unaccompanied children (UAC). Subsequently, the attorney filed an I-360 seeking to have the client classified as a Special Immigrant Juvenile. When the attorney inquired about the status of the I-360, CIS responded with a letter that the I-360 was being held in abeyance until the I-589 interview took place. A copy of the letter is attached. The attorney believes it is in her client's best interest to pursue SIJS as the primary form of relief. However, she has been told that she must now withdraw the I-589 (using the attached form) and thus presumably lose any protections that attached to her initial filing in order to have the I-360 adjudicated first.

Is this reflective of a new local (LA office) or nationwide policy of CIS? Is CIS always putting SIJS petitions "in abeyance" pending asylum interviews, or is it simply that the "first filed" application or petition gets precedence? If the former, are the I-360s being held in abeyance pending the I-589 interview or I-589 adjudication? Can a system be set up to allow attorneys or elect to hold the I-589s in abeyance rather than the I-360s?

Asylum is coordinating with USCIS Field Operations Directorate and the USCIS Office of Policy and Strategy on this issue. All of the offices (field offices and asylum offices) are aware of the intricacies and coordination involved with adjudicating these cases. In March 2010 we issued draft interim guidance to the field offices to give them an idea of what to do in this situation. As there are many players in this process, we will continue to monitor and follow-up on individual cases and will issue official guidance once we have a more global understanding of issues that may arise.

USCIS does not have a policy to hold concurrent applications in abeyance and there is no regulatory mechanism to do so. Normally both adjudications will proceed at the same time and the abeyance letter is not the typical way cases are handled. Generally, when an asylum office has a pending I-589 they will proceed with the interview and adjudication and then coordinate to transfer the A-file to the field office for adjudication of the I-360. In the event that an I-360 has been pending more than 150 days and an asylum interview has not yet been scheduled, the asylum office will transfer the file to the field office for adjudication of the I-360. However, these cases are being prioritized in asylum offices so most cases do not reach the 150 day mark. The Asylum Division has a statutory obligation to interview cases within 45 days of filing and all UAC cases must go through QA review at HQ.

Asylum offices will follow the Affirmative Asylum Procedures Manual (AAPM) procedures when they receive a request to reschedule an asylum interview. UAC cases are manually rescheduled so there is greater flexibility in rescheduling these cases versus regular asylum cases which are rescheduled automatically.

Please feel free to reach out to the Asylum Division if you have any additional questions. We also welcome your suggestions and concrete examples of ways to improve our draft guidance.

- 9. Question.** Under the administration's policy of transparency, please consider releasing the Asylum Officer's Memo, or Referral Memo, under the Freedom of Information Act (FOIA).

Please address all questions regarding FOIA to the USCIS FOIA/Privacy Act Office. Not releasing the assessment is consistent with USCIS FOIA/PA policy.

Additional Questions

- 1. Question.** Please explain the difference between credible fear and reasonable fear.

Credible fear screenings are for individuals in expedited removal proceedings. Reasonable fear screenings are for individuals who are subject to administrative removal from the U.S. because they are aggravated felons or the U.S. has reinstated a prior order of removal. For additional information on credible fear screenings, please go to [USCIS - Questions & Answers: Credible Fear Screening](#). For additional information on reasonable fear screenings please go to [USCIS - Questions & Answers: Reasonable Fear Screenings](#).

- 2. Question.** Are cases submitted to HQ for QA review subject to a timeline for review?

Not at this time but we are working to establish a timeline. We would like to have cases pending between 30 – 45 days at HQ. This is a difficult deadline to meet given our current staff shortage and increase in juvenile, credible fear, and reasonable fear cases. Certain cases, like publicized cases and unaccompanied minors referred through TVPRA, have higher priority. We eliminated our backlog last summer but unfortunately it has picked up again. We currently have 65 cases that are over 180 days at HQ for review. There may be cases in the field that are over 180 days and are not coming to HQ for review.

The next meeting is scheduled for Tues, October 19th. Details will be posted on the uscis.gov website.