



Executive Summary

April 19, 2010

Listening Session – Request for Evidence (RFE) Review and Revision

Background

On April 12, 2010, Director Mayorkas introduced the Request for Evidence (RFE) Project during a national stakeholder engagement at the California Service Center. This project, which will be led by the Service Center Operations Directorate (SCOPS) and the Office of Chief Counsel (OCC), in collaboration with the Office of Public Engagement (OPE), will engage stakeholders in a concerted effort to review and revise the RFE templates used at the Service Centers to ensure they are:

- consistent across Service Centers;
- relevant for the classification being adjudicated;
- adaptable to the facts and needs of individual cases;
- concise and clear.

The listening session elicited concerns and recommendations from stakeholders on RFEs for the O, P, and Q nonimmigrant classifications and the E11 immigrant classification, which comprise the first phase of this project. Specifically, USCIS posed the following questions to stakeholders:

1. What are the top 5 issues stakeholders have with the RFEs in these classifications?
2. What improvements can be made to the current RFE process in these classifications?
3. Why are certain types of evidence unavailable when requested?
4. What evidence could be submitted as an alternative?

This session was the first in a series of engagements that USCIS will have as we move through the phases of the project. An email address (scopsrfe@dhs.gov) has been created as a mechanism for continued engagement throughout the project. We encourage stakeholders to provide feedback on the questions above and to provide suggestions on what future classifications should be prioritized in subsequent phases of this project. Draft RFE templates will be posted for stakeholder review and comment.

Principal Themes

- **Lack of Specificity**

Stakeholders voiced concern that rather than being tailored for a specific case, RFEs are lengthy and unclear. It was suggested that RFEs provide a discussion about what documentation was reviewed, an analysis of what was deficient, and a description of what information is needed. Stakeholders noted that, for example, an RFE for E11 classification will list all 10 criteria from 8 CFR § 204.5(h) without clarifying which of those criteria have been met through the documentation submitted at time of filing. Stakeholders also noted that they receive RFEs that request information that was already provided at the time of filing the petition, which causes confusion about what criteria have been met and raises concern about whether information has been overlooked by the adjudicator.

- **Disconnect between Petitions**

Stakeholders also raised concerns about subsequent petitions advising that often times they receive requests for information that are contained in previous petitions. In terms of O-1 extensions, the regulations state that supporting documents are not required unless requested by the Director. Stakeholders indicated that RFEs are being issued requesting the same documentation that was submitted with the initial petition and emphasized that it is a large undertaking to compile the information again. One suggestion was made to give more than 30 days to respond to RFEs. Also in the O-1 context, stakeholders stated that they find some cases are being denied even though they have been approved many times in the past.

Stakeholders expressed concern about a possible disconnect between O-1 and E11 petitions – two classifications with similar evidentiary criteria. Stakeholders noted that individuals will be granted O-1 status having been found to meet the criteria, but when they file for E11 classification they are informed that they do not meet any of the criteria. Stakeholders also highlighted that there is a comment in the E11 RFE that suggests perhaps the individual never met the O-1 criteria.

USCIS acknowledged that this is a challenge for the Agency as often times we do not readily have access to previously approved petitions. While adjudicators may request previous petitions, this process can be time-consuming and it is generally more efficient for a stakeholder to provide the requested evidence. USCIS is aware that this may be burdensome and it will be addressed as our business processes are transformed. USCIS also acknowledged the Kazarian decision and the role it would play in instructing adjudicators how to determine whether evidence meets the regulatory criteria before making the overall determination of extraordinary ability.

- **Evidence**

There was agreement between stakeholders and USCIS that the classifications considered in this first phase encompass highly specialized professions and that adjudicators cannot be expected to be experts in each industry. Stakeholders also stressed that as industries go through changes, USCIS needs to be mindful of this. The stakeholder community was interested in how they can help educate adjudicators and communicate “terms of art” from an industry or profession in order to establish eligibility.

Stakeholders expressed that they are seeking clarification on what USCIS deems acceptable evidence. For example:

- Do testimonial letters satisfy the endorsements criteria when trying to demonstrate extraordinary achievement in the motion picture or television industry? What evidence does USCIS consider sufficient for an endorsement?
- What evidence can be provided to demonstrate that a performance or event is culturally unique?
- What does USCIS need to see when there is an oral contract? How much is USCIS looking for in terms of detail for an oral contract?
- Will internet publications be accepted in lieu of printed publications?

The stakeholder community indicated the need for clarification on comparable or alternative evidence though they acknowledged that there are circumstances when the regulations do not allow for this. Whereas USCIS was open to accepting alternative evidence in the past, stakeholders noted that more recently RFEs seem to dismiss comparable evidence if it does not fall within the regulations. Stakeholders also expressed concern about the need to provide a signed contract for every performance or for the entire period of stay in the United States, a complete itinerary of events, and evidence of salary. Stakeholders noted that these criteria are not always applicable or are not always available and asked what could be

provided as an alternative. Stakeholders acknowledged that sometimes the regulations do not allow for comparable evidence when a specific piece of evidence is listed.

- **Underlying Philosophy**

An additional concern raised by stakeholders is that RFEs reflect the agency's philosophy, and that if they are argumentative, then we should examine the underpinnings of the philosophy driving those RFEs.

USCIS emphasized that the RFE project might sound really simple on the surface, but it is going to be a large, complex initiative. We are looking at training, guidance, and different ways of how we are approaching things. It is not just RFE templates that are changing. Therefore, while we are looking at the underpinnings, our work product is the RFE and through this tangible work product we can insure that the public is being appropriately served.

Director Mayorkas noted that he would be interested in a subsequent conversation on the issue of comparable evidence.