



HQRAIO 120/12.16a

January 28, 2010

Memorandum

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

FROM: Joseph E. Langlois /s/
Chief, Asylum Division

SUBJECT: Further Revised Reasonable Fear Quality Assurance Review Categories

The purpose of this memorandum is to further modify the categories of reasonable fear determinations that must be sent to the Asylum Division Training, Research, and Quality (TRAQ) Branch for quality assurance (QA) review prior to the issuance of a final determination. This modification is effective immediately.

Currently, all requests to withdraw from the reasonable fear process require HQ TRAQ concurrence before the withdrawal process can be completed. As discussed in the January 10, 2011 memo "Revised Reasonable Fear Quality Assurance Review Categories," a study of concurrence rates for withdrawals was conducted in January 2011 to determine to the extent to which post-decisional review is appropriate for this category of adjudications.

TRAQ review of requests to withdraw from the reasonable fear process reflects that a high degree of accuracy already exists: approximately 90% of all withdrawal requests submitted for review receive TRAQ concurrence. In light of this fact, selected withdrawals will still undergo TRAQ QA review after the case has been processed, but will not require delaying completion of a case pending a TRAQ response. This post-decisional review will employ the same methodology used for the recently introduced post-decisional review scheme for certain positive reasonable fear determinations. As with those cases, this process will continue to inform training efforts by providing information and guidance on common issues, trends, and areas for improvement and can and will be adjusted if concurrence levels appear to be decreasing.

I. Quality Assurance Review of Reasonable Fear Determinations

Under the new QA review framework, a segment of requests to withdraw from the reasonable fear process will be randomly reviewed post-decisionally as further discussed below. TRAQ will continue to review all negative reasonable fear determinations to ensure that individuals with bona fide claims for protection under the Refugee or Torture Conventions are not returned to countries where they may face persecution or torture, and certain positive determinations as previously described.

Cases that Require TRAQ Quality Assurance Review Prior to Service of a Determination

As noted previously, TRAQ will continue to review all negative reasonable fear of persecution and torture determinations prior to decision service. Pre-decision review will also continue for all cases (positive and negative) in which the alien is subject to a Final Administrative Removal Order. A Supervisory Asylum Pre-Screening Officer (SAPSO), Deputy Director, or Director, in his or her discretion, may also request TRAQ review of any other case as he or she deems appropriate.

The following is a comprehensive list of reasonable fear cases that require TRAQ QA review and concurrence prior to issuance of a decision:

- **All negative reasonable fear of persecution and torture determinations;**
- **All reasonable fear determinations in which the alien is subject to a Final Administrative Removal Order;**
- **Any case that a SAPSO, Deputy Director, or Director believes should be reviewed by TRAQ.**

Cases that No Longer Require TRAQ Quality Assurance Review Prior to Service of a Determination

Mandatory pre-decisional TRAQ QA review is no longer required for all other cases, which are:

- **Positive reasonable fear determinations in which the alien is subject to the reinstatement of a prior order of removal;**
- **Requests to withdraw from the reasonable fear process.**

Procedures for Post-Decisional TRAQ Quality Assurance Review of Requests to Withdraw from the Reasonable Fear Process

TRAQ will require post-decisional review of a random sampling of requests to withdraw from the reasonable fear process using the methodology already established in the RAIO QA program for affirmative asylum adjudications. In accordance with that program, a statistically determined sample of cases will be randomly selected from all of the previously unreviewed withdrawal requests completed in the preceding month. The RAIO methodology of 90% confidence level, error rate of

5%, and precision level of 4% will be employed. This will mean that the Asylum Division can be 90% sure that the error rate in the positive cases reviewed post-decisionally is 5%, plus or minus 4%.

The cases will be reviewed using the attached checklist designed to mirror that being used in the RAIO QA program for affirmative cases. (Attachment A)

At the beginning of each month, the withdrawal requests subject to post-decisional review will be listed on an automated report, and selected on a random basis (using the randomizer function available in Microsoft Excel). The selected cases will be then be requested by email. These cases should then be scanned and sent to the Asylum QA - Reasonable Fear e-mail address, consistent with current procedures. (Please contact the Reasonable Fear Quality Assurance Program Manager in the TRAQ Branch by telephone prior to submitting any case documentation by fax.) Questions concerning quality assurance review of reasonable fear cases should also be submitted to the Asylum QA – Reasonable Fear inbox.

After the post-decision review is completed, TRAQ will provide regular reports to the local asylum offices and HQ management. These reports will include error rates, any trends or issues on which follow-up training may be needed, and other TRAQ comments or concerns. If error rates appear to be increasing, then the selection metrics may be modified to address and rectify those errors.

II. Implementation

The new submission categories and procedural requirements set forth in this memorandum are effective immediately. Asylum Offices should no longer submit requests to withdraw from the reasonable fear process for TRAQ review prior to the completion of a case; in such cases, once a withdrawal request has received supervisory approval, the case can be completed. In addition, all withdrawal requests currently pending HQ concurrence will be returned to the various field offices for the case to be completed. The first post-service QA review of withdrawal requests will be conducted in March 2011. Cases will be requested by email in the first week of that month. After the review has been completed by HQ TRAQ staff, information and guidance on common issues, trends, and areas for improvement will be communicated to the field offices.

Please direct any questions or comments you may have to Locky Nimick, TRAQ Branch Chief.

Attachment

REASONABLE FEAR QA REVIEW CHECKLIST (DRAFT, 1/25/11)					
ASYLUM OFFICE					
A number					
DECISION (circle one):					
No reasonable fear found/withdrawal request					
QUALITY ASSURANCE					
QA Reviewer (name)					
Date					
Asylum Officer (AO)					
Name					
ID Number					
Supervisory Asylum Officer (SAO)					
Name					
ID Number					
SYSTEMS					
Is biographical and decisional information correct in APSS?					
JURISDICTION					
		Yes	No	N/A	Comments
Reinstatements: Are I-871 and supporting documents complete and correct?					

Administrative removals: Are I-851, I-851A and supporting documents complete and correct?				
When necessary, were ABC class membership/eligibility issues properly identified and addressed?				
DOCUMENTS/FORMS				
Are all required documents included and completed correctly?				
Is the I-899 filled out correctly?				
INTERVIEW/NOTES				

Were applicant (and interpreter, where applicable) placed under oath?				
Are notes in proper sworn statement format, including required initials/signatures?				
Does record reflect that the APSO explored all possible aspects of the applicant's claim?				
WRITTEN DECISION				
Does assessment include all required components?				
Is biographic/entry information correct?				
Is procedural history correct?				
Is summary of testimony supported by the record?				
Credibility analysis				
Does the record sufficiently support the credibility determination?				

Positive credibility finding: Does the record sufficiently support a finding that the applicant is credible?				
Adverse credibility finding – Does the record sufficiently support a finding that the applicant is not credible, and that he/she was given an opportunity to address inconsistencies/discrepancies in testimony?				
Adverse credibility Finding: Are factors which led to the negative credibility finding properly identified and analyzed?				
Past persecution				
Does the assessment properly consider all evidence to determine whether the applicant established a reasonable fear of persecution?				

Identifies any harm experienced				
Analyzes whether or not any harm is serious enough to rise to the level of persecution				
Identifies any agent, actor or entity that harmed the applicant				
If agent or entity is a non-state actor, properly analyzes inability/unwillingness of government to protect applicant from the harm feared				
Identifies and correctly analyzes nexus to protected ground				
Analyzes any evidence to rebut presumption of a reasonable fear in the future				
Addresses reasonable relocation				
Future persecution				
If the applicant did not claim/establish past persecution, does the record sufficiently support the determination that the applicant does/does not have a reasonable fear of future persecution?				

Properly considers all evidence to determine whether the applicant has established a reasonable fear of future persecution.				
Properly identifies and analyzed feared harm				
Properly identifies any agent, actor or entity that is feared by the applicant.				
If agent or entity is a non-state actor, properly analyzes inability/unwillingness of government to protect applicant from the harm feared				
Identifies and analyzes nexus to protected ground				
Analyzes reasonable relocation if reasonable fear established				

Analysis -- past torture				
Analyzes whether the harm reached the level of severity required to constitute torture.				
Identifies whether the harm was inflicted by a government official or at the instigation of a government official or by someone acting with the acquiescence of the government.				
Identifies whether the applicant was in the custody or physical control of the torturer.				
Identifies whether the harm was intended to severe physical or mental pain or suffering?				
Analyzes whether or not the harm was the result of lawful sanctions enforced against the applicant.				
Properly considers any past experience of torture as probative of a reasonable fear of future torture, and whether a preponderance of the evidence establishes that there is no reasonable possibility the applicant would be tortured in the future.				
Analysis -- future torture				
Analyzes whether the harm feared would rise to the level of severity required to constitute torture.				

Identifies whether the harm would be inflicted by a government official or at the instigation of a government official or by someone acting with the acquiescence of the government.				
Identifies reasonable possibility of whether the applicant would be in the custody or physical control of the torturer.				
Identifies whether the feared harm would be intended to cause severe physical or mental pain or suffering.				
Analyzes whether feared harm would be the result of lawful sanctions enforced against the applicant.				
Is written determination clear, concise and objective?				
WITHDRAWALS				
If the applicant is requesting to withdraw from the reasonable fear process:				
Does the record indicate that the applicant's request was made knowingly and voluntarily?				