U.S. Citizenship and Immigration Services

REFUGEE, ASYLUM, AND
INTERNATIONAL OPERATIONS DIRECTORATE
ASYLUM DIVISION

AFFIRMATIVE ASYLUM PROCEDURES MANUAL

NOVEMBER 2007

TABLE OF CONTENTS

I. BACKGROUND INFORMATION *1*
A. MANUAL CONTENTS **1**
1. Manual Structure 1
2. How to Search the Manual 1
3. General Notes 1
B. REFERENCES **2**
1. Written and Electronic Materials 2
2. Sources of Authority 2
3. Computer Databases 2
a. Refugee Asylum and Parole System (RAPS) 2
b. Central Index System (CIS) 3
c. Deportable Alien Control System (DACS) 3
d. Nonimmigrant Information System (NIIS) 3
e. Alien Change of Address Query Request Database (AR-11) 3
f. Computer Linked Information Management System (CLAIMS 3) 3
g. Automated Nationwide System for Immigration Review (ANSIR) 3
h. National Files Tracking System (NFTS), Receipt and Alien-File Accountability Control System (RAFACS) 3
i. United States Visitor and Immigrant Status Indicator Technology/Secondary Inspections Tool (US-VISIT/SIT) 4
j. National Automated Immigration Lookout System II (NAILS II) 4
k. Interagency Border Inspection System (IBIS) 4
l. Consular Consolidated Database (CCD) 4
II. THE AFFIRMATIVE ASYLUM APPLICATION *5*
A. ALIEN OBTAINS ASYLUM APPLICATION PACKET **5**
1. How to Obtain 5
2. Asylum Packet Contents 5
3. What Applicant Must File 5
B. APPLICANT FILES I-589 ..... **6**
1. Filing with the Service Centers 6
2. Filing Directly with the Asylum Offices 6
C. USCIS RECEIVES I-589 ..... **7**
1. I-589 Filed with the Service Center 7
2. I-589 Filed Directly with the Asylum Office 7
a. Mailroom Processing 7
b. Computer Entries 7
c. Accepting a New I-589 After Denial or Withdrawal of a Previous Application 7
i. Submission of a New Asylum Application 8
ii. RAPS Entries 8
iii. Interview and Adjudication 8
d. Prior Dependent Filing as a Principal Applicant – DRAFT 8
D. RAPS ACTIVITY AFTER DATA ENTRY OF I-589 ..... **9**
1. Receipt Mailers 9
2. File Transfer Requests 9
3. Automated Records Checks and Other Automated Activity 9
E. A-FILE IS TRANSFERRED TO ASYLUM OFFICE **9**
1. From the Service Center 9
2. From Other DHS Locations 9
F. ASYLUM OFFICE RECEIVES A-FILE **10**
1. Receiving File from Service Center 10
2. Receiving File from Other DHS Locations 10
G. ASYLUM OFFICE SCHEDULES INTERVIEW **10**
1. Asylum Office Creates an Interview Calendar in RAPS 10
2. Cases are Selected for Interview Scheduling 10
a. Automatic Scheduling 10
b. Manual Scheduling 11
c. Scheduling Priorities 11
d. RAPS/CLAIMS Interface for Certain Administratively Closed Cases 11
3. Asylum Office Generates and Mails *Interview Notice* 11
H. ASYLUM OFFICE PULLS FILES FOR INTERVIEW **12**
I. APPLICANT ARRIVES FOR INTERVIEW **12**
1. US-VISIT/SIT 12
2. Asylum Office Verifies that Applicant Complied with Fingerprinting Requirements 12

a. Fingerprint Response Column Indicates that No Response Has Been Received 13
b. After Verification Efforts, Asylum Office Personnel Conclude that Applicant Did Not Appear at ASC Appointment 13
i. Applicant Failed to Appear for ASC Appointment Once 14
(a) Failure to Attend ASC Appointment Caused by Applicant 14
(b) Failure to Attend ASC Appointment Caused by USCIS 15
(c) Expired Fingerprint Results, REJECTS, and Waivers 15
(d) Dependents Added After the Submission of the Asylum Application 16
ii. Applicant Failed to Appear for ASC Appointment More Than Once 16
3. Interview Assignment Log 17
4. Random Assignment 17
5. AO Prepares for the Interview 18
6. Delays in Interviewing 18
7. AO Calls the Applicant for the Interview 18
8. AO Meets and Greets the Applicant 18
J. AO CONDUCTS AN ASYLUM INTERVIEW 19
1. Minimum Requirements for an Interview 19
2. Placing the Applicant Under Oath 19
3. Dependents 19
4. Interpreters 19
a. The Applicant's Interpreter 19
i. Placing the Interpreter Under Oath 19
ii. Interpreter's Role 19
iii. Identity 19
iv. Solicitation of Interpreter Services 20
v. Abuse of the Interpreter's Role 20
(a) Misrepresentation or Fraud 20
(b) Incompetence 20
(c) Improper Conduct 20
b. Asylum Office Provision of a Contract Interpreter Monitor 21
i. Determining the Language of Interpretation 21
ii. Connecting to a Telephonic Interpreter 21
iii. Arranging an On-Site Interpreter 22
iv. Role of the Contract Interpreter 22
v. Working with the Contract Interpreter 23
(a) Introduction and Orientation 23
(b) Problems with Applicant's Interpreter 23
(c) Problems with the Contract Interpreter 23
(d) Conclusion of the Interview 23
vi. Requirements for Local Office Interview Monitoring Call Record 23
vii. Tracking Call Times and Call Duration 24
5. Legal Representative 24
a. Representative Qualifications 24
b. Representative Appearances 24
i. For a Form G-28 filed prior to February 10, 1994 24
ii. For a Form G-28 filed on or after February 10, 1994 24
c. Representative Role 25
d. Failure of Representative to Attend Interview 25
e. Abuse of Representative's Role 26
f. Attorney's License to Practice Law 26
6. Witnesses 27
7. Submission of Documents 27
8. Retention of Applicant's Original Documents 27
9. Note-taking by the AO During an Asylum Interview 29
10. Applicant Testifies to Fraudulent Entry or Violation of Status 30
11. Conducting an Interview in a Language other than English 30
12. Applicants Unable to Testify on their Own Behalf 31
a. Criteria and Required Documentation 31
b. Testifying on an Applicant's Behalf 32
13. Re-interviews of Asylum Applicants 32
14. Discovery of Adverse Information After an Asylum Interview 32
a. Applicant is Maintaining a Valid Status or Parole is Valid 33
b. Applicant is Deportable or Removable 33
K. AO CONCLUDES AN ASYLUM INTERVIEW 33
1. I-589 Application 33
2. AO Informs the Applicant About the Next Step in the Process 33
a. In-Person Service (Personal Service) 34
b. Service by Mail 34

c. Dismissing the Applicant 34
L. AO UPDATES RAPS AND VERIFIES COPY OF I-589 SENT TO DRL 34
1. RAPS 34
a. CSTA 34
b. CHIS 35
c. VIST 35
d. EOIR 35
e. PUSH 35
f. MOVE and AHIS 36
g. I589 Screen 36
h. NCHG 36
i. FREQ 36
j. REPR 36
k. Preparer Screens 37
l. Minor Principal Applicants 37
2. AO Sends a Copy of I-589 to DRL, if not Previously Sent 38
M. AO RESEARCHES A CASE 38
1. Asylum Virtual Library (AVL) 38
2. The Country of Origin Information (COI) Research Section 38
3. The Department of State (DOS) 39
4. Office of Fraud Detection and National Security (FDNS) 39
5. U.S. Embassies and Consulates Overseas 39
6. Foreign Embassies and Consulates in the U.S. 40
7. Forensics Document Laboratory (FDL) 40
8. INTERPOL 40
9. Federal Law Enforcement Agencies 40
N. AO PREPARES A DECISION 40
1. Applicant Appears Eligible for Asylum 41
a. Recommended Approval 41
b. Asylum Approval 42
2. Applicant Appears Ineligible for Asylum 43
a. Asylum Office Authority to Issue Decisions to Applicants who Appear Ineligible for Asylum 43
b. Referral 43
c. Notice of Intent to Deny (NOID) 44
d. Denial 44
O. SAO REVIEWS FILE 45
1. Case Review Checklist 45
2. Signature on Documents 46
3. Standard of Review 46
P. ASYLUM OFFICE PREPARES THE DECISION FOR SERVICE ON THE APPLICANT 46
Q. ASYLUM OFFICE SERVES THE DECISION ON THE APPLICANT 46
1. Recommended Approval 47
2. Asylum Approval 47
3. Referral 48
4. Notice of Intent to Deny (NOID) 49
5. Denial 49
R. POST-SERVICE PROCESSING 50
1. Recommended Approval 50
2. Asylum Approval 50
3. Referral 50
a. EOIR 51
b. ICE Office of the Principal Legal Advisor (OPLA) 51
4. Notice of Intent to Deny (NOID) 51
a. Applicant Fails to Submit a Rebuttal or Rebuttal Does not Overcome the Reasons for Denial 51
b. Rebuttal Overcomes Reasons for Denial 52
III. EXPANDED TOPICS 52
A. ADDRESS CHANGES 52
1. Applicant's Obligation to Notify USCIS of a Change of Address 52
2. Recording Change of Address 52
a. Change of Address Received on the Interview Day 53
b. Change of Address Received After the Interview but Before Service of Decision 53
c. Change of Address Received After Service of a Decision 54
B. CATEGORIES OF CASES 54
1. Children Filing as Principal Asylum Applicants 54
2. Coercive Family Planning (CFP) 54
3. Credible Fear-Screened Affirmative Asylum Applicants 55

4. Deceased Applicants – DRAFT 55
5. Deferred Enforced Departure (DED) 56
6. Disabilities – Physical and Mental – DRAFT 56
a. Hearing-Impaired Applicants 57
b. Mentally Incompetent Applicants 57
7. Expeditious Processing Required 58
8. Legalization/Special Agricultural Workers (SAW) 58
9. National Security Matters, Including Known or Suspected Terrorists and Human Rights Abusers 59
a. Notification Procedures 59
b. Categories of National Security Matters 60
i. Terrorism-Related Categories: 60
ii. Human Rights Abuse-Related Categories: 60
iii. Other National Security-Related Categories: 61
c. Guidelines for Liaison with Local ICE Personnel 61
i. Arrests in the Asylum Office 61
ii. Preparation of Charging Documents 61
10. NTA Issuance at Applicant's Request 62
11. Special Groups 62
a. ABC/ABR/ABX 62
b. ABQ/ABN/ABA/ABB/ABZ 62
c. DEP 63
d. FSB 63
e. HDD/HGN/HGT/HGX 63
f. KRD 63
g. NCG 63
h. PEN 63
12. Temporary Protected Status (TPS) 64
13. Transsexual Asylum Applicants – DRAFT 64
a. Adjudications of Transsexual principal applicants 64
b. Dependents of Transsexual Applicants 65
14. Trafficking Victims – DRAFT 66
C. CONFIDENTIALITY ISSUES 67
1. Asylum Interviews 68
2. Protecting Confidentiality – Written Materials 68
3. Access to Asylum Files by Non-DHS Federal Law Enforcement Agencies (FLEAS) 68
4. Disclosure to Third Parties – General 69
5. Testimony of Other Asylum Applicants 69
D. DEPARTING THE U.S. BEFORE A FINAL DECISION 70
1. Discovering Departure from U.S. before an Asylum Interview 70
2. Discovering Departure from the U.S. During an Asylum Interview 70
3. Discovering Departure from the U.S. After an Asylum Interview 71
E. DEPENDENTS 71
1. Adding a Dependent After Principal Applicant's Initial Filing 71
a. Dependent Did NOT Previously File an Asylum Application 72
i. Adding a dependent before the interview 72
ii. Adding a dependent at the time of the interview 72
iii. Adding a dependent after the interview 73
(a) Requests Received by the Service Center 73
(b) Requests Received by the Asylum Office 73
b. Dependent Previously Filed an Asylum Application as a Principal Applicant 73
i. Request to add a dependent received before the asylum interview 74
ii. Adding a dependent at the time of the interview 74
iii. Adding a dependent after an interview 74
(a) Requests Received by the Service Center 75
(b) Requests Received by the Asylum Office 75
2. Family Members Filing as Separate Principal Applicants 75
3. Simultaneous Filing as a Principal Applicant and a Dependent 75
a. All Applicants Eligible for Approval 76
b. All Applicants Referred or Denied 76
c. All Applicants Require Notices of Intent to Deny 76
d. One Applicant Eligible for Approval, Other(s) Not Eligible 76
4. Dependent's Failure to Appear at Asylum Interview 77
a. Dependent Fails to Appear on Appointed Date and Time 77
b. Dependent Appears on Appointed Date and Time 78
5. Child Status Protection Act – DRAFT 78
6. Loss of Derivative Status After Initial Filing but Before Final Decision 79
a. Loss of Derivative Status by Dependent Withdrawal 79

b. Loss of Derivative Status by Marriage, Divorce, or Death of Principal Applicant ... 80
i. Notifying the principal applicant and dependent of ineligibility for derivative status ... 80
ii. Loss of derivative status after issuance of Recommended Approval ... 80
iii. Updating RAPS to reflect loss of derivative status ... 80
7. Loss of Derivative Status After *Asylum Approval* but Before Adjustment of Status ... 81
a. Filing an I-589 and Interview with an AO ... 81
b. Discretion to Interview on the Merits of an Asylum Claim ... 82
c. Granting Asylum Nunc Pro Tunc ... 82
d. Individual is Ineligible for a Grant of Asylum Nunc Pro Tunc ... 83
e. Dependents with Spouses or Children – DRAFT ... 85
8. Effect of Principal Applicant's Administrative Closure on a Dependent's Claim ... 85
9. "Split Decisions" ... 85
a. Approvals ... 86
b. Referrals ... 86
i. Dependent is in a valid status or parole is not terminated ... 86
ii. Dependent is under the jurisdiction of EOIR ... 86
c. Final Denial ... 87
i. Dependent is removable or parole is to be terminated ... 87
ii. Dependent in a valid status or parole is not and will not be terminated ... 87
10. Dependent Subject to Reinstatement ... 87
11. Dependent Subject to Mandatory Bar to Asylum ... 88
F. EMPLOYMENT AUTHORIZATION DOCUMENT (EAD) ... 89
1. Pre-reform Cases ... 89
2. Reform Cases ... 89
a. Asylum Program Time Frame ... 89
b. EOIR Time Frame ... 90
3. 180-Day Clock ... 90
4. Employment Authorization of Asylees ... 90
G. EXTENSIONS OF NONIMMIGRANT STAY ... 91
H. EXTENSIONS TO SUBMIT DOCUMENTATION ... 91
1. Requested by Applicant at Conclusion of Interview ... 91
2. Requested by AO at Conclusion of Interview ... 91
3. Requested by Applicant after Service of *NOID* ... 92
I. FAILURE TO APPEAR ... 92
1. Asylum Interview – Applicant Submits Excuse ... 92
a. Excuse Submitted before Issuance of a Referral ... 92
b. Excuse Submitted after Issuance of a Referral ... 92
c. Excuse Submitted after an Administrative Closure of the Asylum Application ... 93
2. Asylum Interview – Applicant Fails to Submit Excuse ... 93
a. Caused by USCIS ... 94
b. Caused by the Applicant ... 94
i. Applicant is a parolee ... 94
ii. Applicant is deportable or removable ... 94
iii. Applicant is in a valid status or the file does not contain sufficient evidence of inadmissibility or deportability ... 95
3. Pick-up Appointment ... 95
J. FILE MANAGEMENT ... 95
1. Multiple A-Numbers ... 95
a. Consolidating Multiple A-files ... 95
b. Recording File Consolidation in RAPS ... 96
i. CHAN ... 96
ii. ANCH ... 97
c. Adjudicating a Claim when the Asylum Office has not Received the Multiple A-file(s) ... 97
2. Requesting Copies of A-Files from the Law Enforcement Support Center (LESC) – DRAFT ... 97
3. Work Folders ("W-files") ... 98
4. Temporary Files ("T-files") ... 98
a. Interviewing an Applicant When the Asylum Office Cannot Locate an A-file or T-file ... 99
b. Adjudicating an Application on a T-file ... 99
i. CIS Indicates Another DHS Office has the A-file ... 99
ii. CIS Indicates the Asylum Office has the A-file ... 100
(a) A-file not in its NFTS location ... 100
(b) A-file sent to another office but CIS was not updated ... 101
5. Record Order ... 101
K. IDENTITY AND SECURITY CHECKS ... 103
1. Failure to Follow Requirements for Identity Check Procedures ... 103
a. Excusing a Failure to Comply with Identity Check Procedures ... 103
b. Notice to the Applicant ... 104
i. Notifying the Applicant of a Request for Documents or Appointment for Sworn Statement ... 104

c. Verification of Compliance with Fingerprinting Requirements 105
d. Cancellation of the Recommended Approval and Dismissal or Referral of the Asylum Application 105
i. Principal Applicant Failed to Comply with Identity Check Procedures 105
ii. Principal Complied with Identity Check Procedures, but Dependent Failed to Comply 106
L. JURISDICTION 106
1. USCIS Jurisdiction 106
a. EOIR Jurisdiction Discovered Prior to Service of Final Decision 107
b. EOIR Jurisdiction Discovered After Service of Final Decision 107
i. Asylum Office referred applicant to the IJ or issued final denial 107
ii. Asylum Office issued recommended approval 107
iii. Asylum Office issued final approval 108
2. Asylum Office Geographical Jurisdiction 108
a. Residence of Applicant 108
3. Aliens Not Entitled to Proceedings under Section 240 of the INA 109
a. Crewmembers 111
i. Crewmembers who applied for asylum on or after 4/1/97 111
ii. Crewmembers who applied for asylum prior to 4/1/97 111
b. Stowaways 111
c. Visa Waiver Permanent Program (VWP) Applicants 112
i. Evidence of Admission Under the VWP 112
ii. Dependents Admitted under the VWP 113
iii. Applicant Paroled into U.S. During Visa Waiver Pilot Program (VWPP) Contingency Plan 113
iv. Guam Visa Waiver Program 113
4. Federal Court Jurisdiction 114
5. Applicants for Admission at Land Border Ports of Entry 114
M. MOTIONS TO REOPEN AND RECONSIDER 114
1. Types of Motions 114
a. Motion to Reopen 115
b. Motion to Reconsider 115
2. Asylum Office Processing of a Motion 115
3. Denying or Dismissing a Motion 115
a. Referred Cases 115
b. Final Denials 115
4. Granting A Motion 116
a. Asylum Office Upholds Decision to Deny/Refer 116
b. Asylum Office Overturns Decision to Deny/Refer 116
N. PAROLEES INELIGIBLE FOR ASYLUM 116
1. Pre-April 1, 1997 Parolees and Advance Parolees 116
a. Applicants with Valid Parole Granted for the Purpose of Applying for Asylum 116
b. Applicant with Valid Parole Granted for Other Reasons 117
c. Applicant with Expired or Terminated Parole 117
2. Applicants who were Paroled on or after April 1, 1997 (not pursuant to advance parole) 117
a. Parole Valid at the Time of Preliminary Decision 117
b. Parole Valid at Time of Final Decision 117
i. Applicant paroled to apply for asylum 117
ii. Applicant paroled for reasons other than to apply for asylum 118
c. Parole is Expired or Terminated at the Time of Interview 118
i. Applicant is inadmissible under INA Section 212(a)(6)(c) or 212(a)(7) 118
(a) AO finds credible fear of persecution OR torture: 118
(b) AO does NOT find a credible fear of persecution OR torture: 118
ii. Applicant is inadmissible under a section of the INA other than 212(a)(6)(c) or 212(a)(7) 118
d. Parole Expired or is Terminated after the Interview but Before a Preliminary or Final Decision 119
i. Applicant is inadmissible under INA Section 212(a)(6)(c) or 212(a)(7) 119
ii. Applicant is inadmissible under a section of the INA other than 212(a)(6)(c) or 212(a)(7) 119
3. Dependents Who Are Parolees 119
a. Dependent Paroled Prior to April 1, 1997 or Pursuant to Advance Parole 119
i. Parole expired or terminated 119
ii. Parole valid 119
b. Dependent Paroled After April 1, 1997 120
O. PRE-REFORM VS. REFORM APPLICATION PROCESSES 120
1. Overview of Processing Procedures – Pre-Reform vs. Reform 120
2. Applications Interviewed before January 4, 1995 but Still Pending a Final Decision 121
a. Applicants Eligible for Asylum Status 121
b. Applicants Ineligible for Asylum Status 121
c. Evidence of Deportability/Removability 121
P. PROHIBITIONS ON FILING AN ASYLUM APPLICATION 121
1. Categories of Aliens who May not Apply for Asylum 122
2. One-Year Filing Deadline 122

a. Calculating the One-Year Period and Determining the Filing Date 122
b. Interview 123
c. Analysis and Assessment 123
i. Applicant Established an Exception to the One-Year Filing Deadline 123
ii. Applicant Did Not Establish an Exception to the One-Year Filing Deadline 123
(a) Assessment Requirements 123
(b) Country Conditions Citations 124
d. Date of Entry (DOE) in RAPS 125
e. Preparing the Decision 125
i. Applicant Established an Exception 125
ii. Applicant Did Not Establish an Exception 125
3. Previous Denial of Asylum by EOIR 125
a. Receiving the I-589 126
i. Applicant was a Principal on the Prior Application 126
ii. Applicant was a Dependent on the Prior Application 126
b. Eligibility to Apply 127
c. Jurisdiction 127
d. Case Assignment 128
e. Interview 128
f. Determination and Assessment 129
i. Applicant Established Changed Circumstances that Materially Affect Asylum Eligibility 129
ii. Applicant Did Not Establish Changed Circumstances that Materially Affect Asylum Eligibility 129
g. HQASM/TRAQ Review 130
h. Preparing the Decision 130
4. U.S.-Canada Safe Third Country Agreement – DRAFT 130
Q. QUALITY ASSURANCE REVIEW 131
1. HQASM/TRAQ 131
a. Quality Assurance Referral Sheet 131
b. Submission of Quality Assurance Referral Packet to HQASM/TRAQ 131
c. Comments from HQASM/TRAQ 132
2. QA/T at the Local Asylum Office 132
R. RAPS REPORTS 132
1. Types of Reports 132
a. Officer Casebook (RACCAS01) 132
i. Part I – Cases Pending Initial Write-up 133
ii. Part II – Referrals Pending OSSE 133
iii. Part III – PDEC Denials Pending FDEC or DENY 133
iv. Part IV – PDEC Grants Pending FDEC or GLET 133
b. Officer Activity Report (RACFIN00) 133
c. Cases with PDEC "GR" and All FD-258 Ready (RACGRL00) 133
d. Fingerprint IDENT and 2nd Reject (RACFBI02) 133
e. No-Show Cases Open 15-Days or More (RACNSH00) 133
f. IBIS Responses Requiring Reconciliation (RACIBISH) 134
g. DACS Record Check Hit Report (RACINDA2) 134
h. Name Change Report (RACNCG00) 134
i. US-VISIT Watchlist Reports 134
i. Watchlist Hits Requiring Reconciliation: Cases Pending Decision Service 134
ii. Reconciled Watchlist (RW) Hits: Cases Pending Decision Service 134
iii. Watchlist Hits Requiring Reconciliation: Granted, Denied and Closed Cases 135
2. Security Procedures for Reports 135
S. REINSTATEMENT OF A PRIOR ORDER 135
1. Determining Whether an Applicant is Subject to Reinstatement of a Prior Order 135
2. ICE SAC Action 136
3. Asylum Office Action When a Prior Order is Reinstated 136
a. Cases with no decision, cases with a decision other than Recommended Approval, and Recommended Approvals for which the *Recommended Approval* Letter has not been issued 136
b. *Recommended Approval* Letter has been Issued 137
T. RESCHEDULE REQUESTS 137
1. Requests to Reschedule Interview 137
a. Evaluating a Reschedule Request 137
b. Abuse of Rescheduling Policy 138
2. Applicant Requests to Reschedule Pick-up Date 138
3. Canceling a Pick-up Date at the Fault of USCIS 138
U. RESCISSION OF AN ASYLUM APPROVAL 139
1. Issue Motion to Reconsider 139
2. Wait 45 days or until response is received, whichever comes first 139
3. Review response, if any, and issue letter affirming or rescinding grant 140
a. Rescission based on EOIR jurisdiction 140

b. Rescission based on applicant's lack of physical presence in U.S. 140
c. Rescission grounds apply only to dependent 141
V. TERMINATION OF AN ASYLUM APPROVAL 141
1. Overview of Termination Proceedings 141
a. Grounds for Termination of Asylum Status 141
b. Standards of Proof Relevant to Termination Proceedings 142
c. Asylum Office Jurisdiction and Choice of Procedure for Terminating Asylum Granted by USCIS 142
2. Sources of Adverse Information 143
a. Overseas Source 143
i. HQASM receipt of adverse information 143
ii. Transmittal of adverse information to the Asylum Office 143
b. Domestic Source – Asylee in the U.S. 144
c. Domestic Source – Asylee Applying for Admission at a Port of Entry 144
3. Notifying Asylee of USCIS's Intent to Terminate Asylum Status 145
a. Termination by EOIR When the Asylum Office Issued the *Asylum Approval* 146
b. Classified Information 147
4. Conducting the Termination Interview 147
5. Making a Determination 147
a. Asylee Appeared for the Interview 148
b. Asylee Failed to Appear for the Interview 148
c. HQASM Review 148
d. Asylum Office Terminates Asylum Status 149
e. Effect of Termination on Employment Authorization 150
f. Asylum Office Continues the Individual's Asylum Status 150
6. FOIA Requests During Termination Proceedings 151
W. WITHDRAWAL REQUESTS 151
1. Documenting the Applicant's Intent to Withdraw 151
2. Closing the Case in RAPS 151
X. DISMISSAL OF ASYLUM APPLICATION OF LAWFUL PERMANENT RESIDENT 152
1. RAPS Report 152
2. Applicability to Special Groups 152
3. Notice 153
4. Follow-up after *Notice* 154
a. Applicant Returns the *Notice* 154
b. *Notice* is Undeliverable 154
c. Applicant Fails to Return the *Notice* 154
IV. "HOW TO …" 155
A. WRITE AN ASSESSMENT OR NOID 155
B. PREPARE A DECISION LETTER 155
C. PREPARE A NOTICE TO APPEAR (NTA) 155
D. PREPARE A FORM I-213, RECORD OF DEPORTABLE/INADMISSABLE ALIEN 156
E. PREPARE AN I-94 CARD 156
V. APPENDICES 156

I. BACKGROUND INFORMATION

A. MANUAL CONTENTS

This manual provides information on how to process an affirmative asylum application within an Asylum Office. Unless specifically indicated, an Asylum Office Director determines which personnel (e.g., Asylum Officer, Asylum Clerk) perform certain procedures outlined in this manual.

1. Manual Structure

The manual is divided into five (5) sections. Section I, "*Background Information*," lists references with which all asylum personnel should be familiar in order to process an asylum application. Section II, "*The Affirmative Asylum Application*," follows the processing of an application from the point at which an applicant receives a blank asylum application, through the issuance of a decision by U.S. Citizenship and Immigration Services (USCIS), an agency within the U.S. Department of Homeland Security (DHS).

Section III, "*Expanded Topics*," the lengthiest section, provides more detail on some topics referenced in Section II, and includes topics that may cause an asylum application to be handled differently from the norm. While it is not possible to anticipate all possible variations, this section addresses the most common.

Section IV, "*How To…"* explains how to prepare certain documents that Asylum Office personnel issue to applicants in support of a decision to approve, deny, or refer an asylum application.

Section V, "*Appendices*," discusses how to use the appendices referred to in the manual.

2. How to Search the Manual

This manual is not indexed, but contains a detailed Table of Contents to assist Asylum Office personnel in locating needed materials. In addition, Asylum Office personnel can search the manual electronically. In Microsoft Word, the search feature can be added as an icon on the standard toolbar. The search feature can also be accessed by selecting the drop-down menu "Edit" and selecting the "Find" feature, or by pressing Ctrl + F. Key words relating to the topic can be typed in and searched. A similar feature is available in Adobe Acrobat. For more assistance on electronic word searches, consult with the Asylum Office's ADP officer or Quality Assurance/Training Officer (QA/T).

The manual has also been updated to include hyperlinks, which allow users to access a particular section or appendix by simply clicking on the textual reference when viewing the manual in Microsoft Word or Adobe Acrobat. In Microsoft Word, Asylum Office personnel can add the Web toolbar by selecting the drop-down menu "View" and selecting the "Toolbars" feature. The Web toolbar will enable Asylum Office personnel to jump between hyperlinks by clicking on the blue arrows on the left side of the toolbar. In Adobe Acrobat, Asylum Office personnel can jump between hyperlinks by clicking on the green arrows on the bottom of the screen next to the page number.

3. General Notes

"Day" as used in this manual refers to a calendar day unless "business day" is specified.

B. REFERENCES

1. Written and Electronic Materials

This manual is the main procedural guide to processing affirmative asylum applications. The following reference materials are available to Asylum Office personnel and should be consulted for additional procedural guidance:

- Refugee Asylum and Parole System User's Manual (issued June 1, 1995 (will be updated)) (hereinafter referred to as RAPS User's Manual)
- ROPES Quick Reference for RAPS Users (issued February 1996 (will be updated)) (hereinafter referred to as ROPES Reports Manual)
- ABC/NACARA Procedures Manual
- Records Operations Handbook (M-407) (http://ors.uscis.dhs.gov/roh/)
- PC-RAFACS User Manual
- NFTS (National File Tracking System) User Manual (http://ors.uscis.dhs.gov/nfts/nfts.htm)
- AOBTC Basic Training Materials (specific Lesson Plans are referred to in this manual)
- Credible Fear Procedures Manual
- Reasonable Fear Procedures Manual
- Identity and Security Checks Procedures Manual (ISCPM)
- Asylum Virtual Library (AVL), currently located at http://z02rsccow12:8080/docushare/dsweb/HomePage (expected to change at some point in the future to http://asylumdocs.uscis.dhs.gov)
- USCIS web site at http://uscis.gov.

See Section II.M.1 below for more information on the AVL.

Samples of selected USCIS forms (e.g., the I-94 card or the Form G-28) may be found in the *Selected Legal References and Supplemental Information* binder of the AOBTC Basic Training Materials and at http://www.uscis.gov.

2. Sources of Authority

See AOBTC Basic Training Materials, *Overview of the Asylum Program–Part II: Sources of Authority*. The adjudication of an asylum application is governed by:

- Immigration and Nationality Act (INA), particularly Sections 208 and 235.
- Title 8, Code of Federal Regulations (8 C.F.R.), particularly Part 208.
- Precedent Board of Immigration Appeals (BIA) decisions
- Federal Court decisions (including, U.S. District Courts, U.S. Courts of Appeal, and the U.S. Supreme Court)
- USCIS Office of Chief Counsel (formerly INS General Counsel (GENCOU)) Opinions

3. Computer Databases

Asylum Office personnel use several computer databases that include:

a. Refugee Asylum and Parole System (RAPS)

RAPS tracks the processing of affirmative asylum and suspension/special rule cancellation (NACARA 203) applications through the affirmative asylum process. RAPS also contains an Executive Office for Immigration Review (EOIR) screen that allows a viewer to see whether a particular alien-number (A-number) pertains to a case within the Immigration Court system, and the status of that case. Asylum Office personnel have access to update and change information in RAPS. Service Centers have access to RAPS for the purpose of entering new filings and adding dependents. Other DHS branches only have "Look" access to this system.

b. Central Index System (CIS)

CIS is the main file control system for USCIS. CIS contains information about file location, duplicate filings, and whether a particular benefit has been granted to an alien. Some Asylum Office personnel have access to update and change information in limited areas of the database. In addition, Asylum Office personnel may access the FBI Tracking System for fingerprint checks through the FBIQUERY screen.

See Identity and Security Checks Procedures Manual for more information on the FBIQUERY screen.

c. Deportable Alien Control System (DACS)

DACS tracks information about aliens in detention, and in the deportation, exclusion and removal processes. Asylum Office personnel have only "Look" access to this system.

d. Nonimmigrant Information System (NIIS)

As of December 31, 2004, NIIS, which had been available through the INS National System menu, was incorporated into the Inter-Agency Border Inspection System (IBIS), part of The Enforcement Communications System (TECS). Data relating to nonimmigrant arrivals and departures to and from the United States, which had previously been contained in NIIS, is now accessible in IBIS via the SQ94 subject query. For additional guidance on SQ94 queries, please refer to the *IBIS Standard Operating Procedure* (March 2006) (*IBIS SOP*), which is available on the Asylum Virtual Library in the Background, Identity and Security Checks folder located within the HQ Asylum Division folder.

e. Alien Change of Address Query Request Database (AR-11)

AR-11 allows Asylum Office personnel to search for aliens' address history. Asylum Office personnel may search for address information by A-number, FINS (Fingerprint Identification Number), or admission number.

f. Computer Linked Information Management System (CLAIMS 3)

CLAIMS tracks the processing of applications for employment authorization documents (EADs), and many fee-based benefit applications that are submitted to USCIS. CLAIMS 3 contains a mechanism to link to FBIQUERY. Asylum Office personnel only have "Look" access to this system.

g. Automated Nationwide System for Immigration Review (ANSIR)

ANSIR is the system used by EOIR and the Asylum Office to schedule an applicant for a hearing before the Immigration Court. Some Asylum Office personnel have access to schedule a hearing.

h. National Files Tracking System (NFTS), Receipt and Alien-File Accountability Control System (RAFACS)

NFTS tracks the physical location of an Alien-file (A-file), Temporary file (T-file) or Work Folder (W-file) within an Asylum Office. Asylum Office personnel have access to change and update information in this system. Although Service Centers still use RAFACS, NFTS will eventually replace RAFACS as the USCIS file control system. For additional information on this transition, please see Office of Records Services, *National Files Tracking System*, Available on the USCIS Intranet at http://ors.uscis.dhs.gov/nfts/nfts.htm; *Records Operations Handbook*, Part I-15, Sections B.3-B.4, available at http://ors.uscis.dhs.gov/roh/.

i. United States Visitor and Immigrant Status Indicator Technology/Secondary Inspections Tool (US-VISIT/SIT)

The Secondary Inspections Tool (SIT) is a Web-based application that interfaces with the US-VISIT database.

See Section II.I.1 for more information on the application of US-VISIT/SIT in an Asylum Office.

The SIT has the following features:

- 1:1 verification tool (ability to verify that the person who went to the Application Support Center (ASC) for fingerprinting is the same person appearing at the Asylum Office)
- Access to US-VISIT data (including consular, entry/exit, Watchlist, Recidivist, and other asylum records)
- Ability to obtain and analyze data prior to applicants' appearance at the Asylum Office
- Early warning system for Watchlist hits

Asylum Office personnel have access to input information into the system.

j. National Automated Immigration Lookout System II (NAILS II)

On December 31, 2004, the NAILS, which previously contained lookout information from DHS, the U.S. Department of State (DOS), and the U.S. Department of Agriculture (DOA), was incorporated into the Interagency Border Inspection System (IBIS).

See Langlois, Joseph. NAILS/NIIS Migration to TECS, Memorandum for All Asylum Office Personnel, 3 January 2005, 3p.

k. Interagency Border Inspection System (IBIS)

The Interagency Border Inspection System (IBIS) is "a multi-agency database of lookout information … initiated in 1989 to improve border enforcement and facilitate inspection of individuals applying for admission to the United States at ports-of-entry and pre-inspection facilities." The system resides at the CBP Data Center on The Enforcement Communications System (TECS). In addition to DHS, law enforcement and regulatory personnel from 20 other federal agencies or bureaus use IBIS. Some of these agencies are the FBI, Interpol, DEA, ATF, IRS, FAA, and Secret Service, just to name a few. Also, information from IBIS is shared with the Department of State for use by Consular Officers at U.S. Embassies and Consulates.

Customs and Border Protection (CBP) Inspector's Field Manual, Chapter 33.

Guidance on using IBIS is included in Section IV of the *Identity and Security Checks Procedures Manual*, and in the *IBIS Standard Operating Procedure* (March 2006) (*IBIS SOP*), which is available on the Asylum Virtual Library in the Background, Identity and Security Checks folder located within the HQ Asylum Division folder.

l. Consular Consolidated Database (CCD)

Asylum Office personnel use the Department of State's CCD to obtain information about the identity, previous travel history, method of entry into the United States, or background of an asylum applicant. Asylum Office personnel access the CCD through a secure web-based system. For more information on the CCD and for instructions on how to access the database, see Langlois, Joseph E. Asylum Division Access to the Department of State's Consular Consolidated Database and Use of Consular Affairs Visa Data in Asylum Adjudications, Memorandum for Asylum Office Directors and Deputy Directors, 6 October 2006, 3p.

II. THE AFFIRMATIVE ASYLUM APPLICATION

A. ALIEN OBTAINS ASYLUM APPLICATION PACKET

1. How to Obtain

8 C.F.R. 208.3

Prospective asylum applicants may obtain an asylum packet by:

- Calling the USCIS forms request line: 1-800-870-FORM (3676).
- Requesting the packet in person at a USCIS District Office.
- Requesting the packet in person or by mail from an Asylum Office.
- Requesting the packet from a member of the private immigration bar or an agency accredited by the Board of Immigration Appeals (BIA).
- Downloading the form from the USCIS public Internet site at http://uscis.gov.

USCIS does not charge a fee to provide an asylum packet to a prospective applicant; however, a fee may be charged to an attorney or representative if he or she orders large quantities.

2. Asylum Packet Contents

An asylum packet consists of:

- The most recent acceptable version of the Form I-589, *Application for Asylum and for Withholding of Removal*
- Form AR-11: *Alien Change Of Address*
- Notice of Counsel and Consequences of Filing
- Executive Office for Immigration Review (EOIR) Representative List

3. What Applicant Must File

At a minimum, an applicant must submit the following to apply for asylum:

- Original I-589, which is completed in English and signed by the applicant and preparer, if any.
- Two (2) copies of the completed and signed I-589.
- One (1) passport-style photograph.

If an applicant has a spouse or child in the U.S. who wants to be included as a dependent on the I-589, an applicant must also submit the following for each dependent:

- One (1) copy of his or her asylum application that includes the dependent's information.
- At a minimum, an applicant is permitted to submit only copies of pages 1, 2, 3, and 9 (including Supplement A Form I-589 as needed for additional family members) of the principal applicant's application in lieu of the entire I-589 and supplemental documentation.
- One (1) photograph of the dependent that he or she wants to add, stapled on page 9 of the dependent's copy.
- One (1) copy of evidence of relationship:
- A marriage certificate, if the dependent is a spouse.
- A divorce decree, if the principal applicant or spouse was previously married.
- A birth certificate, if the dependent is a child.

"Original I-589" is an I-589 with the original signature plus any supplemental sheets and/or statements.

If a principal applicant does not have and is unable to obtain a marriage or birth certificate, he or she may submit a copy of secondary evidence of relationship. Secondary evidence may take the form of historical evidence; such evidence must have been issued contemporaneously with the event that it documents and may include, but is not limited to, medical records, school records and religious documents. Affidavits may also be accepted.

8 C.F.R. 204.2(d)(2)(v) discusses secondary evidence to support a petition for child or son or daughter.

If an affidavit is the secondary evidence, the principal applicant must submit one (1) original and two (2) copies of an affidavit from at least one (1) person for each event the principal applicant is trying to prove. A relative or other person may provide an affidavit, and he or she need not be a United States citizen or lawful permanent resident. An affidavit must:

- Fully describe the circumstances or event in question and fully explain how the affiant acquired knowledge of the event(s).
- Be sworn to, or affirmed by, a person who was alive at the time of the event(s) and have personal knowledge of the event(s) (date and place of birth, marriage, etc.) that the principal applicant is trying to prove.
- Show the full name, address, date and place of birth of the affiant, and indicate the relationship between him or her and the principal applicant

B. APPLICANT FILES I-589

1. Filing with the Service Centers

An applicant mails his or her I-589 and any supporting documentation to the appropriate Service Center, determined by the applicant's address. A list of Service Centers and the areas they service are outlined in the I-589.

The term "I-589" refers to a Form I-589 and any supporting documentation.

2. Filing Directly with the Asylum Offices

An asylum applicant may file his or her I-589 with the Asylum Office at the express consent of the Asylum Office Director or when a principal/dependent relationship has ceased to exist and the former dependent is filing an asylum application as a principal. *See* 8 C.F.R. 208.5(b)(2). A Directors' consent to file in the local office is normally given under the following circumstances:

Check with local Asylum Office management for a list of all cases that may be directly filed.

- Expeditious processing is required.
- Previously denied or withdrawn asylum application where the applicant was not placed into deportation, exclusion or removal proceedings.

C. USCIS RECEIVES I-589

1. I-589 Filed with the Service Center

The Service Center is responsible for:

- Receiving and receipting an I-589.
- Verifying that USCIS has jurisdiction over the case by checking available databases for duplicate filings and multiple alien-numbers (A-numbers) or for evidence that the applicant is/has been in proceedings.
- Matching an I-589 with already existing alien-files (A-files) where they exist.
- Creating a new A-file where there is no prior A-file for the asylum applicant.
- Entering the I-589 into RAPS and forwarding the file to the appropriate Asylum Office.

See Section III.L below for more information on jurisdiction.

2. I-589 Filed Directly with the Asylum Office

An Asylum Office processes a direct filing of an I-589 as follows:

a. Mailroom Processing

On the same day of receipt, Asylum Office personnel stamp the I-589 with the date of receipt and bring it to the attention of a Supervisory Asylum Officer (SAO) or QA/T, depending upon local policy. The SAO or QA/T determines whether the I-589 fits into one of the categories for which a direct filing is permitted and reviews the I-589 to ensure it meets the specifications for completeness. If an I-589 is erroneously filed with the Asylum Office or incomplete, Asylum Office personnel return it to the applicant with written instructions indicating the corrective action that the applicant must take in order to properly file the application.

b. Computer Entries

No information is entered in USCIS databases until it is determined that the I-589 is properly filed with the Asylum Office and that the I-589 meets the specifications for completeness. Once the I-589 has been reviewed and found properly filed (i.e., the Asylum Office has jurisdiction) and complete, Asylum Office personnel enter the application into RAPS on the Case Entry (I589) screen within one business day of receipt. Asylum Office personnel first check the applicant's personal information against information in CIS, DACS, and RAPS for duplicate files. If none exist, Asylum Office personnel create an A-file by assigning the applicant an A-number, and entering the information into RAPS. If an A-file already exists, Asylum Office personnel order the A-file and create a Temporary File (T-file).

For further information on creating an A-File, *see Records Operations Handbook* (M-407), chapter 2, Available on USCIS Online Plus at http://ors.uscis.dhs.gov/roh/.

See Section III.L below for more information on jurisdiction.

The name of an applicant who has only one name is entered into RAPS, CIS or other system as a last name. In the first name field, enter "No Given Name." Dependents are added using the F10 ("Add Rel") function key.

Asylum Office personnel send a copy of the I-589 to State Department's Bureau of Democracy, Human Rights, and Labor (DRL) in accordance with Section II.L.2 of this manual, *AO Sends a Copy of I-589 Sent to DRL, if not Previously Sent*. For high-profile cases, Headquarters Asylum (HQASM) will forward an additional copy of the I-589 to DRL with the assessment when the decision is submitted for HQASM/TRAQ review.

c. Accepting a New I-589 After Denial or Withdrawal of a Previous Application

An asylum applicant may apply for asylum after the issuance of a final denial, or dismissal of a motion to reopen or reconsider by the Asylum Office as long as he or she is not under the jurisdiction of the Immigration Court. An applicant who withdrew an asylum application may also submit a new application, as long as the Asylum Office has jurisdiction to hear the claim.

A withdrawn asylum application cannot be reopened, except as provided in the *ABC-NACARA Procedures Manual* for rescission cases.

Although the applicant may file a new asylum application, he or she is subject to the prohibitions on filing for asylum outlined in INA Section 208(a)(2)(A), (B) or (C).

See Section III.P on prohibitions on filing.

i. Submission of a New Asylum Application

At this time, the Service Centers are not equipped to receipt applications where RAPS shows a final disposition of the case. An applicant must, therefore, file directly with the Asylum Office having jurisdiction over his or her place of residence. Applications received at the Service Center are forwarded to the Asylum Office for processing.

ii. RAPS Entries

When an applicant files the new I-589, Asylum Office personnel locate the A-file that contained the previous asylum application. When this occurs, Asylum Office personnel take the following actions in RAPS:

- Print the CSTA screen that contains the information about the previously-filed asylum application. Place the printout on the right-hand side of the file.
- Delete the information from the previously-filed asylum application from RAPS using the Re-interview (REIN) command. Delete the filing date of the previous application using the Case Correction (CORR) screen, and enter the new filing date.
- If the Asylum Office that accepts the application is not the same office that adjudicated the previous application, the Asylum Office that has the new application must contact the Asylum Office that adjudicated the previous application to delete the information from RAPS, and update the Address Change (MOVE)/Case Transfer (TRAN) screens.

iii. Interview and Adjudication

A newly-filed I-589 receives a new interview and adjudication by an Asylum Officer (AO), and the prohibitions on filing are explored during the asylum interview. Prohibitions on filing for asylum, including the one-year filing deadline and prohibition on filing after a prior denial by EOIR, are discussed below, Section III.P, *Prohibitions on Filing an Asylum Application*. A prior denial by USCIS or INS does not invoke the prohibition on filing. The AO may consider the interview notes and *Assessment* from the previous application to develop lines of inquiry during the asylum interview. Findings of fact and law made by USCIS or INS in the prior adjudication should not be disturbed, absent error or a change in circumstances.

d. Prior Dependent Filing as a Principal Applicant – DRAFT

The principal applicant who was previously a dependent on another asylum application files a Form I-589 directly with the Asylum Office having jurisdiction over his or her place of residence.

Asylum Office personnel locate the former dependent's A-file and perform the necessary RAPS updates/changes to make the dependent a principal applicant in the system. The Create New Case for Dependent (NEWC) command may be used in RAPS to convert the former dependent into a principal record in RAPS. If the former dependent now lives in the jurisdiction of an Asylum Office other than that which received the prior application, Asylum Office personnel coordinate with the owning office to complete the necessary RAPS commands. Asylum Office personnel:

- Convert the dependent to a principal applicant using NEWC.
- Update the Reset Interview (REIN) command to clear any case decision and interview data.
- If applicable, update the address on the Address Change (MOVE) screen.
- If applicable, transfer the case to the new Asylum Office on the Case Transfer (TRAN) screen.

The AO then conducts an interview based on the prior dependent's new application. Prior to the interview, the AO reviews the application on which the applicant was previously listed as a dependant to ascertain whether any mandatory bars to asylum eligibility may apply.

D. RAPS ACTIVITY AFTER DATA ENTRY OF I-589

1. Receipt Mailers

Acknowledgment of Receipt mailers are printed in the Asylum Office the day after the new file data are entered into RAPS. Asylum Office personnel mail the mailers within three (3) business days of their printing, and file copies of the mailers in the applicant's file within ten (10) days of their printing, or no later than ten (10) days after receipt of the A-file from the Service Center, whichever is later.

2. File Transfer Requests

RAPS updates CIS and generates a File Transfer Request (FTR) for any case entered as a new application that has an existing A-file in another USCIS or DHS location. This information is automatically printed at the USCIS or DHS location housing the A-file. The FTR requests that the A-file be sent to the Asylum Office with jurisdiction over the newly filed I-589.

For information on File Transfers *see* Records Operations Handbook (M-407), chapter 3(A)(2), Available on USCIS Online Plus at http://ors.uscis.dhs.gov/roh/.

3. Automated Records Checks and Other Automated Activity

RAPS performs automated batch checks of DHS systems, including DACS and IBIS, initiates automated checks of the FBI name database, and schedules applicants for fingerprinting and biometrics enrollment at Application Support Centers (ASCs). For additional information, please refer to the *Identity and Security Checks Procedures Manual*.

In addition to these automated records checks, RAPS also interfaces with CIS to create new records in CIS for people who did not have an existing A-number and to update existing records in CIS.

E. A-FILE IS TRANSFERRED TO ASYLUM OFFICE

1. From the Service Center

The Service Center forwards new files to the appropriate Asylum Office within 21 days of receipt of the complete I-589. The files of family groups are sent rubber-banded together.

2. From Other DHS Locations

File Transfer Requests (FTRs) are generated by CIS. If a new case is entered into RAPS or if a case is reopened and the RAPS user requests the A-file, RAPS tells CIS to generate an FTR for any case that has an existing A-file in another location. Any USCIS or other DHS facility holding an A-file that corresponds to asylum application data should respond to the FTR by sending the A-file to the appropriate Asylum Office.

F. ASYLUM OFFICE RECEIVES A-FILE

1. Receiving File from Service Center

When an Asylum Office receives an A-file from the Service Center, Asylum Office personnel check the file in RAPS (CSTA screen) to verify that it has been sent to the correct Asylum Office according to the assigned File Control Office (FCO). It is not necessary to confirm receipt of the file in CIS, since RAPS has indicated through an interface with CIS that the FCO is the receiving Asylum Office. However, Asylum Office personnel must confirm receipt of the file in RAPS with the AFIL command, enter the file into NFTS, and keep family groups together.

2. Receiving File from Other DHS Locations

When an Asylum Office receives a pre-existing A-file from another USCIS or DHS location, Asylum Office personnel take the following actions:

- Update CIS to confirm the Asylum Office received the file.
- Check RAPS and CIS to ensure it is a file needed for the adjudication of an asylum application.
- Enter the file into NFTS and see if there is a corresponding T-file or W-file. Physically consolidate any W-file or T-file into the A-file and delete the W-file or T-File from NFTS. *See* Section III.J.1 on file consolidations of multiple A-numbers.

For procedures regarding file consolidation, *see Records Operations Handbook (M-407), chapter 3(C)*, Available on USCIS Online Plus at http://ors.uscis.dhs.gov/roh/.

G. ASYLUM OFFICE SCHEDULES INTERVIEW

Entering a case into RAPS creates a pool of cases that are ready to be scheduled for an asylum interview. The Asylum Office creates a monthly interview calendar and sets scheduling parameters that are determined by the number of AOs that will be available to interview in that month.

1. Asylum Office Creates an Interview Calendar in RAPS

An Asylum Office creates a monthly interview calendar in RAPS using the Create Daily Calendar (CCAL) command. The number of cases that are scheduled for an interview in any given month depends upon each office's scheduling system that takes into consideration staffing resources and no-show rates. Through the CCAL screen, the Asylum Office tells RAPS how many asylum applicants to call-in for an interview by "opening" a certain number of interview slots. The number of slots the Asylum Office opens is based upon each office's staffing resources.

Once the Asylum Office creates an interview calendar, it may be viewed by using the Calendar Query (CALQ) command.

2. Cases are Selected for Interview Scheduling

a. Automatic Scheduling

Approximately 22 days before a particular interview day, RAPS fills that day's opened interview slots with cases from the pool that was created when I-589s were entered into the system.

For information on "special group codes," *see RAPS Users Manual*.

Cases in the pool that are marked with a special group code will not be picked up for scheduling as part of the automatic scheduling system, unless the interview calendar indicates that a particular special group case should be scheduled.

b. Manual Scheduling

Cases may be manually scheduled to available interview days by utilizing the Add Case to Schedule (ADDC) command in RAPS. Reasons for manually scheduling a case may include the need to schedule an expedited interview for a particular I-589 or to reschedule an interview due to lack of available AOs to interview on a given day.

Before using the ADDC command, Asylum Office personnel check to see if interview slots have been opened for a particular day by viewing the Calendar Query (CALQ) command.

c. Scheduling Priorities

All cases within the pool are categorized into priorities. RAPS automatically schedules cases in the following order, exhausting each priority listed before scheduling cases from the next priority group:

Priority 1: Reform rescheduled cases.
Priority 2: Reform cases beginning with those aged 21 days and working towards the newer cases (i.e., from 21 days old to 1 day old).
Priority 3: Reform cases that are between 22 and 100 days of receipt, from newest to oldest (i.e., from 22 days old to 100 days old).
Priority 4: Reform cases that are over 100 days from day of receipt, from newest to oldest (i.e., 100 days to 999 days).
Priority 5: Pre-reform rescheduled cases.
Priority 6: Pre-reform cases where the applicant requests an immediate interview and the interview is added to the scheduler through use of the INTERVIEW REQUEST (INTR) command.
Priority 7: Pre-reform cases, starting with the most recently filed and working to the older cases in the backlog from the newest to the oldest.

d. RAPS/CLAIMS Interface for Certain Administratively Closed Cases

The Asylum Offices administratively closed many pre-reform asylum applications after applicants failed to appear for an interview. Many of the individuals were not placed before the Immigration Court because the Asylum Office did not have sufficient information to establish their deportability.

If an applicant in this category files an application for an Employment Authorization Document (EAD), a CLAIMS/RAPS interface triggers RAPS to reopen the case for interview scheduling. CLAIMS also updates RAPS with the new address. RAPS automatically puts the A-number in the Priority 5 category. If the new address puts the case into a different jurisdiction, RAPS automatically transfers the case to the new Asylum Office.

3. Asylum Office Generates and Mails *Interview Notice*

When RAPS fills an open interview slot with a case, the system automatically generates an *Interview Notice*. If an applicant's representative is recorded in RAPS, RAPS generates an identical *Interview Notice* to the representative of record. An *Interview Notice* is printed in the Asylum Office during the night. Within three (3) business days of the *Notices* being printed and no less than 18 days before the scheduled interview date, Asylum Office personnel mail the *Interview Notice* to the applicant and any representative of record. Asylum Office personnel file the mailers in the applicant's file within twelve (12) days of their printing.

Exceptions to these requirements can be made in particular cases at the discretion of the Director for special circumstances, as long as the applicant receives adequate notice of the interview.

H. ASYLUM OFFICE PULLS FILES FOR INTERVIEW

Each office has its own system for pulling files scheduled for an interview. At a minimum, the system must ensure that:

- A-files activated from the file room are assigned to a responsible party in NFTS in such a way that they are traceable throughout processing of the I-589.
- The A-files of all applicants scheduled for an interview are in the Asylum Office. If the Asylum Office cannot locate an A-file by the date of the interview, the staff responsible for distributing A-files on interview days must be informed. An applicant whose A-file is not in the Asylum Office, and who appears for his or her interview, may not be interviewed unless the applicant has a copy of his or her I-589.
- The EOIR screen is checked prior to the interview to confirm the applicant is not under the jurisdiction of EOIR. Local office policy dictates the timing of the check and the personnel who perform it. The EOIR screen is printed out for all T-files.

See Section III.J for procedures on interviewing and adjudicating a case using a T-file or a W-file.

I. APPLICANT ARRIVES FOR INTERVIEW

1. US-VISIT/SIT

In June and July of 2006, the Asylum Program transitioned from using IDENT-Asylum to using US-VISIT as one facet of identity and security checks. When an asylum applicant appears for the interview, Asylum Office personnel locate him or her and all dependents 14 years old and older in the US-VISIT system, which verifies the subjects' identity and compares the subjects' biometric identifying information to information contained in various databases. Each Asylum Office has a US-VISIT coordinator and established local operating procedures that facilitate US-VISIT processing while maintaining efficient processing of asylum applications. For additional information on US-VISIT, please see Section VI.D of the ISCPM.

Check with local Asylum Office management for procedures on US-VISIT, including how to process a case when an applicant is found in one of the databases.

The applicant is called by number rather than name in the manner dictated by local policy to verify his or her identity in US-VISIT. *See* Section II.I.7 below, *AO Calls the Applicant for the Interview*.

2. Asylum Office Verifies that Applicant Complied with Fingerprinting Requirements

Prior to or at the time an applicant appears for his or her scheduled asylum interview, Asylum Office personnel verify whether the applicant and any dependents 14 years of age or older who require fingerprinting have had their fingerprints taken at an Application Support Center (ASC). If the evidence indicates that the applicant and any dependents have complied with fingerprinting requirements, the asylum interview proceeds as usual. However, if the applicant or any dependent 14 years of age or older has not complied with fingerprinting requirements, the asylum office will reschedule the asylum interview, along with the fingerprinting appointments of those who have not been fingerprinted, in accordance with the guidance set forth below.

Langlois, Joseph E. Securing Compliance with Fingerprinting Requirements Prior to the Asylum Interview and Amending Procedures for Issuance of Recommended Approvals, Memorandum to All Asylum Office Personnel (Washington, DC: 12 September 2006, revised 4October 2006)

Asylum Office personnel first check the Fingerprint Response column on the RAPS INTL screen. In this column, a Y indicates that a response has been received, an N indicates that one has not, and an X indicates that one is not required, because the applicant is under 14 or older than 75. If a Y or an X appears in the Fingerprint Response column, the asylum interview proceeds as scheduled.

a. Fingerprint Response Column Indicates that No Response Has Been Received

If the Fingerprint Response column indicates that no response has been received, Asylum Office personnel should perform the following steps:

- Check if there is a Fingerprint Sent Date or Response Date in RAPS. (These fields can be found adjacent to the FBI Response on the first page of the CSTA screen.) If either of those dates is present, this indicates that the applicant has complied with fingerprinting requirements, and Asylum Office personnel can resume case processing as normal. (Procedures for dealing with delayed FBI responses are set forth below.)
- If RAPS shows neither a Sent Date nor a Response Date, Asylum Office personnel verify in the Benefits Biometric Support System (BBSS) Online Archive whether the applicant has complied with fingerprinting requirements. If BBSS lists an FBI fingerprint result or a "Date Fingerprinted" or "Date Sent" for the applicant, then the applicant has complied with fingerprinting requirements, and Asylum Office personnel can resume case processing as normal.
- If neither RAPS nor BBSS indicates that the applicant has complied with fingerprinting requirements, then Asylum Office personnel query the applicant when he or she appears for the interview as to whether he or she received the notice and appeared at the ASC for fingerprinting.
- If the applicant states that he or she complied with fingerprinting requirements when there is no evidence of such compliance in RAPS or BBSS, Asylum Office personnel request that the applicant present proof of such compliance in the form of the ASC appointment notice, stamped to show attendance at the ASC, or a notice from the ASC rescheduling the fingerprinting appointment for a date after the asylum interview. If the applicant presents such proof, Asylum Office personnel proceed with the interview and document the form of proof in the A-file.

For more information on accessing BBSS, please see Appendix 58 of the ISCPM.

b. After Verification Efforts, Asylum Office Personnel Conclude that Applicant Did Not Appear at ASC Appointment

After exhausting the verification procedures listed above, if Asylum Office personnel conclude that the applicant did not appear at the ASC appointment, they should determine by looking at documentation in the A-file and/or the CHIS screen in RAPS whether the failure to appear at the ASC was the first or second time the applicant failed to appear at the ASC.

i. Applicant Failed to Appear for ASC Appointment Once

If it is the applicant's first failure to appear at the ASC, the interview will be rescheduled. If the need to reschedule the interview for failure to comply with fingerprinting requirements is caused by the applicant, the clock will be stopped, unless the applicant can show good cause for failing to attend the ASC appointment. If the need to reschedule the interview to allow the applicant to comply with fingerprinting requirements is caused by USCIS, the clock will not be stopped.

8 C.F.R. § 208.7(a)(2)

(a) Failure to Attend ASC Appointment Caused by Applicant

If it is determined that the failure to attend the ASC appointment was caused by the applicant, Asylum Office personnel must then determine whether the applicant can establish good cause. For guidance on determining whether the applicant caused the failure to appear and on whether the applicant can establish good cause, see Langlois, Joseph E. Securing Compliance with Fingerprinting Requirements Prior to the Asylum Interview and Amending Procedures for Issuance of Recommended Approvals, Memorandum to All Asylum Office Personnel (Washington, DC: 12 September 2006, revised 4 October 2006).

If the applicant shows good cause for failure to attend the ASC appointment, Asylum Office personnel proceed as follows:

- Obtain documentation from the applicant supporting the good cause finding and include this documentation in the A-file with a memo explaining the good cause finding.
- Obtain Supervisory Asylum Officer (SAO) approval for any good cause finding made by Asylum Office personnel and document the SAO approval in the memo included in the A-file.
- Provide the applicant a *Notice of Scheduling of Fingerprinting Appointment* (Appendix 6), explaining the consequences for unexcused failure to appear at this appointment.
- Schedule the applicant, or dependent where appropriate, for a fingerprinting appointment to occur within the two days following the interview date by handing the applicant a manually generated fingerprint appointment letter. To the extent practicable, Asylum Office personnel will schedule the ASC appointment and asylum interview in time to meet the 60-day timeliness standard for asylum case processing.
- Reschedule the asylum interview using the REMC command in RAPS and indicate that the rescheduling was caused by USCIS so that the employment authorization clock continues.
- Document in the A-file (e.g., by placing a copy of the above-referenced notice in the file) that the applicant was scheduled for another fingerprinting appointment.

If the applicant caused the failure to attend the ASC appointment and cannot show good cause for the failure to attend, Asylum Office personnel proceed as follows:

- Provide the applicant a *Notice of Scheduling of Fingerprinting Appointment Employment Authorization Clock Stopped* (Appendix 5), informing the applicant that he or she (or a dependent, where applicable) will receive notice to appear at an ASC and explaining the consequences for unexcused failure to appear.
- Schedule the applicant, or a dependent where appropriate, for another fingerprinting appointment using the FREQ command in RAPS.
- Reschedule the asylum interview using the REMC command in RAPS and indicate that the rescheduling was caused by the applicant, so that the employment authorization clock stops.
- Document in the A-file (e.g., by placing a copy of the above-referenced notice in the file) that the individual was scheduled for another fingerprinting appointment.

(b) Failure to Attend ASC Appointment Caused by USCIS

For guidance on determining whether USCIS caused the failure to appear, see Langlois, Joseph E. Securing Compliance with Fingerprinting Requirements Prior to the Asylum Interview and Amending Procedures for Issuance of Recommended Approvals, Memorandum to All Asylum Office Personnel (Washington, DC: 12 September 2006, revised 4 October 2006).

If the applicant's failure to comply with fingerprinting requirements was caused by USCIS, Asylum Office personnel should perform the following tasks:

- If necessary, update the applicant's address using the MOVE command in RAPS.
- Provide the applicant a *Notice of Scheduling of Fingerprinting Appointment* (Appendix 6), informing the applicant that he or she will receive notice to appear at an ASC and explaining the consequences for unexcused failure to appear.
- Schedule the applicant for another fingerprinting appointment using the FREQ command in RAPS.
- Reschedule the asylum interview using the REMC command in RAPS and indicate that the rescheduling was caused by USCIS, so that the employment authorization clock continues.
- Document in the A-file (e.g., by placing a copy of the above-referenced notice in the file) that the individual was scheduled for another fingerprinting appointment.

(c) Expired Fingerprint Results, REJECTS, and Waivers

If an applicant appearing for his or her scheduled asylum interview previously complied with fingerprinting requirements, and an FBI response was allowed to expire, case processing should continue as normal and the applicant should be interviewed, with the following additions:

- If the expired FBI response was "NON-IDENT," Asylum Office personnel should schedule the applicant for another fingerprinting appointment using the FREQ command in RAPS. If the applicant fails to appear at the ASC during the allotted window and otherwise appears eligible for asylum, Asylum Office personnel schedule the applicant for a fingerprinting appointment one more time and send the applicant a *Notice of Scheduling of Fingerprinting Appointment Employment Authorization Clock Stopped* (Appendix 5).
- If the applicant does not appear eligible for asylum for reasons unrelated to fingerprint compliance, the application should be denied or referred for those reasons.
- If the expired FBI response was "IDENT", an updated RAP sheet may be obtained from the FBI without requiring the applicant to be re-fingerprinted.

See ISCPM for more information on obtaining a RAP sheet.

If the applicant's fingerprints were rejected or if, in the rare instance, the ASC provided a waiver to the applicant, case processing should continue as normal and the applicant should be interviewed.

See Section VI.B of the ISCPM for procedures for dealing with rejected fingerprints and waivers.

(d) Dependents Added After the Submission of the Asylum Application

If a dependent has not yet complied with fingerprinting requirements because he or she was added to the asylum application after its original submission but prior to the interview, the failure to comply will be deemed to be caused by the applicant. In this situation, Asylum Office personnel should perform the following tasks:

- Provide the dependent a *Notice of Scheduling of Fingerprinting Appointment Employment Authorization Clock Stopped* (Appendix 5), informing the dependent that he or she will receive notice to appear at an ASC and explaining the consequences for unexcused failure to appear.
- If it has not already been done, schedule the dependent for a fingerprinting appointment using the FREQ command in RAPS.
- Reschedule the asylum interview using the REMC command in RAPS and indicate that the applicant caused the rescheduling so that the employment authorization clock stops.

If, during an asylum interview, an applicant expresses the desire to add a dependent to his or her application, the Asylum Officer should proceed with the interview, relaying to the applicant the instructions for adding dependents set forth in Section III.F.1. Any request to add a dependent to an application on the day of the interview should be considered "during an asylum interview."

ii. Applicant Failed to Appear for ASC Appointment More Than Once

If an applicant fails to appear for fingerprinting after receiving the second ASC appointment notice, and the failure is not excused, his or her asylum application will be referred or dismissed. Asylum Office personnel dismiss or refer the asylum application, as appropriate, by updating FDEC with codes D7 (in the case of dismissals) or I7 (in the case of referrals). If the applicant is maintaining valid immigrant or nonimmigrant status, or if the applicant filed his or her application prior to 1/4/1995 (i.e., pre-reform), and there is insufficient evidence to support NTA issuance, Asylum Office personnel dismiss the asylum application by updating FDEC with D7 and prepare and issue a *Dismissal of Asylum Application Based on Failure to Comply with Identity and Security Check Procedures* notice (Appendix 29).

If the applicant filed his or her application after 1/4/1995 (i.e., reform cases), and Asylum Office personnel establish from the asylum application that the applicant is not maintaining valid immigrant or nonimmigrant status, Asylum Office personnel refer the asylum application to Immigration Court by updating FDEC with I7 and issuing an NTA (code A1). The Asylum Office prepares and issues a *Referral Notice*, checking box 8.

If the applicant has complied with fingerprinting requirements, but a dependent failed to appear for fingerprinting after receiving the second ASC appointment notice, and the failure is not excused, *only the dependent's case* should be dismissed or referred in accordance with the guidance set forth above. In addition, if the applicant is found eligible for asylum, the Asylum Officer must issue to the applicant a *Denial of Derivative Asylum Status* letter (Appendix 19). This letter must include the A-number of the applicant and the A-number of the dependent who is being denied derivative asylum status, but not the A-numbers of any other dependents included in the asylum application.

When Asylum Office personnel first discover that the applicant or dependent failed to appear for fingerprinting without good cause after receiving the second ASC appointment notice, Asylum Office personnel will, to the extent practicable, immediately process the case for referral or dismissal prior to the interview according to the guidance above so that the referral or dismissal can be served on the individual in-person while he or she is at the office. The decision documents may be prepared prior to the applicant's arrival for interview or the applicant may be requested to wait while the documents are prepared. In either case, failure to comply without good cause must be confirmed when the applicant appears for interview.

3. Interview Assignment Log

As applicants arrive, the Immigration Information Officer/Contact Representative (IIO/CR) notes the time of each applicant's arrival by date/time-stamping the *Interview Notice*. As a general rule, cases are assigned on a "first come, first served" basis within the allotted appointment period. Asylum Office Directors may set up criteria for exceptions to this general rule. A case assignment log is either created at this time, or noted to indicate an applicant's arrival (depending on whether the cases are pre-assigned). As soon as an SAO becomes aware of an AO's absence, he or she informs Asylum Office personnel responsible for distributing cases of the AO's unavailability for interviews. If the Asylum Office pre-assigns cases, the appropriate Asylum Office personnel reassign the cases of the AO who is absent for the day.

4. Random Assignment

Langlois, Joseph E. Office Security Procedures, Memorandum to Asylum Offices, 16 April 1999, 2p.

Whether the Asylum Office pre-assigns cases or assigns them when applicants appear for their interviews, the assignment of a case to an AO is done at random. In offices where cases are not pre-assigned, random assignment may be ensured by use of assignment lists or logs that alternate the order of Asylum Officers each day. Only an Asylum Office Director or Deputy Director can make any exceptions to random case assignment. Any attempt by Asylum Office personnel to improperly influence case assignment is to be immediately reported to the Security Officer (SO).

The IIO/CR updates RAPS using the Assignment of Officers to Cases (ASGN) command if the assignment is made prior to the interview day. The IIO/CR Updates RAPS using the Modify Officer Assignment (MODA) command if the assignment is made on the day of the interview.

One exception to the policy of random assignment is where an asylum applicant was previously denied asylum, but not placed into removal proceedings, and subsequently re-applies in the same office. In such a case, Asylum Office personnel will make a reasonable attempt to assign the case to the same officer who made the original decision. If the same Asylum Officer is unavailable, the case is assigned to another Asylum Officer supervised by the SAO who reviewed the original decision, or if the SAO is no longer with the office, randomly according to regular office procedures.

An AO may not refuse to interview a particular case without cause. Under certain limited circumstances, the AO may feel that it is inappropriate to interview a particular applicant. When this occurs, the AO must obtain SAO approval prior to returning the case for assignment to another AO.

Check with local Asylum Office management for procedures on returning an assigned case.

Acceptable reasons may include but are not limited to:

- The AO determines that the interpreter is inadequate.
- The applicant specifically requests an AO of a different gender. (A female officer for a female rape victim, for example).

If the AO has a prior personal or professional relationship with the applicant, interpreter, or representative of the case, the AO ***must*** notify his or her SAO. If there is an actual conflict of interest or the appearance of a conflict of interest, the case will be reassigned to a different AO.

5. AO Prepares for the Interview

See AOBTC Basic Training Materials, *Interviewing Part I: Overview of the Nonadversarial Asylum Interview; Interviewing Part III: Eliciting Testimony; Interviewing Part IV: Cross-Cultural Communication;* and *Interviewing Part V: Physical Abuse, Torture and Trauma-Related Conditions*.

6. Delays in Interviewing

An AO begins interviewing the applicant as expeditiously as possible. Asylum Office personnel should explain to the applicant any lengthy anticipated delay.

7. AO Calls the Applicant for the Interview

Asylum Office Directors establish procedures for calling an applicant for the interview by number rather than name, to preserve an applicant's confidentiality in the waiting room.

Examples of acceptable practices include, but are not limited to, the following:

- When appearing for the interview, the applicant is issued one part of a two-part coupon or set of twin tickets with a number printed on both parts. The second part is attached to the file, where it remains until after the decision is served, or a second set of tickets is used on the date of pick-up. The applicant is called using the number on the coupon or ticket.
- The applicant is called using the last three or four digits of the A number. A number is pointed out on appointment mailer, or Asylum Office personnel give the principal applicant a piece of paper with the digits to be called.
- The applicant is given a laminated card with a number that is recorded on a master list and written on the appointment mailer for the interviewing officer or the pick-up notice for the IIO/CR. Interview numbers start daily at "1"; Pick-up numbers start at "101".

Langlois, Joseph E. Director. Institution of Procedures to Call Applicants for Interview, IDENT or Decision Pick-up By Designated Number, Rather than Name, Memorandum to Asylum Office Directors, 23 February 2001.

8. AO Meets and Greets the Applicant

Prior to calling an applicant for an interview, the AO notes whether the case includes any dependents or a representative of record. When meeting and greeting the principal applicant in the waiting room, the AO accounts for all parties before escorting everyone involved in the case to the AO's office.

The AO must not discuss any aspect of the applicant's case in the waiting room. If confusion arises in the waiting room as to who should be present at the interview, the AO escorts all the parties concerned to a separate area apart from the waiting room to resolve the matter.

8 C.F.R. 208.9

J. AO CONDUCTS AN ASYLUM INTERVIEW

1. Minimum Requirements for an Interview

See AOBTC Basic Training Materials, *Interviewing Part I: Overview of the Nonadversarial Asylum Interview*.

2. Placing the Applicant Under Oath

The AO places the principal applicant and any dependents who will testify on the asylum claim under oath prior to discussing any merits of the asylum claim. The applicant, AO, and interpreter, if any, execute a *Record of Applicant and Interpreter Oaths* (Appendix 2).

3. Dependents

The AO must personally meet each dependent (a.k.a. "derivative") included on a principal applicant's application. It is not necessary for the dependent(s) to be present for the entire interview, and it is often advisable to dismiss minors to the waiting room for the duration of the interview as long as there is an adult who can supervise the children.

Generally, an AO should consult with the principal applicant to determine his or her preference before dismissing any dependent. At the AO's discretion, a dependent spouse may be dismissed to the waiting room and/or interviewed separately, but a dependent minor should not be interviewed without his or her parent present.

For procedural guidance on issues involving dependents, see Section III.E.

In addition to personally meeting any dependents included as derivatives on the I-589, the AO verifies the dependent's identity, his or her relationship to the principal applicant, and ascertains the dependent's date, place, and manner of entry. The AO also ensures the dependent is not under the jurisdiction of the Immigration Court, and ascertains whether any mandatory bars apply. For guidance on cases where there is evidence that a dependent is subject to a mandatory bar, *see* Section III.E.11, *Dependent Subject to Mandatory Bar to Asylum*.

4. Interpreters

a. The Applicant's Interpreter

8 CFR 208.9

i. Placing the Interpreter Under Oath

The AO places the interpreter under oath and has the interpreter sign the *Record of Applicant and Interpreter Oaths* (Appendix A 1). The AO signs the *Record* as a witness.

ii. Interpreter's Role

See the AOBTC Basic Training Materials, *Interviewing Part VI: Working with an Interpreter*.

iii. Identity

Like asylum applicants, interpreters are not required to present identity documents in order to interpret for an asylum applicant. Regulations give an AO the authority to verify the identity of the interpreter, which is best accomplished through the review of identity documents. However, an AO may not terminate or reschedule an interview if the interpreter is lacking identity documents, or presents identity documents that the AO does not wish to accept. Local asylum office policy dictates whether an AO should photocopy any identity documents of an interpreter, or whether the AO should indicate on the *Record of Applicant and Interpreter Oaths* the type of identity documents, if any, the interpreter provided. AOs must base an individual's ability to interpret on interpretation skills and not on questions of identity.

There may be instances where an AO believes that the issue of an individual's identity is material to his/her ability to interpret. The AO must consult with the SAO in these circumstances. Only the Asylum Office Director or his/her designee has the authority to dismiss/bar an individual from interpreting in an office.

Check with local asylum office management for any procedures for barring interpreters.

iv. Solicitation of Interpreter Services

Solicitation is prohibited on federal property. Asylum offices must take measures to prevent soliciting of or by interpreters in the vicinity of the office.

v. Abuse of the Interpreter's Role

An AO may believe that a particular interpreter is abusing his/her role as an interpreter by engaging in one or more of the following types of conduct:

(a) Misrepresentation or Fraud

The interpreter appears to be willfully changing, creating, omitting or otherwise misrepresenting oral testimony of the applicant.

(b) Incompetence

The interpreter is unable to perform the required service due to insufficient language skills. This may involve vocabulary and diction, as well as pronunciation and other accent problems, and applies to both languages used.

(c) Improper Conduct

The interpreter uses abusive or intimidating language or otherwise disrupts the interview process or the front counter procedures. The interpreter is soliciting business on the asylum office premises.

If one or more of these scenarios applies, the AO (if occurring during an interview) or supervisory asylum office personnel (if occurring at the front desk) informs the interpreter of the problem s/he witnessed and asks the interpreter to correct the behavior. If the behavior continues, appropriate asylum office personnel:

- With SAO approval, terminate or cancel the interview.
- Explain to all parties (the applicant, interpreter, and representative) the reason the interview is being terminated or cancelled.
- Explain to all parties that the applicant will be rescheduled only once and that the applicant must reappear with a different interpreter who is competent and who has not previously been found to have abused his or her role as an interpreter. This rescheduling will stop the EAD clock until the applicant appears for his/her rescheduled interview.
- Complete a *Rescheduling of Asylum Interview – Interpretation Problems* (Appendix A 3), providing the original to the applicant and maintaining a copy in the file. Copies of any identity documents submitted by the interpreter are attached to the file copy of the letter.
- Explain to all parties that a copy of the letter will be submitted to asylum office management, which may result in the interpreter being barred from the office.
- Asylum office personnel reschedule the interview in RAPS using the Remove Case from Schedule (REMC) command, indicating the rescheduling is caused by the applicant.

b. Asylum Office Provision of a Contract Interpreter Monitor

Until the promulgation of regulations requiring USCIS to provide interpretation at affirmative asylum interviews, Asylum Offices will use contract interpreters to monitor affirmative asylum interviews at local Asylum Offices and at circuit ride locations. The Asylum Division has contracted with an interpretation services company to provide interpretation during affirmative asylum and credible and reasonable fear interviews. For information on contacting the interpretation services company for affirmative asylum interviews, please see Langlois, Joseph E. Award of Interpreter Services Contract and Interim Guidance on Monitoring of Asylum Interviews by Contract Interpreters, Memorandum to All Asylum Office Personnel, DRAFT.

Asylum Offices should continue to follow the guidance in Section III.E.3 of the draft *Credible Fear Procedures Manual* and Section III.D of the draft *Reasonable Fear Procedures Manual* for using contract interpreter services during credible and reasonable fear screening interviews.

At this time, the Asylum Division is not providing direct interpretation services, except in the case of hearing-impaired applicants. If a hearing-impaired applicant requires the services of a sign-language interpreter, the asylum office will work with the interpreter services contractor to provide in-person interpretation by a professional sign-language interpreter. See Section III.B.6 below for additional information on accommodations for applicants with disabilities.

i. Determining the Language of Interpretation

Asylum Offices can use I-589 items 22 ("What is your native language? (*Include dialect, if applicable.*)"), 23 ("Are you fluent in English?"), and 24 ("What other languages do you speak fluently?") to determine the language of interpretation. If it appears that the interview will be conducted in an infrequently used language, the Asylum Office should contact the interpretation services company as early as possible in advance of the interview to arrange for a monitor in that language. Asylum Office personnel should be aware that applicants sometimes indicate that they are fluent in English, when in fact they are not, or indicate that they speak a language in which they are not fluent. In such cases, it may be necessary to use the interpretation services company to determine the language of interpretation at the time of the interview.

ii. Connecting to a Telephonic Interpreter

If the Asylum Officer is not connected with a contract interpreter within ten minutes, he or she should proceed with the interview, without monitoring by the contract interpreter, and note this on the interview monitoring call record. After the interview, the Asylum Officer should inform a supervisor of any failure of the contractor to provide an interpreter, who in turn informs the Contracting Officer's Technical Representative (COTR) at Headquarters.

An Asylum Officer may only use a contract interpreter who has cleared appropriate security checks. If the operator indicates that there is no cleared contract interpreter available to monitor in the required language, the interview will proceed without monitoring.

iii. Arranging an On-Site Interpreter

There may be some instances in which the Asylum Office Director determines that an interpreter's or an interpreter monitor's physical presence is required at the interview site. Such situations may include interviews requiring sign-language interpreters, interviews of minors, or interviews of asylum applicants who are mentally incompetent or physically incapacitated. *See* Section III.B.6 below for guidance on applicants with disabilities.

iv. Role of the Contract Interpreter

In general, the role of the contract interpreter is limited to monitoring interpretation by an interpreter provided by the applicant. The contract interpreter may not serve as the primary interpreter in the event of incompetence on the part of or other difficulty with the applicant's interpreter. If the contract interpreter advises the Asylum Officer that there are problems with the applicant's interpreter, or if the Asylum Officer otherwise experiences difficulty with the applicant's interpreter, the Asylum Officer should refer to Section II.J.4.e. Because the contract interpreter may not be familiar with the provisions of this manual, the Asylum Officer must use his or her own best judgment to determine whether the applicant's interpreter has abused his or her role during the interview. If the applicant's interpreter requires assistance, he or she may occasionally ask the contract interpreter for help in translating a word or phrase. As a general rule, the interpreter may be called upon to translate a word or two, but not a sentence or more.

At the discretion of the Asylum Office Director and with the concurrence of Headquarters, Asylum Officers may use contract interpreter services to interpret, as opposed to monitor, at an asylum interview. Examples of situations in which contract interpreters may interpret directly may include certain termination interviews or situations in which patterns of fraud have been detected.

Contract interpreters may be expected to occasionally interject if the applicant's interpreter fails to provide adequate, accurate, and neutral interpretation. However, the contract interpreter should not be allowed to interject excessively or inappropriately. For example, the contract interpreter should not call attention to minor mistranslations, such as an adjective that might not be the monitor's choice but that accurately conveys the meaning of the applicant's statement. If the contract interpreter frequently interjects, the Asylum Officer must determine whether frequent interjections occur because the applicant's interpreter has abused his or her role, or whether the contract interpreter misunderstands his or her role as a monitor, and take appropriate action. In addition, the Asylum Officer should not permit any argument between the contract interpreter and the applicant's interpreter. If there is a dispute in interpretation between the contract interpreter and the applicant's interpreter, the Asylum Officer should note both interpretations in his or her interview notes. However, the Asylum Officer should accept the contract interpreter's interpretation in adjudicating the case, as it can be presumed to reflect more accurately the applicant's testimony. Under no circumstances should the contract interpreter discuss material aspects of the applicant's asylum claim with the Asylum Officer or the applicant's interpreter.

v. Working with the Contract Interpreter

(a) Introduction and Orientation

At the beginning of the interview, the Asylum Officer explains to the applicant, through the applicant's interpreter, that a contract interpreter will be monitoring the interview to ensure the accuracy of interpretation by the applicant's interpreter. The Asylum Officer should also remind the contract interpreter, in the presence of the applicant, of the confidentiality requirements of the interview and should inform the applicant that the interpreter has pledged to keep any and all information the applicant provides during the interview confidential.

The Asylum Officer administers an oath to the contract interpreter, in addition to administering an oath to the applicant and to the applicant's interpreter. The Asylum Officer should use the following language for the contract interpreter's oath:

> Do you affirm that you will truthfully, literally, and fully report to the Asylum Officer any mistranslation observed during the course of this asylum interview? Do you affirm that you will immediately notify the officer in this case if you become aware of your inability to monitor in a neutral manner, on account of a bias against the applicant or the applicant's race, religion, nationality, membership in a particular social group, or political opinion? Do you affirm that you understand that all matters discussed in this interview are confidential and that you will not share what you hear today with any person?

This oath should be translated for the applicant by the applicant's interpreter. The Asylum Officer should record in the interview notes that the asylum officer administered the oath to the contract interpreter.

(b) Problems with Applicant's Interpreter

If, based on information provided by the contract interpreter, the Asylum Officer determines, and a Supervisory Asylum Officer concurs, that the applicant's interpreter has abused his or her role, as described in II.J.4.a.v above or, if the applicant's interpreter is not competent to interpret, the Asylum Officer should terminate the interview. The interview will be rescheduled at the fault of the applicant, and the 150-day clock will be stopped.

(c) Problems with the Contract Interpreter

If the Asylum Officer experiences problems with the contract interpreter, such as frequent and/or inappropriate interjections, unavailability, absence, or unresponsiveness of the contract interpreter when prompted by the Asylum Officer, the Asylum Officer may request another contract interpreter. Any difficulty with the contract interpreter should be noted on the interview monitoring call record and brought to the attention of the Asylum Office management, which will in turn notify the COTR.

(d) Conclusion of the Interview

At the conclusion of the interview, in the presence of the applicant and his or her interpreter, the Asylum Officer should ask the contract interpreter if he or she has any final or overarching concerns about the interpretation provided by the applicant's interpreter. If the contract interpreter has comments, the Asylum Officer should address them with the applicant before concluding the interview. If the contract interpreter has no comments, the Asylum Officer may disconnect the call. Once the call is disconnected, the Asylum Officer records the disconnect time on the interview monitoring call record.

vi. Requirements for Local Office Interview Monitoring Call Record

The local office interview monitoring call record must, at minimum, contain the following information:

- Applicant's A-number;
- Asylum Officer's name and/or office ID number;
- Language of interpretation;
- Date of interview;
- Connect time;
- Disconnect time;
- Notation as to whether or not an interpreter was available in the language requested;
- Notation as to whether the contractor failed to connect the Asylum Officer with a contract interpreter within ten minutes;
- Notation as to whether the contract interpreter had to be replaced and, if so, for what reason; and
- Any problems with the contract interpreter.

vii. Tracking Call Times and Call Duration

The Asylum Office Interpreter Liaison will be responsible for collecting interview monitoring call records for the entire office. The office liaison will use the call records to compile an office call log, which he or she will compare against biweekly invoices provided via email by the COTR. Any discrepancy between the office call log and the invoices should be reported immediately to the COTR.

5. Legal Representative

a. Representative Qualifications

An applicant may be represented by:

- An attorney (a member in good standing of the bar);
- A Board of Immigration Appeals (BIA) Accredited Representative;
- A law student or law graduate not yet admitted to the bar (with certain restrictions described at 8 C.F.R. 292.1(a)(2)); or
- A reputable person who fits certain criteria. *See* 8 C.F.R. 292.1(a)(3).

8 C.F.R. 292.1 outlines the qualifications for a representative.

8 C.F.R. 292.4

b. Representative Appearances

A Form G-28, *Notice of Entry or Appearance as Attorney or Representative* must be properly executed. "Properly executed" is defined as follows:

i. For a Form G-28 filed prior to February 10, 1994

Only the representative's signature is required on the form. If the applicant signed the form but the representative did not, the form is not properly executed. In this scenario, USCIS does not recognize that the applicant is represented. If the representative appears at the interview, the Asylum Officer requests the representative to sign the form prior to the interview.

See 56 FR 61201 and 59 FR 1455-1466 for supplemental information regarding the change in G-28 requirements effective 02/10/94.

ii. For a Form G-28 filed on or after February 10, 1994

The signatures of the applicant and the representative are required on the form. If both signatures are not present, USCIS does not recognize that the applicant is represented. However, the Asylum Officer may obtain the missing signatures at the time of the interview to cure the defect.

If a Form G-28 is not in the file, and the applicant appears with a legal representative, the AO has the representative and the applicant complete and sign a G-28 prior to beginning the interview. This should be done even when the file already contains a Form G-28 executed by a different attorney from the same law firm as the attorney representing the applicant at the interview.

c. Representative Role

See AOBTC Basic Training Materials, *Interviewing Part I: Overview of Nonadversarial Asylum Interview*.

d. Failure of Representative to Attend Interview

If the representative on the G-28 is not present at the interview, the AO should ask the applicant whether he or she is still represented by the individual listed on the G-28.

If the applicant is no longer represented by the individual listed on the G-28, the AO:

- Asks the applicant to sign a brief statement that he or she wishes to withdraw the individual listed on the G-28 from the asylum claim.
- Attaches the signed statement to the G-28 and places the G-28 on the right-hand side of the file.
- Removes the representative from RAPS using the Attorney/VOLAG Search (REPR) screen. To remove the attorney/VOLAG ID, enter the REPR command and the A-number. Then, enter a "Y" in the "Remove (Y/N)" field on the REPR screen and press enter. CHIS will show an action narrative and user ID any time an attorney/VOLAG ID is modified.
- Proceeds with the interview.

If the applicant continues to be represented by the individual listed on the G-28, the AO explains to the applicant that he or she may proceed without the representative, but is not required to do so:

- If the applicant wishes to proceed with the interview, the applicant signs a *Waiver of Presence of Representative During an Asylum Interview* (Appendix 8).
- If the applicant does not wish to proceed without representation, the AO permits the applicant to reschedule the interview and completes a *Case Reschedule History* (Appendix 9).
- If the applicant wishes to reschedule the interview, the AO determines whether the failure of the representative to appear could be the fault of USCIS. The AO ascertains whether the Asylum Office properly sent notice of the interview to the representative by:
  - Questioning the applicant
  - Checking to see if the representative is listed in RAPS
  - Seeing if a copy of the representative's *Interview Notice* is in the file.

SAO consultation is required before rescheduling an interview.

If a copy of the representative's *Interview Notice* is in the file, the Asylum Office presumes that USCIS properly sent notice of the interview to the representative. Therefore, the failure of the representative to appear is not the fault of USCIS. Asylum Office personnel update the Remove Case from Schedule (REMC) command, indicating that rescheduling is caused by the applicant. The 180-day EAD Clock is tolled.

If the representative was retained after the Interview Notice was issued, USCIS is not at fault for failing to notify the representative about the scheduled interview date.

If a copy of the representative's *Interview Notice* is **not** in the file, the failure of the representative to appear is the fault of USCIS. Asylum Office personnel update the Remove Case from Schedule (REMC) command, indicating the rescheduling is at the fault of USCIS. The 180-day Clock is not tolled.

e. Abuse of Representative's Role

It is the AO's duty to ensure that the representative follows the rules of the interview as explained at the outset of the interview, which includes turning off all cellular phones or beepers.

With concurrence of an SAO, an AO may ask a representative who continuously fails to abide by the rules after repeated warnings, to leave the interview. If the attorney is asked to leave, the AO either continues with the interview or suspends the interview at the applicant's request. If the interview is suspended, the rescheduling of the appointment is at the fault of the applicant, so the EAD clock stops. The AO must clearly outline in the interview notes what occurred during the interview that prompted the representative's dismissal from the AO's office.

An AO must consult with an SAO prior to dismissing an attorney from an interview.

f. Attorney's License to Practice Law

See 8 C.F.R. 292.3

An Immigration Judge, the BIA, or the Attorney General may suspend or bar from further practice before the EOIR or USCIS, or may take other appropriate disciplinary action against, an attorney or representative if it is found that it is in the public interest to do so. A formal proceeding to suspend or bar an individual attorney pursuant to 8 C.F.R. 292.3 may occur if he or she is under any order of any court revoking or suspending his or her license to practice law in a particular state, possession, territory, commonwealth, or the District of Columbia. Orders suspending or expelling attorneys are periodically forwarded to the Asylum Offices, and a list of such attorneys is maintained on the EOIR web site at http://www.usdoj.gov/eoir.

If the Asylum Office learns that an attorney who has filed an appearance with the Asylum Office has been suspended or expelled by EOIR or the Attorney General, the Asylum Office may not permit the attorney to act as a representative in connection with the interview or other proceeding during the term of the suspension or expulsion. Such an attorney may not act as an interpreter in any case for which he or she has previously filed an appearance (G-28). The representative code is removed from RAPS only when the attorney has been permanently expelled from practice before USCIS or EOIR in accordance with 292.3.

Although 8 C.F.R. 1.1 defines an attorney as someone who is not under any order of any court, suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law, the USCIS Office of Chief Counsel has advised the Asylum Division that an Asylum Office cannot ban an attorney from representing asylum applicants, absent a formal proceeding to suspend or bar the individual under 8 C.F.R. 292.3, even if the licensing state, possession, territory, commonwealth, or the District of Columbia has taken such action.

Therefore, if an Asylum Office becomes aware that an attorney's license has been revoked in a particular state, possession, territory, commonwealth, or the District of Columbia, the Asylum Office cannot ban that attorney from representing asylum applicants. An Asylum Office may require the attorney to assert his or her eligibility to act in a representative capacity each time he or she appears at the Asylum Office.

When an attorney, who the Asylum Office has learned is no longer licensed to practice law in a particular state, possession, territory, commonwealth, or the District of Columbia, appears at the Asylum Office to represent an asylum applicant, an SAO, the Deputy Director or the Director informs the attorney that:

- The Asylum Office is aware that a particular state, possession, territory, commonwealth, or the District of Columbia revoked his or her license to practice law.
- If he or she is licensed to practice in another state, possession, territory, commonwealth, or the District of Columbia, he or she may complete a new Form G-28 and can list the area where he or she has a license to practice law. Call to the attorney's attention question #1 on the form which states "… and am not under a court or administrative agency order suspending…"
- The Asylum Office will report his or her appearance to DHS Counsel for appropriate action.

If the attorney completes a Form G-28, the Asylum Office allows him or her to appear at the interview.

An SAO, Deputy Director, or Director takes the preceding steps each time the same attorney wants to represent an applicant. In addition, the SAO, Deputy Director or Director copies the Form G-28 in the file and any new G-28 the attorney completes, and writes a brief outline of any conversations with the attorney for forwarding to the USCIS Area Counsel. The Area Counsel's Office may notify EOIR, and the bar within the state, territory, commonwealth, or the District of Columbia that revoked the attorney's license, if appropriate.

6. Witnesses

Pursuant to regulation, an asylum applicant may present witnesses to testify on his or her behalf. There are no restrictions on witnesses with regard to the number of witnesses, age, their own asylum or immigration status, or the relationship to the applicant, except that an interpreter of record or the representative of record may not act as a witness.

An AO may not refuse a witness the opportunity to testify; however, an AO may place a reasonable limit on the length and subject matter of a witness's statement(s), and may request a witness's statement in writing.

See 8 C.F.R. 208.9

7. Submission of Documents

The applicant may present documents in support of his or her case during the interview. Documents submitted must be in duplicate, and accompanied by a certified English translation if they are not in English. Documents that do not meet these requirements need not be accepted. If they are accepted without translations, Asylum Office personnel explain to the applicant that translation is required for them to be considered in support of the application. While applicants may submit facsimile or photostatic copies as documentation, they are not given the same weight as an original. No restriction applies to the amount or nature of documentation an applicant may submit; including videotapes, audiotapes, and photographs.

See 8 C.F.R. 103.2(b)(3) for requirements on certified translations.

When the applicant presents an original document, the AO copies the document (if copies are not submitted by the applicant), and writes on it, "original seen and returned," signing and dating below the statement.

8. Retention of Applicant's Original Documents

In support of his or her application an asylum applicant may submit documentation that the Asylum Officer, in consultation with the office's fraud prevention coordinator, may believe is fraudulent or fraudulently obtained or that the applicant admits is fraudulent or fraudulently obtained. When an applicant admits that a document is fraudulent or fraudulently obtained, the Asylum Officer takes a sworn statement detailing the applicant's admission.

a. During the Adjudication of the Asylum Application

An Asylum Officer may retain a document that is presented during an interview or submitted with an application until the conclusion of the adjudication in order to consider the document and determine its authenticity. The adjudication of the asylum application continues if the application is referred to an Immigration Judge; therefore, DHS may continue to retain documents in the A-file during immigration proceedings.

Once documents are received from the applicant, they should be considered in a timely fashion in order to determine whether they are fraudulent or were obtained fraudulently.

b. After the Adjudication of the Asylum Application

An AO may retain a document of questionable authenticity for further analysis, such as forensic examination. Pursuant to guidance from the USCIS Office of Chief Counsel, the Asylum Office does not need the applicant's permission to retain a document. If the AO retains a document, he or she must give the applicant a Form I-72 or office equivalent as a receipt, as well as a copy of the document. On the Form I-72 the AO must state the name of the document and indicate the reason for the retention of the document.

See Melmed, Lynden, USCIS Chief Counsel, Authority of Asylum Officers to Retain Fraudulent Documents or Documents Fraudulently Obtained, Memorandum to Lori Scialabba, Associate Director of Refugee, Asylum, and International Operations, and Greg Smith, Acting Associate Director of National Security and Records Verification, 30 November 2007, 4p.

For original documents retained by the Asylum Office, forensic examination may take place either at the ICE Forensic Document Laboratory (FDL) or at another DHS facility, such as a fraudulent document unit or intelligence unit at a port-of-entry. Submission of a document for analysis should be done only if the AO/SAO believes that the analysis of such a document may affect the outcome of the decision.

See Section II.M.7 for information on the ICE FDL.

Local Asylum Office policy determines whether an AO must consult with an SAO or other office personnel if an AO wants to send a document for analysis.

Given the circumstances of a particular case, an Asylum Office Director may place a case on "HOLD – AD" while awaiting a report on the analysis of a document. This authority cannot be delegated. Please note that by placing a case on HOLD-AD, the 180-day EAD clock is stopped.

c. Handling and Return of Documents

If the FDL finds a document authentic or if no determination of authenticity is made, the Asylum Office promptly returns the document to the applicant. The Asylum Office may give the original document to the applicant at the time he or she picks up the decision, or may mail the document to the applicant.

If the Asylum Office returns the document to the applicant in-person, the applicant should sign on the file copy of the document that he or she received the original. If the Asylum Office mails the document, it must be sent via certified mail, with a return receipt.

If the FDL determines that a document is fraudulent, the Asylum Office does not return the document to the applicant. The Asylum Office sends the applicant a *Retention of Original Documents* letter (Appendix 10) informing him or her that USCIS is retaining the document(s). A copy of the letter remains in the file along with the fraudulent document, which is placed in an evidence envelope on the non-record side of the file.

The submission of fraudulent documents by an applicant may affect his or her eligibility for asylum. AOs must be familiar with guidance on this issue that has been provided by HQASM. *See* Langlois, Joseph E. Matter of O-D-, Int. Dec 3334 (BIA 1998), Memorandum to Asylum Directors, Supervisory Asylum Officers, and Asylum Officers, 29 April 1998, 3p., and Langlois, Joseph E. Discovery of Fraudulent Documents After the Asylum Interview, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers, 27 May 1998, 2p.

9. Note-taking by the AO During an Asylum Interview

Most interviews will require standard note-taking as outlined in the AOBTC Basic Training Materials, *Interviewing Part II: Note-Taking*; however, HQASM requires notes in sworn statement format under the following circumstances:

- The applicant admits, or there are serious reasons to believe, he or she is associated with an organization included on either the Foreign Terrorist Organizations List or the Terrorist Exclusion List, both of which are compiled by the Department of State and are available at http://www.state.gov/s/ct/.
- The applicant admits, or there are serious reasons to believe, she or he is involved in terrorist activities.
- The applicant admits, or there are serious reasons to believe, he or she assisted or otherwise participated in the persecution of others on account of one of the 5 enumerated grounds.
- There are serious reasons for considering the applicant a threat to national security.
- The applicant admits that or there are serious reasons to believe that he or she committed or was convicted of a serious crime outside of the U.S. and the file does not contain a record of the conviction.
- The applicant admits, or there are serious reasons to believe, he or she committed human rights abuses.

The circumstances noted above all relate to mandatory bars to asylum. Because an applicant's admission may be used as a basis to institute deportation or removal proceedings against him or her, or as a basis for DHS to detain the applicant, it is crucial for the AO to take notes in a sworn statement format about the mandatory bar.

When an AO determines that an applicant has provided information that pertains to one of the circumstances listed above, the AO begins taking notes in the Q&A format on a new sheet of paper in order to separate them from any notes the AO may have already recorded. Once the AO uses this format, he or she continues to use it until the end of interview, even if the discussion surrounding a possible mandatory bar has concluded. The sworn statement Q&A does not have to be a verbatim account of every comment made during the interview, but it must provide a full and accurate record to the specific questions asked of the applicant and the applicant's specific answers. Each page of the sworn statement should contain the applicant's A-number, the date of the interview, and the AO's name.

SAO concurrence may be required before changing the note-taking format to a Q&A format. Check with local Asylum Office management for requirements.

At the conclusion of the interview, the AO incorporates the Q&A notes into the sworn statement template (Appendix 63) (manually or electronically) and reviews the sworn statement with the applicant, making any corrections requested by the applicant. The applicant initials the bottom right-hand corner of each page. Both the AO and the applicant print and sign their names below the last recorded answer.

The AO draws a diagonal line from the end of the testimony to the bottom of the page to ensure that no one adds additional comments. If the applicant refuses to sign and/or initial the sworn statement, the AO writes a note to that effect on the last page. The AO prints and signs his or her name and draws a diagonal line from the end of the testimony to the bottom of the page.

10. Applicant Testifies to Fraudulent Entry or Violation of Status

Asylum Office personnel may encounter an applicant who was inspected and admitted, and whose authorized period of stay has not expired, but who testifies that he or she gained admission to the U.S. through fraud or that he or she has violated the conditions of his or her status.

Asylum Office Directors maintain discretion to establish local policies, in consultation with local USCIS Area Counsel and/or ICE Office of the Principal Legal Advisor (OPLA), as to note-taking, documentation of the file, whether to treat such an applicant as in- or out-of-status for the purposes of issuing a *Notice of Intent to Deny (NOID)*, whether and how a charging document is prepared, and whether consultation with the Director is required in making any of the above determinations. Asylum Office Directors establish local policies in accordance with the following priorities:

The taking of a sworn statement is strongly recommended, even if it would not be accepted to sustain a fraud charge in the local jurisdiction. The statement could later serve as evidence for DHS to consider in future applications for immigration benefits.

- A charging document issued by the Asylum Office will be sustained by the Immigration Court, i.e., proceedings will not be terminated, regardless of whether the alien appears for his or her hearing before the Immigration Judge.
- Charges on an NTA are substantiated, i.e., if fraud is charged, there is sufficient evidence for DHS to prevail on that charge before the Immigration Judge.
- The file is documented with a reliable record of the applicant's testimony and copies of evidence in the applicant's possession.
- The asylum application is processed and completed in a timely manner.

Note: An AO may not deem a document fraudulent based solely on his or her judgment and may not confiscate an applicant's documents without his or her consent. See Section II.J.8, *Retention of Applicant's Original Documents in the File*.

11. Conducting an Interview in a Language other than English

Each asylum office has a local policy on whether an AO may conduct an asylum interview in a language other than English in accordance with the below guidance. If the local policy allows an AO to conduct interviews in a language other than English, the AO must be certified by the Department of State (DOS).

An applicant, who is not fluent in English, is required to bring an interpreter with him/her to the asylum interview. Depending upon local policy and with the asylum applicant's approval, the AO can either conduct the interview in the applicant's language, if the applicant agrees, or use the services of the interpreter. The AO must make a clear notation in the interview notes that the interview was conducted in a language other than English and indicate the language used by the AO. If the AO conducts an interview in the applicant's language, it is preferable that a competent interpreter be present during the interview to monitor the level of understanding between the asylum officer and applicant.

Because 8 CFR 208.9(g) requires an applicant who is not competent in English to bring an interpreter to an asylum interview, as a general rule, asylum applicants are required to bring interpreters regardless of whether there are asylum office personnel available to conduct interviews in languages other than English. Nevertheless, the asylum office Director maintains the discretion to allow qualified asylum office personnel to conduct or assist in the conducting of an interview in the applicant's preferred language, with the applicant's consent, if there are extraordinary circumstances for doing so, such as (but not limited to) the disqualification of an interpreter through no fault of the applicant combined with the applicant's having traveled a very long distance for the interview, etc.

12. Applicants Unable to Testify on their Own Behalf

An asylum applicant may be incapable of testifying on his or her own behalf due to mental incompetence, a physical disability. See Section III.B.6 below for additional guidance on applicants with disabilities. These include individuals who suffer from acute mental or physical disorders, or have suffered an injury, such as a stroke, that makes them unable to communicate.

Asylum Office personnel are neither trained nor expected to evaluate an asylum applicant's mental or physical competency and shall not make any determinations to that effect. However, there may be cases in which an applicant manifests behavior that leads Asylum Office personnel to question the applicant's ability to provide competent testimony.

When Asylum Office personnel become concerned that an applicant is not competent to testify, a Supervisory Asylum Officer must be notified and apprised of the reasons for concern. If the Supervisory Asylum Officer believes that there are reasonable grounds to question the competence of the applicant to provide testimony, Asylum Office personnel shall explain the procedures in this section to a representative, family member or guardian accompanying the applicant to the Asylum Office, or to the asylum applicant him or herself, if practicable.

Although the burden of proof is on the applicant to establish his or her eligibility for asylum, a Director may permit another individual to testify on behalf of an applicant who is unable to testify on his or her own behalf as long as certain criteria are met.

a. Criteria and Required Documentation

For another individual to be allowed to testify on behalf of an applicant, the nature of the applicant's condition must be so severe that it rules out the possibility of him or her testifying on his or her behalf at any time in the near future. Additionally, the applicant must be under the care of a physician, psychiatrist, or psychologist who certifies in a letter that the applicant is mentally or physically incompetent to be interviewed about his or her asylum application in the near future. Only the Asylum Office Director may waive the requirement of documentation if extraordinary circumstances warrant. When provided, documentation must include:

- Length of time the physician, psychiatrist, or psychologist has been treating the applicant.
- Condition from which the applicant suffers, including any type of medication that is prescribed.
- Long term prognosis of the applicant's mental or physical condition.

Usually, an applicant who suffers from post traumatic stress disorder (PTSD) would not be considered unable to testify on his or her own behalf. Individuals who are seeking medical assistance for PTSD or other mental health conditions may request a postponement of an asylum interview. The request should be made in writing to the attention of the Asylum Office Director, who determines whether the request shall be granted and how long the interview shall be postponed.

b. Testifying on an Applicant's Behalf

The individual testifying on the applicant's behalf cannot be the representative of record. The individual must have first-hand knowledge of the applicant's asylum claim. There is no requirement that the individual be the applicant's relative, only that he or she possesses sufficient knowledge of the applicant's situation in order to sustain the applicant's burden to establish asylum eligibility.

If no one is available to testify on the applicant's behalf, or the above criteria are not satisfied and competent testimony cannot be taken, contact HQASM for guidance on how to proceed.

13. Re-interviews of Asylum Applicants

An Asylum Office Director maintains the discretion to have an Asylum Officer re-interview an asylum applicant. The types of case that are normally re-interviewed include (but are not limited to):

- An applicant who was interviewed prior to the establishment of the asylum corps in April 1991.
- An applicant who was interviewed by an AO who left the Asylum Office but did not make a decision on the asylum claim prior to departing.
- An applicant who was interviewed by an AO, but the record was not sufficiently developed in order to reach a legally sufficient decision in the case. At the discretion of the Director, either the same AO or another AO interviews the applicant.

If a re-interview occurs, any notes or records of the previous interview remain in the file, on the non-record side. The original assessment may remain in the file, where appropriate, and only at the discretion of the Asylum Office Director, but must be clearly marked "DRAFT – UNOFFICIAL" on each page. In addition, the file should contain a print-out of the Case Status (CSTA) screen in RAPS marked "DRAFT - UNOFFICIAL," which shows any decision that may have been made prior to the re-interview.

Except for ABC cases in which the interview is the first ABC interview and prior to an initial assessment, the AO may develop lines of questioning based upon the record of the initial asylum interview, but must create a new record for the re-interview. If the decision following the re-interview differs from the previous decision, where appropriate and at the Asylum Office Director's discretion, the AO's assessment should briefly explain the basis for the change in decision.

See the ABC/NACARA Procedures Manual for more information on adjudicating ABC cases.

14. Discovery of Adverse Information After an Asylum Interview

An AO may discover information after an asylum interview but before writing a decision, which adversely impacts upon the asylum claim. A non-exhaustive list of examples includes:

- country conditions information that contradicts a material aspect of the asylum claim,
- results of a forensic or other examination reveal that material documents are fraudulent, or
- review of information in a second A-file of an applicant indicates the applicant may be a national of a different country than the one he or she claimed on the asylum application.

In all cases where adverse information is discovered before or during the interview, the AO provides the applicant with the opportunity to explain any discrepancies or inconsistencies during the course of an interview. If discovery of the adverse information occurs after the interview, the AO apprises the applicant of the information either in a *NOID* or a *Referral Notice*, depending on the applicant's status. In compelling cases where testimony was otherwise solid and convincing, an Asylum Office Director maintains the discretion to re-interview an applicant when adverse information is discovered after the asylum interview. However, a re-interview should take place only in extremely exceptional circumstances.

See Langlois, Joseph E. Discovery of Fraudulent Documents After the Asylum Interview, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers, 27 May 1998, 2p.

a. Applicant is Maintaining a Valid Status or Parole is Valid

The applicant is given an opportunity to explain any issues of credibility in a written rebuttal to a *NOID*. The *NOID* must clearly outline the adverse information, including identifying documents that were found fraudulent, and explain how it negatively impacts upon the asylum claim.

b. Applicant is Deportable or Removable

The AO clearly reflects in the *Assessment to Refer* that the applicant did not have an opportunity to rebut the information during the asylum interview. In addition, the AO outlines the adverse information and how it negatively impacts the asylum claim in the credibility section of the *Referral Notice*, including identifying documents that were found fraudulent.

For substantive guidance on how to proceed with fraudulent evidence, *see* AOBTC Basic Training Materials, *Fraud in the Context of Asylum Adjudications.*

K. AO CONCLUDES AN ASYLUM INTERVIEW

1. I-589 Application

At the conclusion of the interview, the AO:

- Reviews and explains to the applicant any corrections, additions, or changes made to the I-589 and numbers each correction, addition, or change.
- Informs the applicant that by signing the I-589, he or she is affirming/swearing that the information on the application is true and correct.

The applicant and the AO then sign and date the record copy(ies) of the I-589, as dictated by local Asylum Office policy.

See Weiss, Jeffrey. Form I-589 for the Immigration Court, Memorandum to Asylum Office Directors and Supervisory Asylum Officers, 21 August 1996, 1p.

2. AO Informs the Applicant About the Next Step in the Process

The AO does not inform the applicant of the decision during the course of the interview, or give any hint, suggestion, or any other indication of what the decision will be at the interview's conclusion.

The AO informs the applicant how he or she will be informed of the decision. With the exception of circuit rides, the Asylum Office generally requires an applicant to return to the office to receive the decision.

Check with local Asylum Office management to ascertain which cases receive an in-

a. In-Person Service (Personal Service)

The AO gives the applicant a *Pick-Up Notice* (Appendix 11). Only the principal applicant in the case receives the *Pick-Up Notice*; the A-numbers of all the dependents are listed on it. The applicant is informed that he or she and all dependents age 14 and over must appear in person to pick up the decision. The AO informs the applicant that while an interpreter is not required at the pick-up appointment, it is highly recommended, so that the applicant will fully understand the documents he or she is receiving and be able to ask any questions he or she may have.

The principal applicant must sign the A-file copy of the *Pick-Up Notice* to evidence his or her receipt of the pick-up requirement. Asylum Office personnel inform the principal applicant that he or she is signing the *Pick-Up Notice* on behalf of all dependents who are listed on the I-589 and are 14 years old and older. An Asylum Office Director may exercise his or her discretion to require any dependent 14 years of age or older to sign the A-file copy of the *Pick-Up Notice*, in addition to the principal.

It is crucial for the principal applicant to sign the Pick-Up Notice because there are consequences for EAD eligibility for failing to appear on a pick-up date. *See* Section III.I.3 for more information.

Local Asylum Office policy dictates which office employee (e.g. AO or IIO/CR) serves the *Pick-up Notice* and whether the individual serving the *Notice* must sign it along with the applicant.

b. Service by Mail

The AO gives the applicant a *Mail-out Notice* (Appendix 12). This informs the applicant that he or she is not required to return to the office to receive a decision. Only the principal applicant in the case receives the *Mail-out Notice*; the A-numbers of all the dependents are listed on it.

The principal applicant must sign the A-file copy of the *Mail-out Notice* to show that he or she was notified of how the decision will be processed.

c. Dismissing the Applicant

The AO makes sure the applicant clearly understands the next step in the process before dismissing him or her from the office. After the interview is concluded, the AO escorts the applicant out of the office to the waiting room or exit, making sure that the applicant has not left any belongings in the office.

L. AO UPDATES RAPS AND VERIFIES COPY OF I-589 SENT TO DRL

1. RAPS

Information in RAPS must match the same information on the Form I-589. The following RAPS checks and updates are relevant to completing AO responsibilities for processing the asylum application:

a. CSTA

The Case Status (CSTA) screen is a data display screen. The AO checks the CSTA screen to verify that the information is correct, and checks the CURR OFFICER (Current Officer) field to be sure the case is appropriately assigned to the AO. If it is not, the AO ensures appropriate Asylum Office personnel correct the data using the Modify Officer Assignment (MODA) command.

The CSTA screen has two pages. Pressing PF1 will show the second page of CSTA, which contains the applicant's current address, date, place, and manner of entry, relationship to the principal applicant, and other useful information. PF2 will return the user to the main CSTA screen. Pressing PF9 from the main CSTA screen will show the CSTA data for a dependent. When a CSTA screen print is required pursuant to instructions in this manual, the first page is sufficient unless otherwise specified.

b. CHIS

The Case History (CHIS) screen is a data display screen. The AO checks the CHIS screen when needed to see the history of significant RAPS transactions in the case such as the history of fingerprint processing, addition and deletion of dependents, interview scheduling and rescheduling history, employment authorization history, holds, changes in the applicant's address, decisions, and corrections to decisions. The CHIS screen maintains a record of the user ID associated with the actions listed. The CHIS screen also includes the same information for dependents, with the A numbers for all dependents associated with the file displayed in the upper center area of the screen. Each action listed in CHIS has a store date (STORE DT) and an event date (EVENT DT) associated with it. The store date is the date the action was entered or uploaded into RAPS, and the event date is the date the action took place or became effective. If no other date is entered, the default date for the event date is the store date. It is useful to note the store date of an action, because the action may have been stored in RAPS some time after the event date.

c. VIST

The Validate Immigration Status (VIST) screen is a data display screen and data update command. The AO updates or corrects the data fields, as necessary, by inputting "N" or "Y" in the "CURRENTLY IN STATUS (Y/N)?" field. When "Y" is indicated in the "CURRENTLY IN STATUS (Y/N)?" field, "VALID IN-STATUS" will appear in the upper right area of the CSTA screen. This update is required for in-status cases.

d. EOIR

The EOIR Data Inquiry (EOIR) screen displays data relating to EOIR proceedings including the hearing location, when proceedings were instituted, type of proceedings, asylum processing information, dates and types of decisions, appeal history, EAD clock information, and charges contained in the Notice to Appear (NTA) filed with EOIR. The EOIR screen is two pages. The second page, accessed by pressing PF1, displays the applicant's address with EOIR and the applicant's representative's name and address, if any. Designated Asylum Office personnel check the EOIR screen before each interview to ensure that the case is not under EOIR jurisdiction.

Explanations of abbreviations of EOIR codes are found in *EOIR Data Field Chart*, Appendix 4.

e. PUSH

The Pickup Scheduling (PUSH) screen is a data display screen and data update command. The AO checks that the pick-up appointment has been scheduled, where appropriate. The pick-up appointment may be viewed from the CSTA screen or the PUSH screen. If the decision pick-up has not been scheduled and a *Pick-up Notice* was issued to the applicant, the AO ensures the appointment is scheduled by designated Asylum Office personnel at the appropriate time, using the PUSH command. Once a pick-up date has been entered into RAPS, it may not be removed or changed without the express consent of an SAO. *See* Section III.T, *Reschedule Requests,* for more information.

f. MOVE and AHIS

The Address Change (MOVE) screen is for data display and data updating. Address History (AHIS) is for data display only. If the applicant has provided a new address, the AO changes the address utilizing the MOVE command. A list of the current and any previous addresses in RAPS can be accessed through the AHIS screen. The addresses are displayed in order, from the most recent to the earliest. The dates of address changes may be viewed in the CHIS screen.

g. I589 Screen

The Case Entry (I589) screen is for data display and data updating of biographical information. The AO checks all of the fields on the I589 screen for accuracy, and modifies as necessary. Any corrections or changes in biographical information such as date of birth, date, place, and manner of entry, gender, religion, or marital status made on the I-589 (including amendments made during the interview) should be entered.

When biographical information is changed in RAPS, AOs follow local procedure to ensure that the information will be updated in CIS by the designated clerical personnel with special update access to CIS.

h. NCHG

Asylum Office personnel may correct errors in the applicant's name in the Name Change (NCHG) screen. RAPS generates a weekly report in each Asylum Office with the A numbers of files that were updated using the NCHG command. Asylum Office Directors dictate local policy to ensure that all name changes are compared to CIS and, when appropriate, that CIS is updated by Asylum Office personnel with special update access to CIS. The "ALIASES" field in CIS should be updated if appropriate. Use of the NCHG command is documented in the weekly RAPS *Name Change Report* (RACNCG00).

The name of an applicant who has only one name is entered into RAPS, CIS or other system as a last name. The following language is entered in the first name field: "No Given Name."

With corroborating documentation and unless there is suspicion of fraud, an Asylum Officer may use NCHG to change an asylum applicant's name to a married name or maiden name after divorce, or when presented with evidence of a legal name change. Guidance is currently being sought from the USCIS Office of Chief Counsel regarding other applicant-requested name changes. Please contact HQASM Operations for guidance if an applicant requests to change his or her name without evidence of a legal name change.

Please note that changing an applicant's name in RAPS via NCHG automatically initiates a new FBI name check. For additional information, please refer to Section V of the Identity and Security Checks Procedures Manual.

i. FREQ

The Fingerprint Request (FREQ) command is used to manually request a fingerprinting appointment for an applicant or dependents. For additional information on the FREQ command, see the Identity and Security Checks Procedures Manual.

j. REPR

The Attorney/VOLAG Update (REPR) screen is a data display and data update screen. The main CSTA screen will show an identification number in the "ATTORNEY" field, if an attorney or representative has a G-28 on file and has been updated in RAPS. To verify that the correct representative and address are associated with the identification number displayed or to add a representative to the case, the REPR command is used. This command is required in cases with a G-28 on file to ensure the representative receives proper notice of case processing information.

If the representative's current identification number is not known, an "X" is entered in the "SEARCH/UPDATE DATABASE" field. Pressing the Enter key after entering the X will link the user to the Private Attorney Maintenance System (PAMS). By entering the appropriate three-letter code for the local USCIS District Office and the representative's last name, the user can search and find the representative's identification number. If the representative's name is found on the list, the AO enters an X to the left of the name and presses Enter. The full data entry for the representative identification number will display. If the information is correct, the AO presses Enter, which will return the AO to the REPR screen in RAPS at a prompt whether or not to replace the current I-589 representative with the representative selected. A "Y" must be entered and the Enter key pressed to complete the update. Note that PAMS may contain several listings for the same representative. Be sure to select the most current and complete listing. CSTA should be checked again to verify that the representative was entered.

To remove the attorney/VOLAG ID, enter the REPR command and the A-number. Then, enter a "Y" in the "Remove (Y/N)" field on the REPR screen and press enter. CHIS will show an action narrative and user ID any time an attorney/VOLAG ID is modified.

For further information about the REPR command, *see* the *RAPS User's Manual*.

k. Preparer Screens

The Preparer Update (PREP) screen is a data display and data update screen. The main CSTA screen will show an identification number in the "PREP" field if an individual other than the representative of record or the applicant's family member prepared the asylum application.

With regard to preparer information RAPS users may:

- Search a database of known preparers using the Preparer Database Search screen (PRES).
- Associate a preparer with an asylum or NACARA application through the Preparer Update (PREP) screen.
- Add or modify preparer records via the Add/Maintain Preparer Database screen (PREM).
- View the unique identification code of any preparer associated with an application via the Case Status screen (CSTA) and the I-881 Current Status screen (8STA).

For more information on the RAPS preparer screens see Langlois, Joseph E. New RAPS Capability: Preparer Tracking, Memorandum to All Asylum Office Personnel, 30 July 2007, 6p.

l. Minor Principal Applicants

RAPS captures data on minor principal applicants, both accompanied and unaccompanied. This mechanism allows the Asylum Division to track applicants who are unaccompanied minors and reminds Asylum Officers that modified procedures are in order when handling a minor principal applicant's claim.

The CSTA screen automatically displays "MINOR PRINCIPAL" when a principal applicant is under the age of 18 at the time of filing. In addition, an "UNACCOMPANIED MINOR (Y/N):" field has been added to the PDEC and FDEC screens. This field will require that a RAPS user indicate whether a minor principal applicant is an unaccompanied minor when updating RAPS, either with a preliminary decision using the PDEC command or a final decision using the FDEC command. For further information on RAPS functionalities regarding minor principal applicants see Langlois, Joseph E. Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS, Memorandum to Asylum Office Directors, et al., 14 August 2007, 9p.

Fur further information on minor principal applicants see Section III.B.2, *Children Filing as Principal Asylum Applicants*.

2. AO Sends a Copy of I-589 to DRL, if not Previously Sent

8 C.F.R. 208.11

If RAPS or the Service Center Processing Sheet does not indicate that a copy of the applicant's asylum application has been sent to the DRL for review, the AO prepares for DRL one full copy of the application from the file (including applicant-specific supporting documentation). The AO makes sure the A-number of the applicant and the name of the Asylum Office appear on the front of the application.

Check with local Asylum Office management about how submissions are sent to DRL.

Prior to sending the copy to DRL, Asylum Office personnel update the BHRHA Advisory Requested/Received (OPIN) screen to indicate the date the case was sent for an opinion. The submissions are sent to DRL at the following address:

DRL
Department of State
2201 C St. NW
Rm. 7802
Washington, D.C. 20520

An AO does not need to wait for any DRL response before making a decision on an asylum claim.

M. AO RESEARCHES A CASE

See AOBTC Basic Training Materials, *Country Conditions Research and the Resource Information Center (RIC)*, and the ISCPM.

1. Asylum Virtual Library (AVL)

The Asylum Virtual Library (AVL) is an online collection of documents produced and collected by HQASM and Asylum Field Offices. Documents in the AVL are organized into folders and include caselaw, country conditions information, decision writing templates, forms, policies and procedures, statistics, and training materials. Asylum Office personnel can find information by browsing through the folders or by conducting searches. Asylum Office personnel can find information on how to conduct searches at http://z02rsccow12:8080/docushare/dsweb/Get/Document-57111.

The AVL is currently located at http://z02rsccow12:8080/docushare/dsweb/HomePage; however, the web address is expected to change at some point in the future to http://asylumdocs.uscis.dhs.gov. Asylum Office personnel log in to the AVL with the same username and password that they use to log in to their computers.

2. The Country of Origin Information (COI) Research Section

The mission of the COI Research Section is to provide Asylum Officers with credible and objective information on human rights and country conditions in order that asylum applicants' claims may be adjudicated in a timely manner. The COI Research Section also maintains the Resource Information Center (RIC), a hard copy library of more than 100 serials and other publications and several electronic resources and databases. The collection consists of material generated by governmental and non-governmental agencies, international organizations, human rights advocacy groups, academia, and general news media. The RIC's electronic resources include a COI collection and links to electronic research tools within the Asylum Virtual Library (AVL). Before submitting a question to the COI Research Section, AOs must exhaust the resources available in the office, including checking all country conditions information in the AVL, in case the question has been answered previously.

AOs should discuss with their SAOs the submission of queries to the COI Research Section, as case processing may be delayed in order to complete the research. In addition, AOs should copy their QA/Ts on the submission of queries to the COI Research Section so that QA/Ts are aware of research needs and questions in the office. Queries are best sent by email (to "Queries, RIC" in the Global Address Book). The Asylum Office is responsible for developing a system to distribute to staff COI queries and responses. In addition, the COI Research Section will publish all query responses on the AVL. Access to certain query responses may be limited to certain user groups if the query response contains sensitive information.

3. The Department of State (DOS)

DOS can provide assistance with country conditions information through its DRL. Requests to the DRL may be addressed to the appropriate DRL country editor by phone. Asylum Offices should not contact DOS country desk officers except when directed to do so by DOS, e.g., for follow-up on an IBIS hit. As with COI requests, these calls should be coordinated through the QA/T, SAO and/or the in-house resource technician to avoid duplication.

When information contained in or pertaining to an asylum application is disclosed to a DOS employee, the USCIS or DHS officer must inform the DOS employee of the confidentiality requirements of 8 C.F.R. 208.6. Confidentiality requirements for asylum applications and the Department of State are discussed in more detail in Cooper, Bo. Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information, Memorandum to Jeffery Weiss, Director, Office of International Affairs, 21 June 2001, 7p., and in Langlois, Joseph E. Fact Sheet on Confidentiality, Memorandum to Asylum Office Directors and Deputy Directors, 15 June 2005, 1 p., including the attached fact sheet entitled *Federal Regulations Protecting the Confidentiality of Asylum Applicants*. *See also* 8 C.F.R. 208.6(b).

4. Office of Fraud Detection and National Security (FDNS)

The Office of Fraud Detection and National Security (FDNS) coordinates initiatives with DHS enforcement bureaus, including anti-fraud strategies and processes for referring cases to ICE for criminal investigation and prosecution. For more information on FDNS, please see the *Identity and Security Checks Procedures Manual* (ISCPM).

5. U.S. Embassies and Consulates Overseas

Under certain circumstances, AOs may need to be in touch with US embassies or consulates abroad. This should **not** be done directly. Requests for assistance or information from a U.S. Embassy or Consulate abroad should be coordinated through the QA/T(s) within the Asylum Office to the HQASM Supervisor for Quality Assurance/Training at (202) 272-1616.

6. Foreign Embassies and Consulates in the U.S.

Under certain (very rare) circumstances, an AO may require information from a foreign embassy or consulate about their regulations or laws (e.g., residency or citizenship laws that bear on the issue of firm resettlement). An AO may contact a foreign embassy or consulate directly under the following conditions:

- The AO has exhausted all country conditions research sources available to him or her, and the relevant information cannot be obtained.
- The AO's supervisor agrees that the information needed is material to the asylum claim and cannot be obtained through any other source.
- The AO will not violate confidentiality provisions of 8 C.F.R. 208.6. *See* Section III.C, *Confidentiality Issues*.

See also Cooper, Bo. Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information, Memorandum to Jeffrey Weiss, Office of International Affairs, 21 June 2001, 7p., and Langlois, Joseph E. Fact Sheet on Confidentiality, Memorandum to Asylum Office Directors and Deputy Directors, 15 June 2005, 1 p., including the attached fact sheet entitled *Federal Regulations Protecting the Confidentiality of Asylum Applicants*.

7. Forensics Document Laboratory (FDL)

The ICE FDL provides forensic examination of documents submitted by various units within DHS. Information about the FDL, the services it provides, and policies and procedures for submitting documents, is available on the *FDL Bulletin Board* in cc:Mail and on the Internet at http://www.ice.gov/pi/news/factsheets/fdl_fs_080304.htm.

Due to time constraints and FDL's policy of prioritizing the examination of documents pertaining to detained and criminal aliens over cases submitted by an Asylum Office, documents should generally only be submitted to the FDL if the AO or SAO believes that the analysis may impact on the outcome of the decision.

8. INTERPOL

An Asylum Office may become aware that INTERPOL stores information about a particular asylum applicant. An Asylum Office may not contact INTERPOL directly. Requests for investigative assistance from the DHS representative to INTERPOL should be coordinated through the QA/T(s) or Fraud Coordinator within the Asylum Office to HQASM at (202) 272-1629 or (202) 272-1631.

9. Federal Law Enforcement Agencies

An Asylum Officer may become aware that other federal law enforcement agencies (FLEAs), such as FBI or DEA, possess information about an asylum applicant. Asylum Officers may not contact FLEAs directly until after consulting with his or her SAO. Asylum Office Directors maintain discretion to establish procedures for contacting FLEAs. Disclosure of case information to FLEAs is covered in Section III.C, *Confidentiality Issues*, below.

N. AO PREPARES A DECISION

Once the AO completes the interview, he or she prepares the decision. The AO writes an *Assessment* or *NOID* in every interviewed case adjudicated by the Asylum Office. Local office policy dictates whether an individual other than an AO prepares a decision letter, NTA, I-94 card, etc.

This section lists the possible decisions that an AO may reach, and the documents that must be prepared to support that decision.

The instructions on which documents to prepare presume that the immigration status of the principal applicant and all dependents are the same. If a dependent's immigration status is different from the principal applicant's status, the principal applicant may receive different documents than those listed in this section. These are referred to as "Split Decisions." An outline of how to process a split decision may be found in Section III.E.9.

1. Applicant Appears Eligible for Asylum

The Asylum Office grants asylum in the exercise of discretion to an applicant who qualifies as a refugee under Section 101(a)(42) of the INA and is not barred from relief under Section 208(a)(2) or 208(b)(2) of the INA. The status of an applicant's identity and security check determines whether an applicant receives either a *Recommended Approval* letter or an *Asylum Approval* letter.

8 C.F.R. 208.14(b)

a. Recommended Approval

The Asylum Office issues a recommended approval when:

Langlois, Joseph E. Securing Compliance with Fingerprinting Requirements Prior to the Asylum Interview and Amending Procedures for Issuance of Recommended Approvals, Memorandum to All Asylum Office Personnel (Washington, DC: 12 September 2006, revised 4 October 2006)

- All background security checks have been completed for the principal applicant and all dependent family members, except that an FBI name check response (primary, as well as any alias and alternate dates of birth) is IP (pending) for one or more of the family members. If an FBI name check response of PR (positive response) has been received, the basis for the response must be reviewed and considered before a recommended approval may be issued;
- All background security checks have been completed for the principal applicant and all dependent family members, but the Asylum Officer has only a W-file or T-file, procedures for issuing a final grant on the W-file or T-file have not been completed, and there are no reasonable grounds for believing information in the A-file would materially impact on the decision; and
- All background security checks have been completed for the principal applicant and all dependent family members, but a dependent appears to be subject to reinstatement of a final order and the Special Agent in Charge has not yet determined whether to reinstate the final order.

See Section III.J.4.b for more information on adjudicating an application on a T file.

See SectionIII.E.10 for more information on dependents subject to reinstatement.

A background security check is considered completed only after a response of negative (e.g., NONIDENT for a fingerprint check or "N" for IBIS checks) has been received or any positive response (e.g., IDENT or "Y" for IBIS checks) has been carefully reviewed and considered pursuant to existing procedures, including the receipt and review of court dispositions for all arrests listed on the RAP sheet. If an applicant fails to provide any court dispositions requested by the Asylum Office within the required time period, the case may be referred or dismissed in accordance with Section III.L.12(c).

See SectionIII.L and the Identity and Security Check Procedures Manual for more information on security checks.

A case in which the applicant appears eligible for an asylum grant but a final decision cannot be made because background security checks have not been completed, and a recommended approval is not permitted to be issued, will be put on hold using the "AD" code in RAPS. The AD code allows users to select whether the delay in the security check processing is due to the applicant, which stops the employment authorization "KLOK," or due to the government, which keeps the KLOK running.

For example, if the applicant's FBI fingerprint result is an "IDENT" response, and the RAP sheet prompts the Asylum Officer to request court disposition documents from the applicant, the AD hold code would be placed at the fault of the applicant, thereby stopping the KLOK. If an IBIS hit instructs the Asylum Officer to call a certain law enforcement agency for follow-up information, and contact with the law enforcement agency is delayed, the AD hold code would be placed at the fault of USCIS, thereby continuing the KLOK.

All cases on AD hold can be tracked by Asylum Office management in the Officer Casebook. The Supervisory Asylum Officer is responsible for receiving any court disposition records or other documentation related to an unresolved security check hit. As soon as the documentation is received by the Supervisory Asylum Officer, the Supervisory Asylum Officer is responsible for releasing the AD hold on the case.

Supervisory Asylum Officers retain discretion to cancel the decision pick-up appointment where Asylum Office personnel are still awaiting receipt and review of the FBI fingerprint check response and therefore cannot issue a recommended or final grant of asylum.

The following is an outline of the documents and the Form I-589 and RAPS updates associated with a recommended approval. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To …*" of this manual.

- *Assessment to Grant* (Appendix 44)
- *Recommended Approval* letter (Appendix 47 or 48)
- RAPS – PDEC of GR. When updating "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference).
- I-589 – "FOR BCIS USE ONLY" section. If the form does not contain a space for a recommended approval, Asylum Office personnel write "recommended approval," the Asylum Officer ID number (e.g., ZCH041), and the date of the decision.
- RAPS – DINT for service of decision letter

b. Asylum Approval

The Asylum Office issues an asylum approval when results of all required identity and security checks for the principal applicant and all dependent family members are current and complete and allow for an approval.

The following is an outline of the documents and the Form I-589 and RAPS updates associated with an asylum approval. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To…*" of this manual.

- *Assessment to Grant* (Appendix 44)
- *Asylum Approval* letter (Appendix 17, 49, or 50)
- I-94 card, endorsed with asylum approval stamp (see Section IV.E below) that bears the date of asylum approval, signature, Asylum Office code, and office ID number of the adjudicating officer
- *Asylum and NACARA § 203 Background Identity and Security Checklist*(Appendix 1 of the Identity and Security Checks Procedures Manual)
- RAPS – FDEC of G1
- When updating "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference).
    - If the claim is being granted based solely on coercive family planning (CFP) policies, place an "X" next to the CFP ground only.[1]

For more information on CFP cases, see Section III.B.2.

- I-589 – "FOR BCIS USE ONLY" section. Asylum Office personnel complete the appropriate area(s) of this section, indicating a final approval, date, and Asylum Officer ID number.
- RAPS – GLET for service of decision letter

2. Applicant Appears Ineligible for Asylum

8 C.F.R. 208.14(c)

a. Asylum Office Authority to Issue Decisions to Applicants who Appear Ineligible for Asylum

The Asylum Office's authority to issue decisions to individuals who are found ineligible for asylum is defined by regulation. Because the authority of the Asylum Office varies depending on the individual's status, the type of decision prepared depends on the status of the individual at the time the decision is *issued* (mailed or personally served), not at the time of decision preparation or interview, if there is a difference.

Asylum Office Directors maintain the discretion to establish the most efficient workflow for the processing of decisions for individuals who appear ineligible for asylum provided that:

- the type of decision is appropriate under the regulations at the time it is *issued*; and
- In the absence of exceptional circumstances, asylum applications are processed in a manner consistent with established timeliness requirements and without unreasonable delay.

***See* Section III.N for special procedures governing parolees.**

b. Referral

The Asylum Office must refer to the Immigration Court for adjudication in removal proceedings an applicant who is ineligible to apply for or be granted asylum and appears inadmissible or deportable at the time the decision is issued.

The following is an outline of the documents and RAPS updates associated with a referral. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To…*" of this manual.

- *Assessment to Refer* (Appendix 46)

Check with local

[1] Previously, CFP cases had to await assignment of a final approval authorization number under a 1,000 per-year cap and were given a conditional grant until a number became available. However, since the Real ID Act of 2005 lifted the cap, CFP cases, like all other asylum cases, may receive a final approval as soon as all required security checks are complete and allow for a final grant. Nonetheless, it is important to record the basis of claim in RAPS as CFP, as the Asylum Program is still required to report to Congress on the number of CFP cases granted each year.

- Form I-213, *Record of Deportable/Inadmissible Alien*, if required
- Form I-862, *Notice to Appear* (NTA), or Form I-863, *Notice of Referral to Immigration Judge*
- *Referral Notice* (Appendices 51, 52, 53, 54 and 55)
- *Asylum and NACARA § 203 Background Identity and Security Checklist* (Appendix 1 *of the Identity and Security Checks Procedures Manual)*
- RAPS – FDEC of I1-I7, with a deport code of A1 if an NTA is to be issued, A5 if an I-863 is to be issued
    - When updating "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference). The RAPS screen allows entry of "NO," for no nexus, if applicant failed to establish nexus to one of the five protected grounds.
- RAPS – OSCG and OSCP screen to generate an NTA and Form I-213, if required
- I-589 - "FOR BCIS USE ONLY" section. If the form does not contain a space for a referral, Asylum Office personnel write "referral," the Asylum Officer ID number, and the date of the decision.
- RAPS – OSSE for service of decision letter.

Asylum Office management about requirements for preparing Form I-213.

c. Notice of Intent to Deny (NOID)

The Asylum Office issues a denial of asylum to an applicant who is ineligible to apply for or be granted asylum and is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status ("in-status") at the time the decision on the application is issued. Prior to denial, the Asylum Office issues an in-status applicant a *NOID* (Appendix 45), providing him or her 10 days, plus 6 days for mailing (a total of 16 days), to rebut the reasons for the denial. Any rebuttal is considered prior to making a final decision in the case. An applicant found eligible for asylum after the rebuttal period is processed for approval as indicated above in this section. An applicant found ineligible for asylum is processed as a denial or referral, as described in this section.

From time to time, Asylum Office personnel will encounter an applicant who nears and reaches the end of his or her period of authorized stay during the processing of the asylum application. As indicated in Section II.N.2, an Asylum Office Director maintains the discretion to establish procedures to ensure that the appropriate decision is prepared based on the applicant's status at the time the decision is issued, without undue delay.

For discussion of extensions of periods of nonimmigrant status, see Section III.G.

The following is an outline of the documents and RAPS updates associated with a *NOID*. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To…*" of this manual.

- *Notice of Intent to Deny (NOID)* (Appendix 45)
- RAPS – "Y" and expiration date entered in VIST
- RAPS – PDEC of D1-D7, deportation code A6.
    - When updating the "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference). The RAPS screen allows entry of "NO," for no nexus if applicant failed to establish nexus to one of the five protected grounds.
- I-589 – "FOR BCIS USE ONLY" section. Asylum Office personnel write "NOID," the Asylum Officer ID number, and the date of the decision.
- RAPS – DINT for service of the NOID, RBUT for receipt of any rebuttal.

d. Denial

After a *NOID* and rebuttal period, the Asylum Office denies asylum to an applicant who is ineligible to apply for or be granted asylum and is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status or has valid parole at the time the decision on the application is issued. If the applicant lost valid status between the issuance of the NOID and the date of issuance of the final decision, a referral is issued.

8 C.F.R. 208.14(c)

The following is an outline of the documents and the Form I-589 and RAPS updates associated with a denial. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To…*" of this manual.

- *Final Denial* (Appendices 56, 57, and 58)
- *Asylum and NACARA § 203 Background Identity and Security Checklist*(Appendix 1 of the *Identity and Security Checks Procedures Manual*)
- RAPS – "Y" entered in VIST
- RAPS – FDEC of D1-D7, deportation code A6.
  - When updating "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference). The RAPS screen allows entry of "NO," for no nexus if applicant failed to establish nexus to one of the five protected grounds.
- I-589 – "FOR BCIS USE ONLY" section. If required by local Asylum Office policy, the AO completes the appropriate area(s) of this section, indicating a denial.
- RAPS –DENY for service of decision letter.

O. SAO REVIEWS FILE

1. Case Review Checklist

Before a decision letter is served, the SAO reviews each case for procedural and substantive correctness and completeness, which includes the following:

SAOs must review the cases for completeness and correctness as outlined in this manual and appendices and in the various lesson plans of the AOBTC Basic Training Materials.

- The applicant and the AO signed the I-589, and corrections have been made accurately and clearly.
- Assessment is clear, concise, complete, and correct.
- AO's notes contain the proper elements as described in the AOBTC Lesson Plan, *Interviewing Part II – Note-taking*.
- Decision Letter (e.g. *Referral Notice*, etc…) is correctly addressed to the applicant and any representative of record, accurately reflects the status of the case and lists all dependents.
- Address on the documents matches the address in RAPS.
- Information and dates are correct and consistent throughout (NTA, I-213, assessment, I-589, I-94).
- The AO signed the Form I-213, if required.
- NTA allegations/charges and the location of the Immigration Court are correct.
- Any *Record of Oath* is properly executed.
- *Asylum and NACARA § 203 Background Identity and Security Checklist* is present and completed in accordance with the decision being issued.
- Each A-file is in neat, record order, with no loose papers or unconsolidated folders attached.
- RAPS is properly updated.
- Copies of the relevant documents are in the dependent's A-file.

See Section III.J.5 on record order.

2. Signature on Documents

An SAO's signature on a document evidences that he or she reviewed the case in accordance with the instructions in the previous section, and concurs in the decision that was made by the AO. After reviewing the asylum decision, the SAO takes the following action:

- Signs or initials the *Assessment*, or a flowchart indicating supervisory review.
- Signs the *Referral Notice*, *Recommended Approval* letter, *Asylum Approval* letter, *NOID*, or *Final Denial* letter.
- Signs and dates each NTA, if required.
- Signs Form I-213, if required.
- Signs and dates the *Asylum and NACARA § 203 Background Identity and Security Checklist.*

3. Standard of Review

It is **not** the role of the SAO to ensure that the AO decided the case as he or she would have decided it. AOs must be given substantial deference once it has been established that the analysis is legally sufficient.

Melville, Rosemary Langley. Procedures for Supervisory Asylum Officers and Asylum Officers, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers, 29 June 1995, 1p.

In the event that the SAO disagrees with the AO's decision, he or she discusses the case with the AO. If the SAO and AO are not able to resolve their differences, the SAO elevates the issue to the Director (or Deputy Director) of the Office. The Director may decide, in his or her discretion, to refer the case to the HQASM Training, Research, and Quality Branch (HQASM/TRAQ) for further review.

P. ASYLUM OFFICE PREPARES THE DECISION FOR SERVICE ON THE APPLICANT

Once the SAO has reviewed the case, Asylum Office personnel prepare the case for service of the decision on the applicant and representative of record, if any, according to local Asylum Office procedures. An applicant's file must contain copies of any documents served on him or her by the Asylum Office.

Q. ASYLUM OFFICE SERVES THE DECISION ON THE APPLICANT

For all in-person service of decisions, local Asylum Office policy dictates whether Asylum Office personnel verify the identity of an applicant and all dependent family members 14 years old and older in US-VISIT.

See Section I.1 of this manual and Section VI of the *Identity and Security Checks Procedures Manual* for additional information on US-VISIT.

Applicants are called to receive the decision by number, rather than name, in a manner dictated by local policy. *See above* Section II.I.7, *AO Calls the Applicant for the Interview.*

The principal applicant receives service of the documents for the entire family, except that an NTA must be served on the dependent if he or she is at least 14 years old. Asylum Office personnel may serve an NTA to the principal applicant for any dependent who is less than 14 years old.

Before personally serving a document on an applicant, Asylum Office personnel must ask the applicant to review the document served, particularly the I-94 (if issued), to ensure biographical data is correct (e.g., spelling of the applicant's name and date of birth).

See 8 C.F.R. 292.5(a) for information about service upon attorney or representative of record.

A representative of record is entitled to copies of the decision the Asylum Office serves on the applicant, so if the representative does not appear for an in-person service, the Asylum Office must mail him or her copies of the decision.

At the time of service, asylum personnel date stamp the decision letter. If the Asylum Office serves the decision by mail, the date stamp should correspond to the date of actual mailing.

Depending upon the decision that was reached in the case, the applicant receives one (1) of the following sets of documents:

1. Recommended Approval

Decision documents:
- **Original *Recommended Approval* letter**
- **Form AR-11, *Alien Change of Address***

If the Asylum Office serves the decision **in-person**, Asylum Office personnel:

- Place the date of service on the *Recommended Approval* letter.
- Inform the applicant that a final approval of asylum may not be issued until the office receives results of the mandatory confidential background check.
- Inform the applicant of the requirement to notify USCIS of any change in address on the Form AR-11 within 10 days of such change, sending one copy to the address on the Form AR-11 and another to the Asylum Office.
- Ask the principal applicant to sign the file copy as proof of service.

If the Asylum Office serves the decision **by mail**, Asylum Office personnel:

- Place the date of service on the letter the *Recommended Approval* letter.
- Serve the *Recommended Approval* letter and Form AR-11 by regular or certified mail, as dictated by local Asylum Office policy.

"Date of service" refers to the date that the letter is placed in an envelope and put in the out-going mail.

For both methods of service (in-person or by mail), no more than two (2) business days after the decision is served, Asylum Office personnel update the Record Preliminary Decision Sent (DINT) screen, indicating the type of letter ("R" for recommended approval) that was served, and the date and type of service.

2. Asylum Approval

Decision documents:
- **Original *Asylum Approval* letter**
- **Original I-94 card, for principal applicant and each dependent properly included as a derivative, endorsed with asylum approval stamp (see Section IV.E below) that bears the date of asylum approval, signature, Asylum Office code, and office ID number of the adjudicating officer**
- **Form AR-11, *Alien Change of Address***

If the Asylum Office serves the decision **in-person**, Asylum Office personnel:

- Place the date of service on the *Asylum Approval* letter.

- Inform the applicant to notify USCIS of any change in address on the AR-11 within 10 days of such change.
- Ask the principal applicant to sign the A-file copy as proof of service.

If the Asylum Office serves the decision **by mail**, Asylum Office personnel:

- Place the date of service on the *Asylum Approval* letter.
- Serve the *Asylum Approval* letter, all I-94 cards, and the AR-11 either by regular or certified mail, as dictated by local Asylum Office policy.

"Date of service" refers to the date that the letter is placed in an envelope and put in the out-going mail.

For decisions served by mail, Asylum Office personnel must keep in mind the importance of timely service, as asylees may be eligible for social benefits for which they must apply within 30 days of their asylum approval.

For both methods of service (in-person or by mail), no more than two (2) business days after the decision is served, Asylum Office personnel update the Grant Letter Served/Sent (GLET) screen, indicating the date and type of service.

3. Referral

Decision documents:

- ***Referral Notice***
- **NTA -- copy of original NTA that was signed by SAO or one of several original NTAs that were signed by an SAO**
- **Legal Service List**
- **EOIR-33, *Change of Address Form***
- **Form AR-11, *Alien Change of Address***

Each individual 14 years of age and older must receive an NTA, Legal Services List and an EOIR-33 Change of Address Form.

The Immigration Court must receive an NTA with the original signature of an SAO. Local Asylum Office policy dictates whether Asylum Office personnel copy an NTA with the original signature or have an SAO sign multiple NTAs. Whatever policy is instituted, the Asylum Office must ensure that the Immigration Court receives an NTA with an SAO's original signature, otherwise an Immigration Judge may terminate the case.

If the Asylum Office serves the decision **in-person**, Asylum Office personnel:

- Ask each individual at least 14 years of age to sign his or her NTA.
- Ask the principal applicant to sign the NTA for any dependent under the age of 14.
- Place the date of service on the *Referral Notice.*
- Fully and correctly complete the certificate of service section on the NTA, indicating that the document was personally served.

In serving the decision, Asylum Office personnel inform the applicant:

- Of the date and location of hearing.
- That failure to appear for the hearing can result in the judge's entering a removal order *in absentia*, which could mean that the applicant could be detained or removed without a further hearing.
- That the applicant is required to notify the USCIS of a change of address on the AR-11 within 10 days of such change and that the applicant is also required to notify the Immigration Court of any change of address on the EOIR-33 within 5 days.

If the Asylum Office serves the decision **by mail**, Asylum Office personnel:

- Place the date of service on the *Referral Notice*.

- Fully and correctly complete the certificate of service section on the NTA, indicating the type of mail (certified or regular) that was used to serve the document.
- Serve the referral documents by either regular or certified mail, as dictated by local Asylum Office policy.

"Date of service" refers to the date that the notice is placed in an envelope and put in the out-going mail.

Local Asylum Office policy as to whether NTAs are mailed by regular or certified mail must take into account differing interpretations of "proof of service" by local Immigration Courts. In cases where the applicant fails to appear for the removal hearing, some courts have held that when an NTA has been mailed by certified mail, DHS has a greater burden to establish proof of service before an *in absentia* order will be entered. *See* Langlois, Joseph E. Service of Notices to Appear by Mail, Memorandum to Asylum Office Directors, 9 March 1998, 2p.

For both methods of service (in-person by mail), no more than two (2) business days after the decision is served, Asylum Office personnel update the Notice to Appear Served (OSSE) command, indicating the date and type of service of the NTA.

4. Notice of Intent to Deny (NOID)

Decision document:
- ***NOID***

The letter provides an applicant a sixteen-day (16) period before a rebuttal is due. The actual time allotted is the ten days to prepare the rebuttal, plus three days on either end (16 days total) for the mail to be delivered. The rebuttal is considered timely if received on the next business day after the 16th day, if the last day of the rebuttal period is a weekend or holiday. *See* 8 C.F.R. 1.1(h).

If the Asylum Office serves the decision **in-person**, Asylum Office personnel:

- Place the date of service on the *NOID*. This date is when the 16-day period begins even though the decision is not mailed.
- Ask the applicant to sign the file copy as proof of service.
- Inform the applicant of the need to notify USCIS of any change in address.

If the Asylum Office serves the decision **by mail**, Asylum Office personnel:

- Place the date of service on the *NOID,* as this begins the 16-day rebuttal period.
- Serve the *NOID* by either regular or certified mail, as dictated by local Asylum Office policy.

"Date of service" refers to the date that the letter is placed in an envelope and put in the out-going mail.

For both methods of service (in-person or by mail), no more than two (2) business days after the decision is served, Asylum Office personnel update the Record Preliminary Decision Sent (DINT) screen, indicating the type of letter ("N" for *NOID*) that was served, and the date and type of service.

5. Denial

Decision document:
- ***Final Denial***
- **AR-11, *Alien Change of Address***

If the Asylum Office serves the decision **in-person**, Asylum Office personnel:

- Place the date of service on the *Final Denial*.

- Ask the applicant to sign the file copy as proof of service.
- Inform the applicant of the need to notify USCIS of any change in address.

If the Asylum Office serves the decision **by mail**, Asylum Office personnel:

- Place the date of service on the *Final Denial*.
- Serve the *Final Denial* and Form AR-11 by either regular or certified mail, as dictated by local Asylum Office policy.

For both methods of service (in-person or by mail), no more than two (2) business days after the decision is served, Asylum Office personnel update the Denial Letter Sent (DENY) screen in RAPS.

R. POST-SERVICE PROCESSING

1. Recommended Approval

Asylum Office Directors establish local procedures for tracking recommended approvals, identifying cases that are ready for final approval, and conducting follow-up on cases when necessary (for example, when an FBI name check turns up results requiring further research).

Asylum Office personnel prepare a recommended approval as a final approval when:

Langlois, Joseph E. Securing Compliance with Fingerprinting Requirements Prior to the Asylum Interview and Amending Procedures for Issuance of Recommended Approvals, Memorandum to All Asylum Office Personnel (Washington, DC: 12 September 2006, revised 4 October 2006)

- FBI name checks have been completed for the principal applicant and all dependents, and the results allow for a final approval;
- The Asylum Office only had access to a T-file or a W-file at the time of the interview, and procedures for issuing a final grant on the T-file or W-file have been completed; or
- A dependent appeared to be subject to reinstatement of a final order, and the ICE Special Agent in Charge opted not to reinstate the final order.

2. Asylum Approval

After an asylum approval is served, asylum personnel take the following action:

- Ensure each file (principal and all dependents) contain a copy of the *Asylum Approval* letter and corresponding I-94.
- Transfer the file to the National Records Center (NRC) for storage.
- Transfer the file in CIS and update NFTS to indicate that the file is no longer in the possession of the Asylum Office.

3. Referral

After the Asylum Office serves a referral on an applicant, Asylum Office personnel prepare the case for EOIR and the ICE Office of the Principal Legal Advisor (OPLA) so the hearing can take place on the appointed date and time.

a. EOIR

The Asylum Office prepares a packet to file with the Immigration Court. Once this packet has been filed with the court, the Asylum Office no longer has jurisdiction over the asylum claim. 8 C.F.R. 208.2(b). If this packet is not properly filed with the court and served on the applicant, the court may terminate proceedings for failure to prosecute. Such a case may be sent back to the Asylum Office for issuance of a new NTA. Directors should consult with the local USCIS Area Counsel and/or ICE OPLA on procedures for handling these types of cases.

The packet sent to EOIR contains the following documents:

Weiss, Jeffrey. Form I-589 for the Immigration Court, Memorandum to Asylum Office Directors and Supervisory Asylum Officers, 21 August 1996, 1p.

- Photocopy of the I-589 that contains signatures of the applicant and Asylum Officer and reflects changes made by the Asylum Officer during the interview. EOIR is not given the original I-589 with the original signatures unless the AO prepared and signed two I-589s.
- Copies of all documents in support of the I-589 application. This includes but is not limited to country conditions information and documents submitted at any time in connection with the asylum application.
- NTA, with the original signature of the USCIS officer who signed and dated the document on page 1.
- Printout of the Removal screen from ANSIR showing the hearing date, time, and location, and the 150-Day Clock Query (KLOK) screen in RAPS.

b. ICE Office of the Principal Legal Advisor (OPLA)

The Asylum Office also prepares the file for the ICE Office of the Principal Legal Advisor (OPLA) by taking the actions described in the bullets below. Asylum Office Directors coordinate with ICE OPLA for procedures to flag persecutor and terrorist cases for special attention or assignment.

- Ensure the file contains a copy of the NTA, *Referral Notice*, and marked-up I-589.
- Transfer the file to ICE OPLA that has jurisdiction over the Immigration Court where the hearing will take place.
- Transfer the file in CIS and update NFTS to indicate that the file is no longer in the possession of the Asylum Office.

4. Notice of Intent to Deny (NOID)

Asylum Office Directors establish a procedure for tracking files pending rebuttals to *NOID*s to ensure that rebuttals are filed in the file and forwarded to the AO for review and that cases with no rebuttal are processed for a final decision.

After a *NOID* is served, a final decision may not be made until a rebuttal is received or the rebuttal period expires, whichever occurs first. If the applicant submits a rebuttal, Asylum Office personnel update the Rebuttal Received (RBUT) screen in RAPS. The AO verifies that RAPS has been updated properly with respect to the rebuttal, considers the information, and makes a decision on the case.

a. Applicant Fails to Submit a Rebuttal or Rebuttal Does not Overcome the Reasons for Denial

The AO finalizes the decision that the applicant is not eligible for asylum status. The type of decision documents the AO prepares depends upon the applicant's immigration status. *See* Section II.N.2, above, for guidance on which type of decision is prepared.

b. Rebuttal Overcomes Reasons for Denial

If the rebuttal overcomes the reasons for denial, and the applicant has established eligibility for asylum, the AO prepares a short memo to the file indicating the reasons for the decision and prepares the case for approval. This memo replaces the need to prepare an *Assessment to Grant*. *See* Section II.N.1, above, for guidance on which type of decision is prepared.

III. EXPANDED TOPICS

A. ADDRESS CHANGES

1. Applicant's Obligation to Notify USCIS of a Change of Address

8 C.F.R. 265.1

Aliens must notify USCIS of a change of address on Form AR-11, *Alien Change of Address,* within 10 days of such change, to the address given on the form. The applicant should also separately notify the Asylum Office if the applicant changes his or her address at any time during the pendency of an affirmative asylum claim. Notice of such change of address to the Asylum Office may take any of the following forms:

- Electronic request after the applicant updates his or her address on www.uscis.gov.
- Submission of an original or photocopied Form AR-11, *Alien Change Of Address*.
- Written notice in letter form.
- In-person notification to an IIO/CR, documented in writing in the file and signed by the applicant.
- In-person notification to an AO during an asylum interview.

When an applicant submits an AR-11 to the address on the form in London, KY, the address is keyed into a local database and uploaded to RAPS nightly.

2. Recording Change of Address

If the applicant sends the notice of change of address to a USCIS or DHS office other than an Asylum Office, that office forwards the change of address to the Asylum Office that has the physical file. Except as indicated in Section III.A.2.a below, *Change of Address Received on Interview Day*, and Section III.A.2.b below, *Change of Address Received After the Interview but Before Service of Decision*, below, a notice of change of address is processed as follows:

Asylum Office personnel update RAPS with the notice of change of address within two (2) business days of its receipt, and file it in the A-file within ten (10) days of receipt. To update RAPS, Asylum Office personnel:

- Check the Case History (CHIS) and Address History (AHIS) screens to see whether the address change is the most current. If it is **not** the most current, do not change the address in RAPS and route the correspondence to the file.
- **If there is no future interview date,** update the new address as indicated on the Address Change (MOVE) screen. Enter the effective date of the new address, which is the date the notice was dated by the applicant. If the applicant did not date the notice, use the date that the Asylum Office received the notice. If the new address falls under the jurisdiction of the same Asylum Office, route the correspondence to the file after updating RAPS, or schedule the applicant for an asylum interview using the Add Case (ADDC) command, depending upon local Asylum Office policy. If the address of the applicant falls under the jurisdiction of a different interview location, RAPS will prompt the user to transfer the case on the Case Transfer (TRAN) screen. Transfer the case in RAPS and, if necessary, transfer the A-file.
- **If there is a future interview date and an interview mailer has been sent notifying the applicant of an upcoming interview date,** follow the procedures in Section III.A.2.a, *Change of Address Received on the Interview Day*, starting at the second paragraph.
- **If there is a future interview date but no mailer has been sent**, cancel the interview (indicating the cancellation was caused by the applicant), update MOVE in RAPS and transfer the case to the Asylum Office having jurisdiction over the applicant's residence.
- **If the applicant failed to appear for a prior interview,** route the change of address to Asylum Office personnel who process no-show applications.

a. Change of Address Received on the Interview Day

An applicant may notify an IIO/CR or an AO of a change of address when he or she appears at the Asylum Office for the interview. If the applicant's new address remains within the jurisdiction of the Asylum Office that issued the *Interview Notice*, Asylum Office personnel update the Address Change (MOVE) screen in RAPS, using the day of the interview as the effective date of the change. An AO may proceed with the asylum interview.

If the applicant's new address falls under the jurisdiction of another Asylum Office, in most cases the applicant is not interviewed in the Asylum Office that issued the *Interview Notice* and the case is transferred to the Asylum Office having jurisdiction over the applicant's residence. Asylum Office Directors maintain discretion to establish criteria for determining which interviews will go forward and which will be cancelled for transfer of the file to the new Asylum Office having jurisdiction over the applicant's new residence. If the interview is to be cancelled for transfer to the Asylum Office having jurisdiction over the applicant's new address, Asylum Office personnel take the following steps:

- If the applicant is present, ask the applicant to complete and sign a *Case Reschedule History* (Appendix 9).
- Cancel the interview using the Remove Case from Schedule (REMC) command indicating the rescheduling is caused by the applicant.
- Utilizing the MOVE screen, type in the new address, transferring the case on the TRAN screen if appropriate.

b. Change of Address Received After the Interview but Before Service of Decision

Asylum Office personnel give the notice of a change of address to the AO or SAO processing the case, who checks the date the applicant submitted the notice. If the notice was submitted prior to the interview, the case is processed using the address that was verified by the applicant on the I-589 during the asylum interview, provided that address is different from the address on the notice. If the INTERVIEW DATE field does not contain an "N/S" and the CURR OFFICER field is blank, bring it to the attention of a supervisor so that he or she can find out why no action appears to have been taken on the asylum application. If the notice was submitted after the interview, Asylum Office personnel update the Address Change (MOVE) screen.

See Section III.I.3 on the consequences of failing to appear at a pick-up appointment.

If the new address falls under the jurisdiction of another Asylum Office, the Asylum Office where the interview was conducted retains jurisdiction over the case. The applicant is still obligated to appear at the Asylum Office if he or she was served a *Pick-Up Notice* at the time of the interview, although the Asylum Office Director maintains the discretion to cancel the pick-up appointment and mail out the decision. Any documents that were generated with the applicant's old address that have not been served must be regenerated to reflect the new address.

c. Change of Address Received After Service of a Decision

Asylum Office personnel update RAPS and route the evidence of the change of address to the file.

B. CATEGORIES OF CASES

1. Children Filing as Principal Asylum Applicants

The Asylum Office Director must bring to the attention of HQASM any case of a child under the age of 18 who has applied for asylum as a principal and whose parent or legal guardian has not given express consent for the child to apply for asylum in the United States. HQASM and the USCIS Office of Chief Counsel will provide specific guidance on processing the case, if necessary, based on the particular circumstances of each child.

Special guidelines were developed by the INS Office of International Affairs for adjudicating asylum claims filed by individuals under the age of 18 who are applying for asylum independently, rather than as dependents. *See* Weiss, Jeffrey. Guidelines for Children's Asylum Claims, Memorandum to Asylum Officers, Immigration Officers and Headquarters Coordinators, 10 December 1998, 30p.

AOs must familiarize themselves with these guidelines in relation to guidance in Section II.J, *AO Conducts an Asylum Interview*, on conducting an asylum interview and the applicable AOBTC Basic Training Materials, including *Guidelines for Children's Asylum Claims* and *Interviewing Parts I – VI*. If Asylum Office personnel suspect that a child may have been trafficked into the U.S., they should consult Section III.B.14 below, *Trafficking Victims*.

2. Coercive Family Planning (CFP)

In September 1996, the Illegal Immigration Reform and Responsibility Act (IIRIRA) amended the refugee definition to include persons who have been persecuted in the past or have a well-founded fear of future persecution on the basis of a forced abortion, involuntary sterilization, failure or refusal to undergo such a procedure, or for other resistance to CFP practices.

The acronyms "CFP" and "CPC" (coercive population control) are both used within USCIS and are interchangeable.

IIRIRA placed a cap of 1,000 on the number of individuals who were admitted as refugees or approved for asylum status on a claim relating to CFP practices during any fiscal year. Individuals who were found to be eligible for asylum based solely on their resistance to CFP, and whose security checks were complete and allowed for a final grant, were given a conditional grant, pending assignment of a final approval authorization number within the 1,000-per-year cap.

The Real ID Act of 2005, signed on May 11, 2005, lifted the annual numerical limitation on refugee admissions and grants of asylum based on resistance to CFP. Therefore, cases in which the applicant's sole basis of claim is CFP are treated in the same manner as all other asylum cases: those who are found to be eligible for asylum and whose security checks are complete and allow for a final grant are given an asylum approval.[2]

See Langlois, Joseph. The Effect of the "Real ID" Act on the Processing of Coercive Population Control (CPC) Cases, Memorandum for All Asylum Office Personnel, 16 June 2005

3. Credible Fear-Screened Affirmative Asylum Applicants

An Asylum Office may encounter an affirmative asylum application from an individual who was screened in through the credible fear program, but whose charging document was not filed or was terminated by the IJ due to a technical fault. RAPS will display a "Y" in the "APSS" field on the CSTA screen if there is a record of an individual in the Asylum Pre-Screening System (APSS), the system used for adjudicating credible fear cases. If the "Y" appears, Asylum Office personnel check the APSS system to determine the outcome and status of the credible fear adjudication, and whether a charging document was issued but not filed with EOIR. Because such individuals are subject to the expedited removal/credible fear screening process, which has begun but was not completed due to a technical error, the Asylum Office will not take jurisdiction to hear their affirmative asylum claims. Instead, if the Asylum Office encounters such an individual, the Asylum Office will correct the technical error by preparing and filing the appropriate charging document. Asylum Office personnel take the following steps:

- If the A-file is not at the Asylum Office, order and wait for the A-file.
- Cancel or suspend the asylum interview, as appropriate.
- Notify the applicant that because he or she is subject to provisions of INA Section 235, the Asylum Office does not hear the affirmative asylum application, and that the application will be forwarded to the Immigration Court with jurisdiction over the applicant's residence. Explain this to the applicant in person if he or she is in the office and in all cases, issue to the applicant a *Notice of Institution of Removal Proceedings following Positive Credible Fear Screening* (Appendix 64)
- Prepare and serve the charging document, copying the I-589 for the IJ.
- Close the case in RAPS using close code C4, "IJ Jurisdiction."

4. Deceased Applicants – DRAFT

If the Asylum Office discovers, prior to a final decision on an asylum application, that the principal applicant is deceased, Asylum Office personnel treat the asylum application as withdrawn and administratively close the case in RAPS under code C3. The case of a

[2] Previously, CFP cases had to await assignment of a final approval authorization number under the 1,000 per-year cap and were given a conditional grant until a number became available. However, since the Real ID Act of 2005 lifted the cap, CFP cases, like all other asylum cases, may receive a final approval as soon as all required security checks are complete and allow for a final grant. Nonetheless, it is important to record the basis of claim in RAPS as CFP, as the Asylum Program is still required to report to Congress on the number of CFP cases granted each year.

deceased principal applicant should not be deleted from RAPS.

If the case of a deceased principal applicant includes surviving dependents, Asylum Office personnel should follow the instructions in Section III.E.6.b, *Loss of Derivative Status by Marriage, Divorce, or Death of Principal Applicant*, by notifying any dependents of their ineligibility for continued classification as a dependent and by affording the dependent(s) the opportunity to file a new I-589 as a principal applicant.

If the Asylum Office discovers that a dependent is deceased, and is survived by the principal applicant, Asylum Office personnel should print the RAPS CSTA and I-589 screens for the dependent, place copies in both the principal's and dependent's A-files, remove the dependent from the principal's record in RAPS using the MOD REL function (PF9) on the principal's I-589 screen, and place a memo in the principal's and dependent's A-files, explaining that the dependent has been removed from the application because he or she is deceased.

5. Deferred Enforced Departure (DED)

Note:
Please *see* below at Section III.B.7 for procedures governing GTMO/DED Haitians.

Deferred Enforced Departure (DED) grants certain qualified citizens and nationals of designated countries a temporary, discretionary, administrative protection from removal from the United States and eligibility for employment authorization for the period of time in which DED is authorized. The President determines which countries will be designated based upon issues that may include, but are not limited to, ongoing civil strife, environmental disaster, or other extraordinary or temporary conditions. The decision to grant DED is issued as an Executive Order or Presidential Memorandum.

An alien does not need to apply for and be granted DED in order to benefit from its provisions. Although DED status is automatic for qualified citizens and nationals of designated countries, some exceptions exist to eligibility under this program, including persons who have committed certain crimes, persons who are persecutors, and persons who have previously been deported, excluded or removed.

Langlois, Joseph E. Clarification of Procedures for Processing Applicants Covered by Deferred Enforced Departure (DED) who are Ineligible for Asylum, Memorandum to Asylum Office Directors, et al., 1 November 2001, 2p.

Because the decision to extend DED protection is made by the President, it is not a statutory provision under the Immigration and Nationality Act and as such, it is not considered an immigration "status." DED is not considered to be a valid immigrant, nonimmigrant, or Temporary Protected Status under 8 C.F.R. 208.14(c)(2). Therefore, individuals who are covered by DED and are not eligible for asylum must be referred to the Immigration Judge pursuant to 8 C.F.R. 208.14(c)(1) unless they otherwise have valid status or parole as described in 8 C.F.R. 208.14(c)(2) or (3). DED does not prevent DHS from obtaining a removal order. Rather, it prevents DHS from executing that order during the pendency of DED. Therefore, Asylum Offices should proceed with referrals of such cases when asylum is not granted.

When referring a person who appears to be covered by DED, include a memorandum to the file addressed to the ICE Office of the Principal Legal Advisor (OPLA) and DRO indicating, "The individual who is the subject of this memorandum may be covered by Deferred Enforced Departure (DED)."

6. Disabilities – Physical and Mental – DRAFT

Pursuant to Section 504 of the federal Rehabilitation Act of 1974, "[n]o qualified individual with a disability in the United States shall, by reason of his or her disability, be excluded from the participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by any Executive agency." Each federal agency must promulgate such regulations as are necessary to carry out this provision. The implementing regulations for the Department of Homeland Security are found at 6 C.F.R. 15. Pursuant to 6 C.F.R. 15.60, DHS offices "shall take appropriate steps to effectively communicate with applicants" and "shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department." Furthermore, in determining which auxiliary aids are appropriate, "the Department shall give primary consideration to the requests of the individual with a disability."

Pub.L. 93-112; 6 C.F.R. 15.30

a. Hearing-Impaired Applicants

In the case of hearing-impaired asylum applicants, the aforementioned requirements under the Rehabilitation Act mandate that the Asylum Office provide for, and assume the cost of, a sign-language interpreter. See Section II.J.4 above on working with an interpreter.

b. Mentally Incompetent Applicants

Instructions for dealing with mentally incompetent applicants are codified in various sections of Title 8 Code of Federal Regulations. Although there is no definition of "mentally incompetent," 6 C.F.R. 15.3(d)(ii) defines "mental or psychological disorder" to include "mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities."

8 C.F.R. 103.5a(c)(2)(i) provides that, in the event an inadmissible or deportable alien is confined to a mental institution or hospital, and is unable to understand the charges contained in the Notice to Appear, the NTA is to be served on the person in charge of the institution or hospital. 8 C.F.R. 103.5a(c)(2)(ii) provides that the NTA should also be served on the person with whom the mentally competent alien resides, whether or not the alien is confined to a mental institution or hospital. Wherever possible, DHS must also serve the NTA on a near relative, guardian, committee, or friend.

Mentally incompetent applicants may also be unable to participate in all or part of their asylum interviews. Although 8 C.F.R. 1240.4 relates specifically to removal proceedings before EOIR, the provision gives useful guidance for the conduct of asylum interviews. When it is impracticable for the applicant to be present at his or her hearing because of mental incompetence, the attorney, legal representative, legal guardian, near relative, or friend who was served with a copy of the notice to appear is permitted to appear on behalf of the respondent. If one of the aforementioned persons cannot reasonably be found or fails or refuses to appear, the custodian of the applicant shall be requested to appear on his or her behalf. Similarly, if an applicant is unable, due to mental incompetence, to appear for, or testify during, his or her asylum interview, an individual, such as a close relative, should be permitted to testify on the applicant's behalf as long as certain criteria are met. See Section II.J.12 above for further guidance. If the applicant has an attorney or legal representative, that individual should also appear at the interview, but the attorney or representative should not be permitted to testify on the applicant's behalf. Rather, his or her role should be limited to the provision of a closing statement at the end of the interview, as outlined in Section II.J.5 above and in the lesson plan, *Interviewing Part I: Overview of Nonadversarial Asylum Interview*.

When Asylum Office personnel become concerned that an applicant is not competent to testify, a Supervisory Asylum Officer must be notified and apprised of the reasons for concern. If the Supervisory Asylum Officer believes that there are reasonable grounds to question the competence of the applicant to provide testimony, Asylum Office personnel shall explain the procedures in Section II.J.12 above to a representative, family member or guardian accompanying the applicant to the Asylum Office, or to the asylum applicant him or herself, if practicable.

7. Expeditious Processing Required

An Asylum Office Director may determine that it is in the best interest of USCIS to process an asylum application more expeditiously than usual because the case contains sensitive issues or there is special interest in the case. Examples include, but are not limited to, applicants who are being placed in witness protection programs, applicants who are providing information of national security concern to other agencies within the Federal Government, and cases in which there is a family member in jeopardy (e.g., spouse or child of an asylum applicant is in danger of harm in the country of claimed persecution).

Once the Director determines that the Asylum Office will expedite the processing of an asylum application, the following process occurs:

- The Director, Deputy Director, or Quality Assurance and Training Officer (QA/T) communicates the essential facts of the case to the HQASM Chief of the Training, Research and Quality Branch (TRAQ) at (202) 272-1616. HQASM/TRAQ alerts the USCIS Office of Public Affairs, if appropriate, and the DRL.
- Upon receipt of the application, Asylum Office personnel send the I-589 application and supporting documents to HQASM/TRAQ and the appropriate desk officer in DRL when appropriate. The DRL may decide to respond telephonically directly to the Asylum Office Director, with written confirmation to follow.
- An AO interviews the applicant as soon as practicable and prepares an *Assessment*. If the case is high profile, following the interview the Asylum Office sends to HQASM/TRAQ the I-589, supporting documentation, *Assessment*, interview notes, and any recommendation from DRL. Asylum Office personnel should scan the case documents and e-mail them to the "ASYLUM QA – AFFIRMATIVE" mailbox. If the materials cannot be scanned to a file size of less than 9MB, Asylum Office personnel send them to HQASM/TRAQ via DHL at 20 Massachusetts Ave., NW, Suite 3300, Washington, D.C. 20529. Asylum Office personnel should alert HQASM/TRAQ in advance of any case sent via DHL.
- HQASM/TRAQ responds within three days of receipt. Until then, the Asylum Office places the case on HOLD - HQ in RAPS.

8. Legalization/Special Agricultural Workers (SAW)

Certain asylum applicants may have filed applications for adjustment of status pursuant to INA Section 210, the special agricultural workers (SAW) program, and INA Section 245A, the general legalization program, created by the Immigration Reform and Control Act of 1986 (IRCA).

Applicants who filed these special adjustment applications are commonly referred to as Legalization or SAW applicants. Aliens who applied for this benefit were given a 90-93M series A-number.

IRCA contains confidentiality provisions that restrict the use, publication and examination of information furnished pursuant to applications under INA Sections 210 and 245A.

Under the confidentiality provisions, DHS employees may use "information furnished pursuant to an application" for SAW status only (1) to adjudicate the application, or (2) for prosecution for fraud under Section 210(b)(7). They may use information furnished pursuant to an application for legalization under Section 245A only (1) to adjudicate the application, (2) for prosecution for fraud under Section 245A(b)(6), or (3) for preparation of reports to Congress under Section 404 of the Immigration Reform and Control Act, furnishing such information in the same manner and circumstances as census information may be disclosed under 13 U.S.C.

INA Section 210(b)(6) and 245A(c)(5).

"Information furnished pursuant to an application" includes information supplied by the alien on the application form, any documentation the alien may submit in support of the application, and information furnished on behalf of the application by any third party. A DHS document, such as an I-94, that is provided by the alien in support of a legalization or SAW application is protected by confidentiality. This means that an AO is **prohibited** from using any information pertaining to a legalization or SAW case in the adjudication of an asylum claim.

For more information about confidentiality provisions, see GENCOU Opinion 89-73, Utilization of Information from IRCA Records, 7 November 1989,.

Previously, consolidation with a Legalization or SAW file could not take place. In the case of a Legalization/SAW applicant who applied for asylum, the Asylum Office, after receiving a T-file containing the asylum application from the Service Center, had to create a new A-file, with a number different from the applicant's 90M-93M series Legalization/SAW A-number. As of August 2004, this is no longer the case.

For additional information, see Part II-14, Section G.3 of the Records Operations Handbook, available at http://ors.uscis.dhs.gov/roh/.

The AO who adjudicates the asylum application must not review any materials relating to the Legalization or SAW application that were contained in the 90M-93M series file. These materials can usually be found underneath a red file marker.

9. National Security Matters, Including Known or Suspected Terrorists and Human Rights Abusers

For additional guidance on cases involving terrorism or threats to national security, *see* Section VIII of the *Identity and Security Checks Procedures Manual* and Aytes, Michael, Scialabba, Lori, and Sposato, Janis. National Security Reporting Requirements, Memorandum for Asylum Office Directors, et al., 16 February 2007, 4p. (plus attachment).

a. Notification Procedures

An Asylum Office must undertake special notification procedures for asylum applications involving national security matters, as defined in this section. Each office designates a point of contact (POC) for national security matters. If there is reason to believe that an applicant is a national security risk, Asylum Office personnel take the following actions:

For more detailed guidance on notification procedures for cases involving terrorism or threats to national security, *see* Section VIII of the *Identity and Security Checks Procedures Manual*.

- Notify the Asylum Office POC for terrorist and national security issues.
- Within 24 hours of identification of a national security issue, the POC contacts the local Special Agent In Charge (SAC) at the office of Immigration and Customs Enforcement to advise him or her of the case. The SAC may forward the case to the JTTF and/or advise Asylum Office personnel as to how the case will be handled.
- Prior to the issuance of an approval of asylum for any applicant described in this section, obtain concurrence from HQASM/TRAQ in accordance with regular quality assurance submissions to HQ.
- Document all actions taken in the file.

While the case is pending resolution of national security matters, Asylum Office personnel place the case on hold in RAPS using code ZZ-Other or code SECO (as appropriate), unless the case has been referred to HQASM, in which case HQ-Headquarters Review is appropriate.

Langlois, Joseph E. New RAPS Capablity: Ability to Flag Certain Security or Fraud Related Cases, Memorandum to Asylum Office Directors and Deputy Directors, 30 September 2004, 3p. plus attachment.

b. Categories of National Security Matters

National security matters fall into the categories described below. The categories are provided only to assist in identification of cases.

i. Terrorism-Related Categories:

- Any individual associated with any of the organizations included in the Foreign Terrorist Organizations List or the Terrorist Exclusion List, both of which are compiled by the Department of State and are available at http://www.state.gov/s/ct/, or any individual associated with an undesignated terrorist organization as defined by section 212(a)(3)(B)(vi)(III) of the INA.
- Any individual who admits to having engaged in terrorist activities.
- Any individual who testifies to having been falsely accused of engaging in terrorist activities or of being a member of a terrorist organization.
- Any individual who is suspected of being involved in terrorism, or of being a direct or indirect supporter of a terrorist organization(s).
- Any individual whose actions may fall within the definition of terrorist activities under section 212(a)(3)(B) of the INA.

See Williams, Johnny N. Designation of National Security Matters (Washington, DC: 18 December 2002), 7p.

The definitions of these categories were significantly broadened under the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism* (USA PATRIOT) Act of 2001 and the REAL ID Act of 2005. For more details and a summary of the legislation, *see* Ziegler, James W. New Anti-Terrorism Legislation (Washington, DC: 31 October 2001), 8p., appended to Langlois, Joseph E. Procedures for Contacting HQASM on Terrorist Cases (Washington, DC: 3 January 2002), 2p.; Langlois, Joseph E. Revised Instructions for Processing Asylum Terrorist/Suspected Terrorist Cases (Washington, DC: 26 January 2005), 3p. (plus attachments); Langlois, Joseph E. Updates to Asylum Officer Basic Training Course Lessons as a Result of Amendments to the INA Enacted by the REAL ID Act of May 11, 2005 (Washington, DC: 11 May 2006), 8p.

ii. Human Rights Abuse-Related Categories:

- Human rights abusers and modern-day war criminal cases, inquiries, or allegations, to include activity involving an individual suspected of having ordered or engaged in persecution of others, war crimes, genocide or torture.

For the purpose of these procedures, a human rights abuser of national security interest includes an individual who the Asylum Officer has reasonable grounds to suspect has engaged in (either directly or indirectly), ordered, incited, assisted, or otherwise participated in persecution of others, war crimes, genocide, or torture, and who is either a high-level official or who is a risk to public safety. There does not need to be a nexus between the human rights abuse and one of the five protected grounds in the refugee definition in order for the individual to be a suspected human rights abuser of national security interest.

Langlois, Joseph E. Asylum Division. Known or Suspected Human Rights Abusers, Memorandum to Asylum Office Directors, et al., 11 September 2000, 2p.

Pearson, Michael A. Human Rights Abuse Memorandum of Understanding, Memorandum to Regional Directors, et al., 29 September 2000.

iii. Other National Security-Related Categories:

- Other national security cases involving inquiries or allegations of any of the following: espionage, engaging in illegal acts involving weapons of mass destruction, being an agent or officer of a hostile foreign intelligence service, or engaging in violations of the import and export laws relating to sensitive information or technology. For a listing of examples of what may constitute a national security/terrorist-related threat/concern, please refer to Section 212(a)(3) and 237(a)(4) of the Immigration and Nationality Act.

Weiss, Jeffrey L. Processing of Claims Filed by Terrorists or Possible Terrorists, Memorandum to Asylum Office Directors, HQASM Staff, 1 October 1997, 2p. plus attachments.

c. Guidelines for Liaison with Local ICE Personnel

i. Arrests in the Asylum Office

A DHS officer may arrest an alien at the time of issuance of an NTA or at any time thereafter. Depending upon the circumstances of a particular case, it may be appropriate for DHS to arrest an individual for reasons related to national security. Whether or not to arrest an alien is within the purview of the local ICE SAC.

If requested, the asylum POC provides to a Special Agent any documentation from the asylum interview indicating that the alien is of national security interest, including a Q&A sworn statement. The POC also reminds the Special Agent of the confidentiality requirements of 8 C.F.R. 208.6, should the Special Agent discuss the case with non-Federal Government officials. *See* Section III.C below, Confidentiality Issues, for more details.

An arrest of an asylum applicant may take place at an Asylum Office. Note, however, that Asylum Office personnel do not have the authority to detain individuals and therefore may not "hold" the alien for a lengthy period of time in anticipation of arrest. If arresting officials do not arrive in a timely manner, Asylum Office personnel may not prevent the alien from leaving the Asylum Office.

Of paramount importance in determining when and where the arrest should take place is safety. If the arrest is to take place in an Asylum Office, the arresting officer should be given some deference as to where and when the arrest should occur in accordance with his or her training to maximize the safety of all involved. However, the Asylum Office Director informs the arresting officer of the Asylum Office's strong interest in avoiding a disturbance that may intimidate other asylum-seekers in the office. Directors are encouraged to provide a discreet area for the arrest to take place.

ii. Preparation of Charging Documents

When an arrest is to be made and/or charging documents will be issued in a national security case, ICE personnel and the asylum POC coordinate which party will issue and serve the NTA. Asylum Office personnel consult with USCIS Area Counsel and/or ICE Office of the Principal Legal Advisor (OPLA) to identify the appropriate allegations and charges when issuing the NTA in a national security case.

8 C.F.R. 236.1(b)

If an NTA is served on the applicant and filed with EOIR prior to an adjudication of the asylum application, Asylum Office personnel administratively close the case in RAPS using the "IJ Jurisdiction" code (C4). Otherwise, once the national security issues have been reviewed and resolved and the case cleared for adjudication, Asylum Office personnel complete a decision and update the case in RAPS according to established procedures. Whenever possible, when the decision is made to go forward with an NTA, the Asylum Office should retain responsibility for preparing the NTA, scheduling the EOIR hearing using the ANSIR system, and serving the applicant and EOIR with the NTA packet.

HQASM/TRAQ concurrence is required prior to the issuance of an approval.

10. NTA Issuance at Applicant's Request

From time to time applicants may ask that an Asylum Office issue an NTA to them if they have received a final denial from the Asylum Office and have subsequently fallen out of status. Applicants may also ask an Asylum Office to issue an NTA to their family members who did not apply with them for asylum so that the whole family can be in Immigration Court proceedings together.

Any supervisory immigration officer has the authority to issue an NTA. Supervisory Asylum Officers may issue NTAs at their discretion based on office resources and the evidence of removability of the requestor. Asylum Office personnel must at least initiate security checks prior to NTA issuance (as required by Yates, William R. Security Check Requirements Preceding Notice to Appear Issuance, Memorandum for Regional Director, et. al., 2 March 2004, 2 p.).

11. Special Groups

a. ABC/ABR/ABX

Pursuant to a settlement agreement entered into by INS, EOIR, and DOS in American Baptist Churches v. Thornburgh (*ABC*) 760 F. Supp. 796 (N.D. Cal. 1991), persons identified as *ABC* class members who have registered for *ABC* benefits, and filed asylum applications by the qualifying dates are entitled to a *de novo* asylum adjudication pursuant to the 1990 regulations and special procedures set forth in the settlement.

See the ABC-NACARA Procedures Manual about ABC cases.

These applicants and their qualifying relatives may file for Suspension of Deportation/Special Rule Cancellation pursuant to Section 203 of the Nicaraguan and Central American Relief Act (NACARA). The original special group designations for these cases were "ABC" and "ABR." The ABC designation is over-inclusive, and may be present even when the individual is not eligible for *ABC* benefits. The ABR code is entered when a file review has occurred and the applicant has not been found ineligible for *ABC* benefits. The special group code "ABX" is used when a case has been removed from the ABC or ABR special group, if evidence surfaces clearly indicating that the individual is not eligible for *ABC* benefits.

b. ABQ/ABN/ABA/ABB/ABZ

As part of its effort to reduce the number of pending asylum cases, the Asylum Division created special group code "ABQ" in 2004 to identify special group ABC/ABR cases, in which the applicant had not yet filed an application for NACARA 203 relief and had not requested employment authorization during the previous three years. Special group code "ABN" was created at the same time to allow asylum offices to identify special group ABQ cases, in which the Asylum Office had received the A-file, for scheduling purposes. Asylum offices have been able to schedule interviews of special group ABQ/ABN cases to determine which applicants are genuinely interested in pursuing their asylum requests.

See Langlois, Joseph. Asylum Backlog Reduction Project, Memorandum for Asylum Office Directors and Deputy Directors, 29 January 2004, 5p.

To continue its backlog reduction efforts, the Asylum Division has added special group code "ABA," which identifies special group ABC/ABR cases, in which the applicant has not applied for NACARA 203 relief but has requested employment authorization during the previous three years. Asylum Offices can change the special group designation from ABA to "ABB" to indicate that the A-file is physically present at the office. Asylum offices can change the special group designation from ABA or ABB to "ABZ," if the applicant appears for his or her scheduled asylum interview and indicates an intent to apply for NACARA 203 relief within 60 days.

See Langlois, Joseph. ABA/ABB Asylum Backlog Reduction Project, Memorandum for Asylum Office Directors and Deputy Directors, 2 February 2005, 6p.

c. DEP

The DEP special group code in RAPS is used only for certain NACARA applications. Asylum Office personnel update a case as "DEP" when an Asylum Office finds a principal applicant ineligible for an ABC interview, but he or she appears eligible to apply for benefits under Section 203 of NACARA based upon the his or her relationship to a parent or spouse who has an asylum application pending with the asylum program and appears eligible to apply under Section 203 of NACARA.

The updating of the case with the DEP code will prevent RAPS from scheduling the applicant for an asylum interview along with other non-special group cases and therefore, gives the applicant an opportunity to apply for benefits under NACARA before being interviewed.

d. FSB

Certain nationals of Former Soviet Block (FSB) countries who entered the U.S. on or before December 31, 1990, and who filed for asylum on or before December 31, 1991, are also entitled to file for Suspension of Deportation/Special Rule Cancellation pursuant to the Nicaraguan and Central American Relief Act (NACARA). The special group code in RAPS for these cases is "FSB."

See the ABC-NACARA Procedures Manual about FSB cases.

e. HDD/HGN/HGT/HGX

The Haitian Refugee Immigration Fairness Act (HRIFA), Pub.L. No. 105-277, § 902, 112 Stat. 2681-538, allows certain nationals of Haiti who have been residing in the United States to adjust status to that of lawful permanent resident. This code was used to place potentially eligible asylum applicants' cases on hold to give them time to apply for adjustment of status.

f. KRD

This code was used to designate cases of Iraqi Kurds who were airlifted to Guam in 1997.

g. NCG

Section 202 of NACARA allows certain Nicaraguan and Cuban nationals who are physically present in the United States to adjust status to that of lawful permanent resident. This code was used to place potentially eligible asylum applicants' cases on hold to give them time to apply for adjustment of status.

h. PEN

This code is used to place on hold those asylum cases that also have pending applications to adjust status to that of lawful permanent resident. The cases are placed on hold in order to give the relevant Service Center time to adjudicate the adjustment applications before the Asylum Office processes the asylum applications.

12. Temporary Protected Status (TPS)

Under Section 244 of the INA, DHS is authorized to grant TPS to eligible nationals of designated foreign states or parts of such states (or to eligible aliens who have no nationality and who last habitually resided in such designated states) upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions.

A chart of all states designated for TPS and the effective dates of the designations is available at uscis.gov by clicking on Services and Benefits, then Humanitarian Benefits, then Temporary Protected Status. This information can also be found on the USCIS public Internet site. Because special group codes prevent cases from being picked up for scheduling, the "TPS" special group code in RAPS has been disabled.

If an applicant has been granted TPS, the Asylum Office considers him or her to be in a valid status for the purposes of processing the asylum application. "TPS" and the expiration date are entered on the VIST screen in RAPS. An applicant who has only applied for but not been granted TPS, however, would not be considered in valid TPS status. In this case, the Asylum Office processes the case depending upon the applicant's immigration status at the time of decision.

13. Transsexual Asylum Applicants – DRAFT

Prior to adjudicating an asylum application involving a transsexual applicant, the Asylum Officer must review the memorandum, Yates, William R. Adjudication of Petitions and Applications Filed by or on Behalf of, or Document Requests by, Transsexual Individuals Memorandum to Regional Directors, et al., 16 April 2004, 4p. As stated in that memorandum, "[t]ranssexualism is a condition in which an individual feels persistently uncomfortable about his or her anatomical sex, and often seeks medical treatment, including hormonal therapy and 'sex reassignment surgery.'" (SRS) A benefit application filed by a transsexual individual will be considered on its merits. Caselaw decided after the above memorandum determined that USCIS personnel may recognize the marriage of a transsexual individual, who, after having undergone SRS, married someone of the opposite sex as his or her new sex, and the state in which the couple were married recognized the change in sex of the postoperative transsexual and considered the marriage as having taken place between two heterosexual persons.

See Matter of Lovo, 23 I&N Dec. 746 (BIA 2005); Interim Decision # 3512

a. Adjudications of Transsexual principal applicants

An asylum applicant is presumed to be of the gender that he or she claims on the asylum application. Unless there is a strong indication or evidence of a change in the applicant's gender, medically or otherwise, such as prior use of a name normally used by the opposite sex, the Asylum Officer need not make any special inquiry into determining whether an applicant is in fact the gender claimed on the asylum application or a transsexual.

When an asylum applicant is determined to be transsexual, the asylum application of a transsexual principal applicant is considered on its merits. The applicant's status as a transsexual is not taken into account in evaluating the merits of the asylum claim, unless transsexuality is raised by the applicant as part of the asylum claim. However, the Asylum Officer is required to undertake the usual questioning and requests for documentation in order to ascertain the applicant's identity. The Asylum Officer should ascertain, through testimony and/or documentation, a transsexual asylum applicant's identity, including gender and name at birth and the current outwardly assumed gender, including whether there is any documentation of the assumed gender, such as a re-issued birth certificate, legal name change, or medical records of SRS or other transgender-related medical treatment.

The Asylum Officer must be sensitive to the transsexual asylum applicant's particular situation, the likelihood that he or she may have experienced stress and/or trauma surrounding issues of gender identity, and the potentiality for increased cultural and language barriers to effective communication. "[A]s in the context of any other adjudication, all CIS officers shall perform their duties in a manner that accords maximal respect, sensitivity, and consideration when adjudicating any petition, application, or document request filed by, or on behalf of, a transsexual individual." *Id., at 4.* For further guidance, *see* AOBTC Basic Training Materials, *Interviewing Part IV: Inter-Cultural Communication and Other Factors That May Impede Communication at an Asylum Interview*; and *Female Asylum Applicants and Gender-Related Claims.*

The Asylum Office processes and issues the decision based on the applicant's name and gender at birth, unless the asylum applicant submits medical and/or other documentation establishing a gender change via SRS and, where applicable, a legal name change. There must be documentation of SRS in order to change the applicant's gender of record. If contemporary documentation of the surgery is unavailable where, for example, the surgery took place in the applicant's home country and the applicant cannot reasonably be expected to obtain the documentation, a current medical evaluation concluding that the applicant has previously undergone SRS is acceptable. Documentation of pre-surgery treatment alone, such as hormone therapy, is insufficient to support a change in the applicant's gender of record. For example, an applicant who was born a male but who provides documentation of SRS shall be recorded and issued documentation as a female, under a new name if there is documentation of a legal name change. Alternatively, USCIS policy would not allow a change in gender of record for a female who is undergoing hormone treatments and presents herself as male, but who has not undergone SRS. If the applicant has not had SRS and/or cannot provide medical documentation of SRS, Asylum Office personnel issue documents reflecting the gender of the applicant at birth. If the applicant cannot provide evidence of a legal name change Asylum Office personnel should contact HQASM Operations for guidance. Guidance is currently being sought from the USCIS Office of Chief Counsel regarding other applicant-requested name changes. Whether or not an asylum applicant has changed his or her name legally, security checks that are conducted by name must be conducted on all names used by the applicant.

If an applicant presents as and/or claims a different gender than his or her anatomical gender at birth, but will not or has not undergone SRS, Asylum Office personnel must explain to the applicant USCIS policy that the gender of record and documentation cannot be changed to a new gender unless there is documentation of SRS. However, Asylum Office personnel should, as a matter of courtesy, respect the applicant's preferences with respect to being referred to as "him" or "her," or "Mr." or "Ms.," in verbal communication.

b. Dependents of Transsexual Applicants

A transsexual asylum applicant may include his or her children in an asylum application in accordance with current guidance and regulations without regard to his or her transsexuality. Similarly, an asylum principal applicant may include a transsexual child in his or her asylum application, without regard to the child's transsexuality. Guidelines in the previous section for determining identity and gender apply.

Because of the legal prohibition on recognition of same-sex marriages for purposes of Federal benefits, USCIS personnel are prohibited from recognizing the marriage of a transsexual individual, who, as a result of having undergone SRS, is now the same gender as his or her claimed spouse, regardless of whether the marriage took place before or after the applicant's change of gender.

See Defense of Marriage Act (DOMA), 1 U.S.C. § 7 (1996).

On the other hand, as stated above, USCIS personnel may recognize the marriage of a transsexual individual, who, after having undergone SRS, married someone of the opposite sex as his or her new sex, and the state in which the couple were married recognized the change in sex of the postoperative transsexual and considered the marriage as having taken place between two heterosexual persons.

Matter of Lovo, 23 I&N Dec. 746 (BIA 2005); Interim Decision # 3512

For example, a male who undergoes medical treatment or SRS in order to change his gender to female, and later marries a male, may include the male as a spouse on the asylum application, provided the state in which they were married recognized the marriage as having taken place between two heterosexuals. However, a male who marries a female, and later becomes a female, cannot include the female as a spouse on the asylum application.

Again, USCIS personnel should be sensitive to the applicant and his or her claimed spouse. The inability to recognize the marriage for purposes of conferring benefits does not prevent USCIS personnel from verbally referring to the applicant's spouse as husband or wife, for example, in the context of an asylum interview. If Asylum Office personnel encounter a situation where a claimed dependent spouse must be removed from an asylum application under this section, Asylum Office personnel follow the guidance in Section III.E.6.b, *Loss of Derivative Status by Marriage, Divorce, or Death of Principal Applicant*, and may, where appropriate, give the removed spouse a reasonable period of time to file a new asylum application as a principal. The Asylum Office may also entertain a request for a *nunc pro tunc* asylum approval in accordance with the guidance in this manual, if a properly granted derivative asylee spouse loses his or her derivative status prior to adjustment due to a gender change by the derivative or principal, whether or not the spouses have divorced. *See* Section III.E, *Dependents*, for further specific procedures for dependent asylum applicants.

14. Trafficking Victims – DRAFT

While Asylum Officers are not responsible for making a determination as to an applicant's status as a victim of trafficking, the Asylum Officer can play a key role in the protection of victims and in the prosecution of traffickers by bringing the cases of possible trafficking victims to the attention of location ICE officials.

The Trafficking Victim's Protection Act (TVPA) guarantees certain rights and protections to victims of severe forms of trafficking, who are physically present in the United States as a result of having been trafficked. The TVPA defines a victim of a severe form of trafficking as a person subject to:

> (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
> (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

22 U.S.C. 7101. The TVPA is Division A of the Victims of Trafficking and Violence Prevention Act, (VTVPA) enacted as Public Law 106-386, 114 Stat. 1464, October 18, 2000. Additional information is available at http://www.uscis.gov/ by clicking on "Services and Benefits" and then on "Visit the U.S."

Each Asylum Office Director must designate an SAO to serve as the principal point of contact between the office and ICE on cases involving potential victims of trafficking. If an Asylum Officer suspects that an applicant for asylum may be a victim of a severe form of trafficking in persons, the Asylum Officer should:

- notify the SAO designated by the Asylum Office Director to handle cases involving potential trafficking victims;
- provide the victim with information on the TVPA, including the pamphlet titled *Information for Victims of Trafficking in Persons and Forced Labor* and the toll-free Trafficking Task Force complaint line: 1-888-428-7581;
- place a memo in the file regarding the applicant's possible eligibility under the TVPA;
- process the asylum case as usual.

The brochure is available at http://www.usdoj.gov/crt/crim/wetf/victimsbrochure.pdf.

Once notified of a possible trafficking victim, the SAO contacts the local ICE enforcement office and requests to speak with the Assistant Special Agent in Charge for Smuggling/Trafficking Issues in order to determine whether ICE would like to take any further action.

Please note that potential victims of trafficking may include children filing for asylum as principal applicants. Asylum Officers who encounter child applicants who may be or may have been victims of trafficking should consult Section III.B.1, *Children Filing as Principal Asylum Applicants*, above.

C. CONFIDENTIALITY ISSUES

Information about and contained in an asylum application or credible/reasonable fear determination is protected from disclosure to third parties without written consent of the applicant or the Secretary of Homeland Security. *See* 8 C.F.R. 208.6. "Generally, confidentiality of an asylum application is breached when information contained therein or pertaining thereto is disclosed to a third party, and the disclosure is of a nature that allows the third party to link the identity of the applicant to:

1) the fact that the applicant has applied for asylum;
2) specific facts or allegations pertaining to the individual asylum claim contained in an asylum application; or
3) facts or allegations that are sufficient to give rise to a reasonable inference that the applicant has applied for asylum."

Cooper, Bo. INS General Counsel. Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information, Memorandum to Jeffrey Weiss, Office of International Affairs. (Washington, DC: 21 June 2001), 7p., and Langlois, Joseph E. Fact Sheet on Confidentiality, Memorandum to Asylum Office Directors and Deputy Directors, 15 June 2005, 1 p., including the attached fact sheet entitled *Federal Regulations Protecting the Confidentiality of Asylum Applicants*.

1. Asylum Interviews

8 C.F.R. 208.9(b)

Asylum interviews shall be separate and apart from the public, except at the request of the applicant. Members of the public (applicants, interpreters, attorneys, cleaning crew, and outside visitors) routinely travel through the corridors of an Asylum Office. Therefore, an AO should keep the office door closed during an asylum interview, if the interview is conducted in a publicly traveled area. If a particular need arises when an AO needs to interview with the door open in a publicly traveled area, a request for an exemption must be made to the SAO prior to the interview.

2. Protecting Confidentiality – Written Materials

Photocopying machines, printers, and Asylum Offices may contain policy memoranda, case assessments, I-589 applications and charging documents with identifying information about an asylum applicant. To ensure that all materials related to an application for asylum remain confidential, Asylum Office personnel must ensure that any written materials with identifying information about an asylum applicant are not laying in plain view during an asylum interview. In addition, Asylum Office personnel may not permit asylum applicants, attorneys, and interpreters to wait in areas (e.g., near printers and photocopying machines) where documents that contain identifying information about an applicant are in plain view.

Any documents with an asylum applicant's name, alien number, or any other type of identifying information that are to be discarded must be shredded or placed in burn boxes.

3. Access to Asylum Files by Non-DHS Federal Law Enforcement Agencies (FLEAS)

8 C.F.R. 208.6

An Asylum Office may disclose information to a non-DHS FLEA if the information requested is needed in connection with a criminal or civil investigation that is already underway, if the Secretary of Homeland Security authorizes disclosure, or if the applicant provides written consent to disclose information from his or her file. Otherwise, any information about an individual applicant may not be disclosed to an agent/officer, even when that individual believes the applicant should be entitled to a benefit because of information/assistance the applicant may have provided. For example, an agent who has received cooperation from an asylum applicant may want to provide information to support the asylum application. The agent may supply the information if he or she is aware that the applicant has applied for asylum, but USCIS may not disclose information about the case or case status, or confirm or deny the fact that the applicant has applied for asylum, unless the applicant consents to the disclosure in writing.

Under certain circumstances as prescribed by the Secretary of Homeland Security's memo of April 18, 2007, asylum information may be disclosed to any element of the U.S. Intelligence Community, or any other federal or state agency having a counterterrorism function. *See* Chertoff, Michael. Secretary of Homeland Security. Disclosure of Asylum-Related Information to U.S. Intelligence and Counterterrorism Agencies, Memorandum to the Deputy Secretary; the Under Secretaries; the General Counsel; Director, USCIS; et al. (Washington, DC: 18 April 2007), 5p.

Asylum Office personnel should not disclose the interest of the law enforcement, intelligence, or counterterrorism agency in a particular application to the asylum applicant and should limit the number of USCIS employees who have knowledge of any such interest to those with a "need to know" basis.

4. Disclosure to Third Parties – General

8 C.F.R. 208.6

Information contained in or pertaining to any asylum application shall not be disclosed without the written consent of the applicant, except as permitted by 8 C.F.R. 208.6 or at the discretion of the Secretary of Homeland Security. This includes neither confirming nor denying that a particular individual filed for asylum. Inquiries about the status of an asylum application should not be taken or responded to by telephone except where it is possible to verify the identity of the caller, such as when an attorney/representative can immediately fax a signed G-28. An Asylum Office may accept written status requests signed by the applicant (or the applicant's attorney or representative with a properly completed G-28 on file) by mail or fax. Information shall not be disclosed to third parties except as provided in 8 C.F.R. 208.6.

An Asylum Office may receive inquiries from city and state officials such as probation officers and police personnel about asylum applicants. The receiving party should refer such inquiring parties or requests to the Director or her/his designated official. Pursuant to 8 C.F.R. 208.6, information about an applicant derived from the asylum application alone cannot be disclosed to state and local law enforcement unless the applicant consents or if permitted at the discretion of the Secretary of Homeland Security.

5. Testimony of Other Asylum Applicants

As discussed in the beginning of this section, the facts contained in an asylum application and the testimony given by an asylum applicant in support of his or her claim are protected by the confidentiality provisions in 8 C.F.R. 208.6. The confidentiality protections also extend to the Asylum Officer's assessment of the applicant's claim, in that it contains the essential facts in support of the applicant's asylum application. The purpose of the assessment is to document the reasoning of the decision and the facts upon which it is based for internal review, not to explain the decision to the public. Nevertheless, the Asylum Officer's assessment of the claim may be disclosed to the applicant in response to a FOIA request, or through other means. Therefore, it is important that the assessment not contain confidential information related to the asylum application of a third party, thus risking the violation of the third party applicant's right to confidentiality if the assessment is released. This does not preclude an Asylum Officer from considering relevant testimony of another asylum applicant in making a determination of asylum eligibility. Until further training materials on this issue have been developed, in cases where the Asylum Office Director and Deputy Director concur that information in one asylum application clearly contradicts the information in another asylum application and that information would change the outcome of an adjudication that would otherwise be an approval, the Asylum Office should contact HQASM-Operations for further guidance.

Confidentiality may be broken by the applicants themselves, and therefore waived. For example, if two or more family members were present when the testimony was given, the confidentiality of that testimony has been broken as to the applicants who were present. Similarly, if a copy of a family member's asylum application is submitted in support of the other's asylum application, the confidentiality of the copied asylum application has been broken as to those family members

D. DEPARTING THE U.S. BEFORE A FINAL DECISION

USCIS presumes that an applicant has abandoned his or her asylum application if one (1) of the following occurs: 8 C.F.R. 208.8

- The applicant departs the U.S. without first obtaining advance parole.
- The applicant departs the U.S. pursuant to advance parole and returns to his or her country of claimed persecution.

In both instances an applicant may overcome the presumption of abandonment if certain facts are established.

Even if the presumption of abandonment is overcome, an applicant's return to the country of feared persecution, depending on the circumstances, may have a bearing on the applicant's ability to establish a well-founded fear. *See* AOBTC Lesson Plan, *Asylum Eligibility Part II: Well-Founded Fear.*

1. Discovering Departure from U.S. before an Asylum Interview

When an Asylum Office learns of an applicant's departure from the U.S. before an interview has been scheduled, Asylum Office personnel should immediately schedule the applicant for an asylum interview.

If the applicant fails to appear for the interview, follow the instructions in Section III.I, *Failure to Appear*. If the Asylum Office Director is satisfied that the individual is no longer in the United States pursuant to 8 C.F.R. 208.8, the Asylum Office does not refer the asylum application to the Immigration Court. If the Asylum Office Director believes the alien may still be in the United States, the Asylum Office may refer the asylum application to the Immigration Court.

RAPS contains a dismissal code for abandonment of the asylum application on the Administrative Closure (CLOS) screen, "CU – Dismissed-Abandoned." This code is only to be used for individuals who have abandoned their claims by departing the United States. If the asylum application is dismissed for abandonment, the Asylum Office issues the applicant a letter *Notice of Dismissal – Abandonment of Asylum Application* (Appendix 65). If the individual is in the United States and not in status, the Asylum Office concurrently issues charging documents. If the individual is not in the United States, the notice is mailed to both the last known U.S. address and the foreign address, if known.

If the applicant appears at the interview, follow instructions in Section III.D.2, *Discovering Departure from the U.S. During an Asylum Interview*.

2. Discovering Departure from the U.S. During an Asylum Interview

When an applicant appears for an asylum interview, he or she has overcome USCIS's presumption of abandonment. The AO questions the applicant about any departure from the U.S. in order to determine if the departure bears on the merits of the asylum claim. The AO also requests a copy of any advance parole document (Form I-512) that was issued by DHS or INS.

3. Discovering Departure from the U.S. After an Asylum Interview

An Asylum Office may learn that an applicant departed the U.S. after the asylum interview, but before a final decision. The asylum regulations provide that an applicant who departs the United States without advance parole, or who returns to the county of claimed persecution may be presumed to have abandoned his or her asylum application. The presumption is rebuttable if an applicant can show compelling reasons for the departure. An Asylum Office determines whether the applicant has overcome the presumption of having abandoned his or her asylum applicant on a case-by-case basis, taking into account the following factors:

8 C.F.R. 208.8

Cooper, Bo. Readmission of Asylees and Refugees Without Travel Documents, Memorandum to Michael Pearson, EAC Field Operations, 23 November 1999, 8p.

- Length, purpose and duration of the departure
- Whether the applicant returned to his or her country of feared persecution, and whether there were compelling reasons for doing so
- Whether the applicant has returned or is attempting to return to the U.S.
- Whether the asylum application would have been approved, and if so, whether the applicant engaged in any activities while outside the U.S. that would be inconsistent with asylum status and if he or she voluntarily re-availed him or herself of the protection of his or her country of nationality.

Mere return to one's country of nationality does not mean that the applicant has voluntarily re-availed him or herself of its protection. The Asylum Officer should consider:

- Whether the return was voluntary;
- Whether the applicant intended to re-avail him- or herself of the protection of his or her country of nationality;
- Whether the applicant actually obtained such protection, including obtaining a passport;
- Whether the applicant re-established him or herself in the country where persecution was feared with a view towards permanently residing there; and
- Whether exceptional circumstances justify the applicant's actions such that a grant of asylum is still appropriate.

The Asylum Office has no jurisdiction to grant asylum to an applicant who is not in the U.S. However, the Asylum Office may be called upon to give input into a decision of whether to allow the re-entry of an asylum applicant into the U.S., necessitating an evaluation of the case using these factors.

RAPS contains a dismissal code for abandonment of the asylum application on the Administrative Closure (CLOS) screen, "CU – Dismissed-Abandoned." This code is only to be used for individuals who have abandoned their claims by departing the United States. If the asylum application is dismissed for abandonment, the Asylum Office issues the applicant a letter *Notice of Dismissal – Abandonment of Asylum Application* (Appendix 65). If the individual is in the United States and not in-status, the Asylum Office concurrently issues charging documents. If the individual is not in the United States, the notice is mailed to both the last known U.S. address and the foreign address, if known.

E. DEPENDENTS

1. Adding a Dependent After Principal Applicant's Initial Filing

A principal applicant may add to his or her asylum application a spouse or child under age 21 at the time of filing, who is in the United States and not under the jurisdiction of EOIR, at any time prior to the rendering of a final decision by the Asylum Office, regardless of whether the new dependent previously filed for asylum as a separate principal applicant, or never submitted an asylum application. An individual who was issued a *NOID* or *Final Denial* may become a dependent on a spouse's/parent's asylum claim. A spouse or child may be added to an applicant's asylum claim even after the issuance of a *NOID* or *Recommended Approval* letter to the principal applicant. The addition of a dependent in RAPS will automatically initiate the scheduling of a fingerprint appointment for a dependent over age 14 and under age 75 and initiate other security checks. Asylum Office personnel should conduct US-VISIT checks for any dependents added after the principal applicant's initial filing.

8 C.F.R. 208.21

"Final Decision" in this context refers to a Final Denial, Referral (with NTA filed on the Immigration Court) or Final Approval.

If a request to add a dependent is received after the issuance of the denial, referral or approval to the principal applicant, Asylum Office personnel provide the applicant with information about the filing of an I-730, *Asylee/Refugee Relative Petition*, which can be found on uscis.gov at http://www.uscis.gov/files/article/d1_english.pdf.

The burden of proof is on the principal applicant to establish the claimed relationship with the prospective dependent. Details regarding the types of documentation that may be used to establish the principal applicant-dependent relationship in cases pending before USCIS are discussed in 8 C.F.R. 204.2(a)(1)(i)(B), (a)(2), (d)(2) and (d)(4).

a. Dependent Did NOT Previously File an Asylum Application

i. Adding a dependent before the interview

The principal applicant files with the Service Center a packet that includes:

- One (1) copy of his or her asylum application that includes the dependent's information.
- At a minimum, an applicant is permitted to submit copies of only pages 1, 2, 3 (including Supplement A Form I-589 as needed for additional family members), and 9 of the principal applicant's application in lieu of the entire I-589 and supplemental documentation.
- One (1) photograph of the dependent that he or she wants to add, stapled on page 9 of the dependent's copy.
- One (1) copies of evidence of relationship.
- Brief statement that he or she wishes to add a dependent to his or her asylum claim.

The Service Center adds the dependent to the parent or spouse's claim in RAPS using the subcommands on the I589 screen and forwards the file to the Asylum Office.

ii. Adding a dependent at the time of the interview

A principal applicant may add a dependent to his or her asylum claim at the time of the asylum interview, as long as the dependent appears with the principal applicant To add a dependent who is present at the interview, the principal applicant submits to the AO the same packet described in the previous section.

Asylum Office personnel create a file for the dependent according to instructions in Section II.C.2, *I-589 Filed Directly with the Asylum Office*. Asylum Office personnel add the dependent to the principal applicant's case in RAPS. The AO meets and interviews the dependent according to instructions in Section II.J.3, *AO Conducts An Asylum Interview, Dependents*.

If the dependent does not appear with the principal applicant at the interview, the AO:

- Completes the interview with the principal applicant
- Completes Form I-72 or office equivalent, which instructs the principal applicant to bring the dependent to the office on a day before the pick-up date if the interview takes place at the Asylum Office, or before the AO leaves the circuit ride city if the interview takes place away from the Asylum Office (or when the next circuit ride is scheduled if this occurs on the last day of the circuit ride).
- Places the principal applicant's case on HOLD – AD in RAPS. This will stop the EAD clock until the applicant presents the requested dependent.

Required Material: Form I-72 or office equivalent

If the dependent appears on the appointed date and time, the AO follows instructions in Section III.E.1.a.iii, removes the case from HOLD in RAPS, and processes the family's decision.

If the individual fails to appear on the appointed date Asylum Office personnel:

- Do not add the individual as a dependent on the principal applicant's claim.
- Write a memo to the principal applicant's file, with a copy in the dependent's file, if any, that states the applicant failed to appear for the appointment.
- Remove the case from HOLD in RAPS
- Process the asylum application of the principal applicant for pick-up or mail-out.

iii. Adding a dependent after the interview

A principal applicant may submit materials to add a dependent either to the Service Center or to the Asylum Office that is adjudicating his or her application. Neither the Service Center nor the Asylum Office will add an individual as a dependent if RAPS indicates the Asylum Office already issued an *Asylum Approval*, *Final Denial* or *Referral* to the applicant. Should this occur, the Service Center or Asylum Office returns the packet to the principal applicant with a letter informing him or her that USCIS cannot add the dependent because a final decision was issued.

(a) Requests Received by the Service Center

If the request to add a dependent is filed with the Service Center and RAPS indicates an interview date in the past, the Service Center forwards the packet to add a dependent to the Asylum Office for further processing.

(b) Requests Received by the Asylum Office

If the Asylum Office receives a request to add a dependent either before the pick-up date, or while the case is pending if the decision will be mailed, Asylum Office personnel take the following action:

- Place the case on HOLD – AD in RAPS
- Send to the principal applicant a *Response to Request to Add Dependent to Asylum Application* (Appendix 13), which schedules both the principal applicant and the dependent for an appointment with an AO. This appointment may be scheduled for the same date as the pick-up appointment if resources permit the completion of all necessary follow-up processing prior to service of the decision on that date.

Asylum Office personnel follow procedures in Section III.E.1.a.ii for processing guidelines depending upon whether the individual appears or fails to appear at the appointment.

b. Dependent Previously Filed an Asylum Application as a Principal Applicant

There is no statutory or regulatory bar to an individual being both a principal applicant and a dependent. An individual who filed an asylum application may wish to withdraw his or her application as a principal applicant and become a dependent on a spouse or parent's asylum claim. The choice to withdraw as a principal applicant or to pursue an application as both a principal applicant and a dependent is the individual's and the principal applicant's, who agrees to include the individual as a dependent. If an individual wants to withdraw his or her asylum application as a principal applicant and become a dependent, the following procedures apply. For procedures on individuals pursuing an asylum application as both a principal applicant and a dependent, *see* Section III.E.3, *Simultaneous Filing as a Principal Applicant and a Dependent*.

i. Request to add a dependent received before the asylum interview

The Service Center will not add an individual as a dependent if RAPS indicates that the individual is currently a principal applicant. Should this occur, the Service Center forwards the packet to the Asylum Office.

Upon receipt of the packet, Asylum Office personnel make reasonable efforts to schedule the interview of the parent/spouse of the individual who wants to be added as a dependent, and the dependent who filed a separate I-589, on the same date and time by having them added to the schedule manually. Asylum Office personnel also make reasonable efforts to assign both individuals to the same AO for interview. If that is not possible, then the same SAO reviews both decisions for consistency.

ii. Adding a dependent at the time of the interview

A principal applicant may request to add a dependent to his or her asylum claim at the time of the asylum interview. The AO explains to the principal applicant and prospective dependent, if present, that it is possible to be a principal applicant and dependent simultaneously. If the choice is made to pursue both cases simultaneously, Asylum Office personnel follow guidance contained at Section III.E.3, *Simultaneous Filing as a Principal Applicant and a Dependent.* If the prospective dependent no longer wants to pursue an application as a principal applicant, the AO may grant the request to withdraw the principal application and add the dependent at the interview as long as the dependent is present. The individual who wants to be added as a dependent provides to the AO a signed statement that he or she wishes to withdraw his or her asylum application. The principal applicant provides to the AO a signed statement that he or she wishes to add a dependent to his or her asylum claim.

Asylum Office personnel locate the dependent's file. The AO completes the section on the I-589 that pertains to information about a spouse or child, so the principal applicant does not need to submit a new copy of his or her I-589. If the file contains one (1) photograph of the individual, he or she does not need to submit a new one. The principal applicant must submit three (3) copies of evidence of relationship. The AO interviews the dependent according to instructions in Section II.J.3, *AO Conducts An Asylum Interview*, *Dependents*.

Asylum Office personnel delete the spouse or child as a principal applicant from RAPS using the Delete Case (DELC) command, and add him or her to the principal applicant's claim using the subcommands found at the bottom of the I589 screen.

If the prospective dependent who filed a separate I-589 did not appear at the time of the principal's interview, the principal applicant may be given a brief extension of time to bring his or her dependent and the required materials to add the dependent. If the dependent does not appear, the AO completes the principal applicant's case without adding the dependent.

iii. Adding a dependent after an interview

A principal applicant may submit materials to add a dependent either to the Service Center or to the Asylum Office that is adjudicating his or her application. Neither the Service Center nor the Asylum Office will add an individual as a dependent if RAPS indicates the Asylum Office already issued an *Asylum Approval, Final Denial* or *Referral* to the applicant. Should a request to add a dependent arrive after the final decision has been issued, the Service Center or Asylum Office returns the packet to the principal applicant with a letter informing him or her that USCIS cannot add the dependent because a final decision was issued.

(a) Requests Received by the Service Center

If the request to add a dependent is filed with the Service Center after the interview and prior to issuance of a final decision, the Service Center forwards the packet to add a dependent to the Asylum Office for further processing. The Service Center will not add an individual as a dependent if RAPS indicates that the individual is currently a principal applicant. Should this occur, the Service Center forwards the packet to the Asylum Office.

(b) Requests Received by the Asylum Office

If the Asylum Office receives a request to add a dependent either before the pick-up date, or while the case is pending if the decision will be mailed, Asylum Office personnel take the following action:

- Place the principal's case on HOLD – AD in RAPS
- Send to the principal applicant a *Response to Request to Add Dependent to the Asylum Application* (Appendix 13), which schedules both the principal applicant and the dependent for an appointment with an AO.

Asylum Office personnel follow procedures in Section III.E.1.a.iii for processing guidelines depending upon whether the individual appears or fails to appear at the appointment.

If the dependent is unable to appear, the Asylum Office schedules the dependent for an interview based on the I-589 he or she filed as a principal applicant This interview should take place during the next scheduled circuit ride. Because the individual wants to be considered as both a principal applicant and a dependent, the AO delays serving the decision on the spouse's or parent's I-589 pending the interview and decision on the dependent's separately filed I-589. *See* Section III.E.3, *Simultaneous Filing as a Principal Applicant and a Dependent*, below. Asylum Office personnel place the principal applicant's case on HOLD – AD until the dependent is interviewed.

2. Family Members Filing as Separate Principal Applicants

There is no requirement that a family must submit an asylum application as a family. A husband and wife, or a mother and daughter may each submit separate asylum applications as principal applicants. Each individual is entitled to an interview on his or her application and confidentiality protections as outlined in Section III.C.

To the extent practicable, Asylum Office personnel should schedule family members on the same day and with the same AO. Asylum Office personnel will not always know in advance that multiple family members have filed principal asylum applications. However, this may come to an AO's attention after interviewing a family member. The AO should notify an SAO so that Asylum Office personnel can attempt to have all family members interviewed by the same AO or at least to have the same SAO review all claims of the family members.

3. Simultaneous Filing as a Principal Applicant and a Dependent

There is no statutory or regulatory bar to an individual being both a principal applicant and a dependent. An individual may pursue an asylum application as a principal applicant and as a dependent on a parent or spouse's asylum claim. However, RAPS is not structured to accommodate the simultaneous claims. Ideally, all family members would appear at the Asylum Office on the same date for interview. However, RAPS may pick the cases up for scheduling on different dates. If the Asylum Office is made aware of the cases in time, the family members should be scheduled for interviews on the same date. If an applicant expresses a desire to both file as a principal applicant and ride as a dependent on another applicant's application, Asylum Office personnel take the following actions:

Davidson, Christine. Simultaneous Principal & Dependent Filings of I-589's, Memorandum to Maureen Dunn, SAO, 26 August 1994, 3p.

- Confirm with all applicants involved that they wish to proceed as principals and that one or all wish to proceed as dependents as well.
- Locate and obtain all A-files.
- If an interview has not yet been conducted, Asylum Office personnel schedule all individuals for interviews, using the Add Case to Schedule (ADDC) command in RAPS to schedule all individuals on the same date. The same AO should be assigned all the cases where possible.
- If an interview has already been conducted or is underway, but the individual who wishes to proceed as both a dependent and principal has not been scheduled for an interview, Asylum Office personnel schedule him or her for an interview as soon as possible, using the Add Case to Schedule (ADDC) command in RAPS. The same AO who conducted the previous interview should be assigned to interview the family member(s) whenever possible.
- No decision is to be rendered in any individual case until all principal applicants are interviewed.

Depending on the decision contemplated in each case, Asylum Office personnel take the following steps:

a. All Applicants Eligible for Approval

- Prepare recommended approvals or final approvals for each individual as a principal applicant.
- Serve decisions on each applicant as a principal applicant.

b. All Applicants Referred or Denied

- Prepare referral or final denial materials, as appropriate.
- Serve decisions on each applicant as a principal applicant.

c. All Applicants Require Notices of Intent to Deny

- Prepare Notices of Intent to Deny.
- Delay all final decisions until all rebuttal periods have expired and final decisions can be processed simultaneously. Final decisions to be processed as indicated in this section.

d. One Applicant Eligible for Approval, Other(s) Not Eligible

If the principal applicant whose application merits a grant is eligible to add as a dependent on his or her I-589 the other applicant who would otherwise be ineligible for an approval as a principal applicant, Asylum Office personnel inform the prospective dependent that he or she is ineligible for an asylum approval as a principal applicant and ascertain from the proposed dependent if he or she wishes to be processed as a dependent on his or her spouse's or parent's claim. If so, the dependent must so indicate in writing. The dependent is not required to withdraw his or her I-589. However, to accommodate the case in RAPS, the dependent's record as a principal applicant must be removed. Asylum Office personnel complete the following steps.

If the individual who merits a grant is eligible to add a dependent to his or her application:

- Print all CSTA and CHIS screens for the prospective dependent and place them in his or her file. Do not update RAPS with a decision on the prospective dependent's asylum application.
- Delete the prospective dependent's record as a principal applicant from RAPS. Update RAPS to add the dependent(s) to the principal applicant's claim.
- Prepare recommended approvals or final approvals for the family group.
- If the proposed dependent fails to indicate in writing his or her withdrawal for the purpose of becoming a dependent, the proposed dependent remains a principal applicant and the decision on his or her application as a principal applicant is then processed on paper (without RAPS updates), including a *NOID* and, if the reasons for denial are not overcome, a *Final Denial*. The applicant is treated as in-status because he or she is being approved for asylum as a derivative.

If the principal applicant whose case merits a grant is not eligible to add the other applicant as a dependent (as in the case where the child merits a grant, but the parent does not), each applicant is processed as a principal applicant

4. Dependent's Failure to Appear at Asylum Interview

If a dependent included in a principal applicant's initial I-589 filing fails to appear for the asylum interview, AO proceeds with the interview and takes the following action:

The principal applicant must bring the dependent at the earliest possible time.

- Completes Form I-72 or office equivalent, which instructs the principal applicant to bring any missing dependent family members to the office or circuit ride location on a specific date and at a specific time. If the AO issues a *Pick-up Notice*, the appointment may be scheduled for the same date as the pick-up appointment if resources permit the completion of all necessary follow-up processing prior to service of the decision on that date.
- Provides the principal applicant with the original form and places a copy on the right-hand side of the A-file.
- Informs the principal applicant that failure to present the missing dependent will result in the dependent's removal from the application for asylum, and possible referral to the Immigration Court.
- Places the principal applicant's case on HOLD - AD in RAPS. This will stop the EAD clock until the applicant presents the requested dependent. When the dependent appears, Asylum Office personnel remove the case from HOLD in RAPS.

a. Dependent Fails to Appear on Appointed Date and Time

If the dependent fails to appear on the date indicated on Form I-72 or office equivalent, Asylum Office personnel:

- Remove the dependent from RAPS using the subcommands on the I589 screen.
- Place a memo in the A-file of the dependent, with a copy in the principal applicant's A-file that states the dependent was removed because he or she failed to appear for an asylum interview.
- Physically separate the A-file from the principal applicant's.
- Process the dependent's A-file in accordance with the status of the applicant and standards of prosecutorial discretion, as exercised by the Asylum Office Director (e.g., place the dependent into removal proceedings, forward the file to the component needing to take action on the file, etc.)
- Remove the principal applicant's case from HOLD in RAPS and process the case.

Meissner, Doris. Exercising Prosecutorial Discretion, Memorandum to Regional Directors, et al., 17 November 2000, 13p.

b. Dependent Appears on Appointed Date and Time

Once the dependent appears, the AO:

- Verifies the dependent's identity, including verifying identity in US-VISIT, and his or her relationship to the principal applicant.
- Ensures the dependent is not under the jurisdiction of the Immigration Court.
- Ascertains whether any mandatory bars apply.
- Reviews any biographical data on the I-589 that may have been incomplete due to the individual's absence at the asylum interview.
- Removes the case from HOLD in RAPS
  - Processes the family's decision.

5. Child Status Protection Act – DRAFT

The Child Status Protection Act (CSPA) amended Section 208(b)(3)(B) of the INA with respect to the definition of "child" for asylum applicants as follows:

> "(B) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS CHILDREN. An unmarried child who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and Section 209(b)(3), if the alien attained 21 years of age after such application was filed but while it was pending."

As a result, unmarried children who turn 21 years of age after an asylum application was filed but prior to adjudication are still considered eligible for derivative asylum status and may remain as dependents on the asylum application. The relevant date to consider in determining whether a dependent who has turned 21 still qualifies as a child for the purposes of eligibility for derivative status is the date on which his or her parent filed an asylum application, at which time the dependent must have been under 21. There is no requirement that the child have been included as a dependent on the application, but the child must have been under 21 on the date the application was filed.

Langlois, Joseph E. H.R. 1209 – Child Status Protection Act, Memorandum for Asylum Office Directors, et. al., 7 August 2002, 2p.; Yates, William R. The Child Status Protection Act – Children of Asylees and Refugees, Memorandum for Regional Directors, Service Center Directors, District Directors, 17 August 2004, 4p.

"Filing date" is defined as the date USCIS or INS received an application. *See* 8 C.F.R. 103.2(a)(7). The filing date is recorded in RAPS in the FILED field on the CSTA screen. In the event there is a conflict between the date in RAPS and the receipt date stamped on the application, the earlier date is used for CSPA purposes.

Pursuant to section 8 of the CSPA, the provisions of the CSPA are not retroactive. Therefore, the CSPA benefits applicants for asylum and asylee adjustment who aged out on or after August 6, 2002, the date of enactment of the CSPA.

In general, a derivative is eligible for continued classification as a child if one of the following conditions is met:

- The parent's application for refugee/asylum status was *pending on or filed after* August 6, 2002, and the derivative was *under the age of 21 at the time of filing*; **or**
- The Form I-730 from which the derivative is benefiting was *pending on* August 6, 2002, and the derivative was *under the age of 21 at the time the I-730 was filed*; **or**
- The parent's application for refugee/asylum status or the I-730 was *filed prior* to August 6, 2002, and the derivative turned 21 years of age on or after August 6, 2002.

The USCIS Office of Chief Counsel has advised that, as long as the asylee adjustment application was pending as of August 6, 2002, a derivative child asylee over age 21 should be permitted to adjust without filing for asylum as a principal with a request for a *nunc pro tunc* approval, as discussed below.

6. Loss of Derivative Status After Initial Filing but Before Final Decision

A dependent loses his or her eligibility to be included as a dependent on a parent's or spouse's application, if at least one (1) of the following occurs:

- Spouse/child withdraws his or her asylum claim;
- Child marries;
- Spouse divorces principal applicant; or
- principal applicant dies.

a. Loss of Derivative Status by Dependent Withdrawal

A dependent may withdraw his or her asylum application at any time prior to the issuance of a final decision, as described in this manual, Section III.W, *Withdrawal Requests*. Depending upon the dependent's immigration status, the Asylum Office may place him or her into deportation or removal proceedings before an Immigration Judge. No charging documents are issued if the dependent is withdrawing for the purpose of pursuing his or her own application as a principal applicant

Weiss, Jeffrey L. Dependents' Requests to Withdraw, Memorandum to Asylum Directors, et. al., 11 March 1997, 2p.

The dependent must request withdrawal in writing, with a copy placed in both the principal and dependent's files. If there is insufficient information in the file to sustain an NTA, Asylum Office personnel request a signed written statement from the dependent including date, place and manner of entry, or copies of documentation providing sufficient basis to sustain an NTA.

If the dependent requests withdrawal in order to be placed into removal proceedings, Asylum Office personnel take the following actions:

- Place in dependent's A-file a printout of dependent's "CSTA" screen from RAPS.
- Remove the dependent from the principal in RAPS using the subcommands in the "I589" screen.
- Enter the dependent as a principal in RAPS.
- Use the "CLOS" screen to administratively close the dependent's case as "C3 – APPLIC. WITHDRAWN."

- Enter "Y" in the "SEND TO IJ (Y/N)" field and place an "X" in the "NTA REQUIRED (X)" field.
- Issue charging documents using "OSCG"/"OSCP" screens.

b. Loss of Derivative Status by Marriage, Divorce, or Death of Principal Applicant

A spouse or child who becomes ineligible for derivative status cannot remain a dependent on a parent's or spouse's asylum application, and must file an application as a principal applicant in order to pursue an asylum claim.

See AOBTC Basic Training Materials, One-Year Filing Deadline.

If the dependent files an I-589 as a principal applicant, the loss of derivative status qualifies as changed circumstance for the purposes of determining whether he or she is subject to the 1-year filing deadline prohibition, so long as the asylum application was filed within a reasonable time after becoming aware of the loss of derivative status. *See* 8 C.F.R. 208.4(a)(4).

i. Notifying the principal applicant and dependent of ineligibility for derivative status

When USCIS becomes aware that a dependent is no longer entitled to derivative status, the Asylum Office notifies the principal applicant (unless deceased) and the dependent of the dependent's ineligibility for derivative status.

If an AO discovers during an asylum interview that a dependent is no longer entitled to derivative status, the AO verbally notifies the principal applicant that the dependent cannot remain on the asylum application and issues the appropriate letter (Appendices 14 to 16). The letter is served on the principal applicant at the interview, copied for the file, and copied to the dependent by mail or in person, if he or she is present. If the dependent is not present, the AO confirms whether the principal applicant is still in contact with the dependent and whether the dependent resides at the same address as the principal applicant If the dependent is not present at the Asylum Office and no longer resides at the same address, the AO obtains the dependent's current address from the principal applicant (if known), and mails the letter, with an accompanying Form I-589 packet, including legal service provider list. If the principal applicant does not know the dependent's current address or the dependent continues to reside with the principal applicant, the AO mails the packet to the dependent's last known address.

If USCIS discovers an individual's ineligibility for derivative status outside of an asylum interview, the Asylum Office sends the appropriate letter regarding the removal of the dependent (Appendices 14 to 16), with an accompanying Form I-589 packet to the principal applicant. The Asylum Office also sends a copy of the letter and a Form I-589 packet to the dependent and representative of record, if any, even if the principal applicant and dependent live at the same address. If the loss of derivative status results from the death of a principal applicant, Asylum Office personnel send the letter only to the dependent and any representative of record.

ii. Loss of derivative status after issuance of Recommended Approval

In addition to notifying the principal applicant and a dependent of a loss in derivative status, the letters cited in Section III.E.6.b.i also cancel any recommended approval that was previously issued to the dependent. The *Recommended Approval* letter remains in the dependent's file, marked "CANCELLED ON [DATE] DUE TO [MARRIAGE, DIVORCE, ETC.], and placed on the non-record side.

iii. Updating RAPS to reflect loss of derivative status

Asylum Office personnel delete the dependent from RAPS using the subcommands at the bottom of the I589 screen, or use the New Case (NEWC) command, which makes a dependent into a principal applicant. Asylum Office personnel may only use the NEWC command if the individual files an I-589 prior to his or her removal from RAPS as a dependent.

7. Loss of Derivative Status After *Asylum Approval* but Before Adjustment of Status

In order to derive LPR status from a principal applicant who was granted asylum status, a derivative asylee must continue to meet the definition of a spouse or child at the time USCIS adjudicates the adjustment application. If the derivative asylee no longer meets the definition of spouse or child, he or she may not adjust his or her status to that of a lawful permanent resident. Although an individual may lose his or her ability to adjust status as a derivative asylee meeting the definition of "spouse" or "child", once asylum status is granted, an individual does not lose asylee status even if a principal/dependent relationship ends, unless USCIS or EOIR formally terminates asylum. The Asylum Program accepts new I-589 applications from these former dependents as principals under special procedures in order to create an avenue for individuals who have been recognized as asylees the ability to adjust status.

The definition of "child" is found at INA § 101(b). The definition was affected by the Child Status Protection Act (CSPA). For more information on the CSPA, see Section III.E.5 above.

The processing of a former dependent's I-589 does not vary depending upon how the individual lost derivative status (i.e., death of principal applicant, marriage, or divorce). These procedures apply to all dependents who are no longer eligible for derivative status regardless of whether they were granted asylum status by an Asylum Office or Immigration Judge, or entered the U.S. as an asylee pursuant to the approval of a Form I-730, *Refugee/Asylee Relative Petition*.

a. Filing an I-589 and Interview with an AO

The dependent who lost derivative asylum status files a Form I-589 directly with the Asylum Office having jurisdiction over his or her place of residence. If the Asylum Office did not grant asylum status, the individual's A-file should contain an IJ order granting asylum to the individual (either as an individual or as a member of a family unit), or an approved Form I-730. At the time of the interview, the individual should present positive identification and evidence of his or her asylee status, such as an endorsed I-94 card.

Asylum Office personnel locate the former dependent's A-file and perform the necessary RAPS updates/changes to make the dependent a principal applicant in the system. This may include adding the case to RAPS if the individual received asylee status pursuant to an approved I-730 Petition.

The approval of an I-730 does not confer asylee status unless and until the beneficiary is present in the United States.

If the former dependent received asylee status pursuant to an I-730, the filing date entered in RAPS will be the date the dependent entered the U.S., or the date of the grant of the I-730, whichever is later. An "X" is placed in the applicable NUNC PRO TUNC field on the I589 screen, depending on whether the applicant attained derivative status from the asylum program ("INS"), EOIR ("IJ"), or through the filing of an I-730 ("I-730").

If the Asylum Office granted the dependent derivative status, the Create New Case for Dependent (NEWC) command may be used in RAPS to convert the former dependent into a principal record in RAPS. If the former dependent now lives in the jurisdiction of an Asylum Office other than that which made the prior decision in the case, Asylum Office personnel coordinate with the owning office to complete the necessary RAPS commands. Asylum Office personnel:

- Convert the dependent to a principal applicant using NEWC.
- Enter an "X" in the NUNC PRO TUNC field on the I589 screen next to INS, IJ, or I-730, as appropriate.
- Update the Reset Interview (REIN) command to clear the case decision and interview data.
- If applicable, update the address on the Address Change (MOVE) screen.
- If applicable, transfer the case to the new Asylum Office on the Case Transfer (TRAN) screen.

An AO conducts an interview with the former dependent to verify the individual's identity and ensure that he or she is physically in the U.S. The AO must also ascertain that the individual is not under the jurisdiction of the Immigration Court and no mandatory bars to asylum eligibility apply. Unless circumstances in the next section are present, a former dependent does not need to independently establish his or her eligibility for asylum, so an AO does not review the asylum claim at the time of the interview.

b. Discretion to Interview on the Merits of an Asylum Claim

There is a presumption that the individual who lost derivative status is eligible for a grant of asylum on his or her own; however, an Asylum Office Director has the discretion to interview an individual on the merits of the asylum claim, if he or she believes the individual may not be entitled to a grant of asylum as a principal applicant. Examples include but are not limited to:

- An individual who is a national of country different from the principal applicant, and does not appear to have a fear of harm in that country (e.g., a national of France or Canada).
- An individual who never lived with the principal applicant
- An individual whose spouse/parent appears to have derived asylum through fraud, but that spouse/parent's asylum status has not been terminated.

At the direction of the Asylum Office Director, the AO conducts a full interview on the merits, according to procedures outlined in Section II.J, to determine the individual's eligibility for asylum status. In the case of an individual who has an adverse history that does not meet the requirements of a mandatory bar, the AO must explore and balance the positive and negative discretionary factors. These factors are weighed and, if the negative factors outweigh the positive factors, asylum may be denied as a matter of discretion.

c. Granting Asylum Nunc Pro Tunc

An Asylum Office may grant asylum *nunc pro tunc* to a date in the past. This date depends upon whether the individual was granted asylum as a dependent on an I-589 that was filed with either USCIS, INS, or EOIR, or entered the U.S. or was granted derivative asylee status pursuant to an approved Form I-730.

"*Nunc pro tunc*" is Latin for "now for then." Granting asylum *nunc pro tunc* means that the derivative is granted asylum as a principal back to the date of the principal's original grant date or the derivative's date of entry into the U.S. (see below).

- If USCIS, INS, or EOIR granted the individual derivative asylum status, the Asylum Office grants asylum *nunc pro tunc* to the date of the principal applicant's asylum approval (which should also be the date of the individual's original asylum approval as a dependent).
- If the individual entered the U.S. pursuant to an approved Form I-730, the Asylum Office grants asylum *nunc pro tunc* to the date of the individual's entry into the U.S.
- If the individual obtained derivative asylee status pursuant to an approved Form I-730 while in the United States, the Asylum Office grants asylum *nunc pro tunc* to the date of the approval of the I-730.

All required background identity and security checks must be current and complete and allow for approval prior to any asylum approval, including a *nunc pro tunc* asylum approval. Asylum Office personnel follow instructions in the *Identity and Security Checks Procedures Manual*, for completing and documenting background identity and security checks. A recommended approval need not be issued to the former dependent pending the completion of the checks, as he or she still maintains derivative asylee status. Upon receipt of the results of the background identity and security checks, follow instructions below, depending upon the type of response that is received.

If the results allow for an approval, and they have not expired, Asylum Office personnel:

- Document all background identity and security checks in the file.
- Prepare an *Asylum Approval – Nunc Pro Tunc* letter (Appendix 17) and an accompanying I-94 card.
- Serve the documents and prepare the case for post-service processing according to the instructions for approvals in Section II.R.
- Return the A file to the Service Center handling the I-485 application. The A file should contain a memorandum including the specific examiner and address to which to return the A file. If there is no memorandum in the A file, Asylum Office personnel can return the A file to the officer at the Service Center who handles *nunc pro tunc* cases.

If the results allow for an approval, but they have expired, follow instructions in the *Identity and Security Checks Procedures Manual*, on obtaining updated identity and security checks.

If the results do not allow for an approval, and if Asylum Office personnel determine that the case must be referred to Immigration Court (because Asylum Office personnel determine that they must terminate derivative asylee status), follow instructions in Section III.X. If Asylum Office personnel refer a *nunc pro tunc* case to Immigration Court, Asylum Office personnel must contact the relevant Service Center so that the Service Center is aware of the referral of the case to Immigration Court and can advise of any additional procedures required for handling the I-485 application.

If Asylum Office personnel determine that they cannot grant the *nunc pro tunc* application but that they need not terminate derivative asylee status, Asylum Office personnel return the A file to the relevant Service Center for continued adjudication of the I-485 application.

If the derivative asylee filed a *nunc pro tunc* application prior to filing an I-485 application, in anticipation of aging out, Asylum Office personnel return the A file to the National Records Center after completion of *nunc pro tunc* processing so that the relevant Service Center can request the file once the derivative asylee files the I-485 application.

d. Individual is Ineligible for a Grant of Asylum Nunc Pro Tunc

If the former dependent is ineligible for an approval of asylum *nunc pro tunc* as a principal applicant due to a criminal record or mandatory bar, the AO:

- Follows any applicable procedures in this manual related to the mandatory bar.
- Prepares a *NOID*, because as an asylee, he or she is considered to be in a valid status.
- If USCIS or INS granted the former dependent's asylee status and the evidence that makes the dependent ineligible for a final approval constitutes a ground for termination under 8 C.F.R. 208.24, the AO initiates termination of the former dependent's asylee status as described in Section III.V of this manual. *See below* for guidance on initiating termination of asylum if EOIR granted the former dependent's asylee status.
- Submits the *NOID* and *Notice of Intent to Terminate Asylum Status (NOIT)* for HQASM/TRAQ review before it is issued to the former dependent. (*See* Section III.S for procedures for sending a QA referral packet for review).
- Notifies ICE Investigations or DRO (according to local practice) that termination of asylum proceedings have been instituted against the dependent. The notification includes the applicant's criminal convictions, name, date of birth, A-number, and current address, where applicable, and a note explaining that either the Asylum Office will provide notification that asylum has been terminated and an NTA is being issued or that an NTA is being issued for litigation of the termination question before an IJ. Document notification and response in the file.

If EOIR granted the former dependent's asylee status and the evidence that makes the dependent ineligible for a final approval constitutes a ground for termination under 8 C.F.R. 208.24, the Asylum Office does not have jurisdiction to terminate the asylee status. The Asylum Office Director maintains discretion to coordinate with the local ICE Office of the Principal Legal Advisor (OPLA) to request and assist in the preparation of a Service *Motion to Reopen* before the Immigration Judge, after the completion of Asylum Office action in the former dependent's case.

If the individual is found eligible for asylum status as a principal applicant after the *NOID* rebuttal period, follow the instructions in Section III.E.7.c on granting asylum *nunc pro tunc*. If the Asylum Office also issued a *NOIT*, the Asylum Office issues Appendix 41, *Notice of Continuation of Asylum Status.*

If the individual fails to present a rebuttal, or fails to present evidence to overcome the reasons for denial, an AO prepares a *Denial of Asylum Status as a Principal Applicant* (Appendix 18). Asylum Office personnel serve the letter according to the instructions for *Denials*, except that if there is a concurrent termination proceeding, the denial letter is held and served under the same cover as the termination notice.

If the Asylum Office issued the *NOIT,* the Asylum Office completes the termination interview and termination according to Section III.V of this manual, with the exception of the RAPS entries.

RAPS is updated as follows:

- For denials as a principal without termination of the derivative asylee status, RAPS should reflect PDEC and FDEC decision codes of D2 (criminal), D3 (persecutor, security risk, or terrorist), D4 (other not eligible), or D7 (failure to comply with fingerprint processing requirements); and a deportation code of A6 (no deportation). Asylum Office personnel ensure that the COA field in CIS continues to reflect the valid derivative asylum status ("AS2" for spouse, "AS3" for child).
- For denials as a principal with concurrent termination of the derivative asylee status, RAPS should reflect PDEC and FDEC decision codes of D2 (criminal), D3 (persecutor, security risk, or terrorist), D4 (other not eligible) or D7 (failure to comply with fingerprint processing requirements); and a deportation code of A1 (NTA required). OSCG and OSCP are used to generate an NTA. Asylum Office personnel follow guidance below in Section III.V.5.d, *Asylum Office Terminates Asylum Status,* in preparing the NTA. Asylum Office personnel with CIS access update the COA field with "ASR" (Asylum Status Revoked) in CIS to show that asylum status was terminated.

e. Dependents with Spouses or Children – DRAFT

A derivative asylee applying for a grant of asylum as a principal *nunc pro tunc* may not include dependents in his or her application or, if the applicant is granted asylum *nunc pro tunc*, petition for them on an I-730, *Refugee/Asylee Relative Petition*, unless the relationship between the derivative asylee and his or her dependents existed at the time the derivative received asylee status. For example, if a derivative asylee had a child at the time he or she received asylum, the derivative asylee could include that child in his or her application for asylum *nunc pro tunc*.

If the derivative asylee has a spouse and/or child that he or she wishes to be included in his or her grant of asylum, and the relationship between the derivative asylee and his or her dependent did not exist at the time the dependent received derivative asylee status, he or she must file a regular principal asylum application and be interviewed on its merits. If approved, the approval of the regular principal asylum application cannot be dated back to the original date of the grant of derivative status, because the relationship between the new principal and the derivative did not exist at that time.

8. Effect of Principal Applicant's Administrative Closure on a Dependent's Claim

Meissner, Doris, Exercising Prosecutorial Discretion, Memorandum to Regional Directors, et al., 17 November 2000, 13p.

If a principal applicant is under the jurisdiction of the Immigration Court, or had a prior order reinstated by the ICE Special Agent in Charge (SAC), the Asylum Office must administratively close the asylum application. This closure also affects the derivative asylum application of any dependent, even if the dependent is not under the jurisdiction of the Immigration Court or subject to a prior order. The dependent may submit an I-589 to pursue asylum in the U.S., as long as USCIS has jurisdiction to hear the asylum claim. Principles of prosecutorial discretion, as exercised by the Asylum Office Director, apply in determining whether to place into removal proceedings a dependent who is not maintaining lawful immigrant, nonimmigrant, or Temporary Protected Status.

9. "Split Decisions"

A "split decision" occurs when the Asylum Office is unable to issue the same type of documents to each individual in a family unit because one (1) of the scenarios applies:

- The principal applicant's immigration status is different from a dependent's immigration status and the principal applicant is ineligible for an asylum approval.
- The principal applicant is eligible for asylum but a dependent is subject to a bar described in 8 C.F.R. 208.21(a).
- The principal applicant is eligible for asylum but the dependent fails to follow requirements for identity and security checks, including fingerprinting, US-VISIT verification, and providing any required court records.

See Section III.N on dependents who are parolees, when the principal applicant not a parolee.

This section provides guidance on how to process "split decisions." A Quick Reference Table, including instructions for RAPS updates, for split decisions is provided in Appendix 61.

a. Approvals

If a principal applicant is found eligible for asylum, but the dependent is subject to a bar described in 8 C.F.R. 208.21(a), then the dependent cannot be granted asylum. A dependent also cannot be granted asylum if he or she is under the jurisdiction of EOIR or failed to follow requirements for identity checks. The AO must issue to the principal applicant a *Denial of Derivative Asylum Status* (Appendix 19) letter. This letter must include the A-number of the principal applicant and the A-number of the dependent who is being denied derivative asylum status, but not the A-numbers of any other dependents included in the asylum application. An Asylum Office Director has prosecutorial discretion to place a dependent before the Immigration Court if the dependent is deportable or removable. Among the factors to be considered are 1) the likelihood the Immigration Court that would have jurisdiction over the removal proceedings would accept the charging documents as sufficient to institute proceedings, 2) the age of the dependent(s), 3) whether the dependent has an application upon which he or she would be able to seek relief in front of the Immigration Judge, 4) whether the dependent has a criminal record, and 5) office resources.

b. Referrals

This section applies to cases where the principal applicant is referred to the Immigration Court, either because he or she is ineligible for asylum status or ineligible to apply for asylum, but the dependent cannot be referred along with the principal applicant because of the dependent's status.

i. Dependent is in a valid status or parole is not terminated

The AO uses the standard *Referral Notice*; however, the name and A-number of the dependent is *not* included on the *Notice*. The AO also inserts the following paragraph directly before the paragraph on employment authorization, or if the application was filed before January 4, 1995, directly before the closing salutation:

> "Because your **[spouse/child], [Name], [A-number]**, who was listed on your asylum application as a dependent, does not appear deportable or removable, we are not placing him or her in Immigration Court proceedings along with you."

Since the dependent is not included in the decision and is not being referred to the Immigration Judge, prior to recording the referral of the principal and any out-of-status dependents in RAPS, the Asylum Officer prints the CSTA and I-589 screens of the in-status dependent, places the screen prints on the non-record side of the dependent's and the principal's A-file, then removes the in-status dependent via the MOD REL command (PF9) on the principal's I-589 screen.

ii. Dependent is under the jurisdiction of EOIR

The AO uses the standard *Referral Notice*; however, the name and A-number of the dependent is *not* included on the *Notice*. The AO also issues a *Denial of Derivative Status* (Appendix 19).

Since the dependent is not included in the decision and is not being referred to the Immigration Judge, prior to recording the referral of the principal and any out-of-status dependents in RAPS, the Asylum Officer prints the CSTA and I-589 screens of the in-status dependent, places the screen prints on the non-record side of the dependent's and the principal's A-file, then removes the in-status dependent via the MOD REL command (PF9) on the principal's I-589 screen.

c. Final Denial

This section applies to a principal applicant who is being issued a *Final Denial* letter because he or she is in a valid status.

i. Dependent is removable or parole is to be terminated

If the principal applicant is in valid status but the dependent is removable or parole will be terminated, the AO issues to the principal applicant the standard *Final Denial* letter, with the A-number of the dependent listed on the letter. *See* Section III.N.3, *Dependents Who Are Parolees*, for guidance in such cases. An Asylum Office Director has prosecutorial discretion to place a dependent before the Immigration Court if the dependent is deportable or removable. Among the factors to be considered are 1) the likelihood the Immigration Court that would have jurisdiction over the removal proceedings would accept the charging documents as sufficient to institute proceedings, 2) the age of the dependent(s), 3) whether the dependent has an application upon which he or she would be able to seek relief in front of the Immigration Judge, 4) whether the dependent has a criminal record, and 5) office resources. If there are serious concerns for considering the dependent a danger to the U.S. community based on criminal convictions or a threat to the security of the U.S. (e.g., terrorist activity), the Director should exercise discretion to place the dependent in removal proceedings.

ii. Dependent in a valid status or parole is not and will not be terminated

A principal applicant who was paroled to apply for asylum, but is found ineligible for asylum is issued a *Final Denial – Parole* letter (Appendix 58). If the dependent is in a valid status or maintains valid parole, the name and A-number of the dependent are *not* included on the *Final Denial* letter. The AO also inserts the following paragraph directly before the paragraph on employment authorization:

> "Because your **[spouse/child], [Name], [A-number]**, who was listed on your asylum application as a dependent, does not appear deportable or removable, we are not placing him or her in Immigration Court proceedings along with you."

10. Dependent Subject to Reinstatement

If a dependent appears to be subject to reinstatement of a prior removal, deportation or exclusion order, Asylum Office personnel coordinate with the ICE SAC for a determination of whether the order will be reinstated.

While this determination is being made, the Asylum Office may continue processing the case. If the application will be denied or referred, the decision may be processed, with a memorandum to the file indicating that the file is being reviewed by the SAC for possible reinstatement of a prior order. A final approval cannot be issued until the determination is made whether to reinstate the order. Asylum Office personnel may issue a recommended approval pending the determination by the SAC. To determine whether a dependent may be subject to reinstatement of a prior order, refer to procedures below in Section III.S.1, *Determining Whether an Applicant is Subject to Reinstatement of a Prior* Order.

If the SAC reinstates the prior order, Asylum Office personnel remove the dependent from the principal's application and issue a *Denial of Derivative Status* letter along with the applicable decision letter to the principal applicant.

11. Dependent Subject to Mandatory Bar to Asylum

Most mandatory bars to a grant of asylum apply independently to any spouse or child who is included in an asylum applicant's request for asylum. 8 C.F.R. 208.21(a) (*referring to* INA Section 208(b)(2)(A)(i)-(v) for applications filed on or after April 1, 1997, or under 8 C.F.R. 208.13(c)(2)(i)(A), (C), (D), (E), or (F) for applications filed before April 1, 1997). The mandatory bars that apply independently to dependents are persecution of others, conviction of a particularly serious crime, commission of a serious nonpolitical crime, security risk, and terrorist – all bars other than firm resettlement. In some instances, a principal applicant may be granted asylum and a dependent denied or referred because he or she is subject to a mandatory bar.

When an Asylum Office learns that a mandatory bar applies to a dependent, the Asylum Officer interviews the dependent in sworn statement/Q&A format. *See* Section II.J.9, *Note-taking by the AO During an Asylum Interview*; Asylum Officer Basic Training Materials, *Interviewing Part II: Note-Taking*. If the evidence indicates that a ground for mandatory denial or referral exists, then the applicant has the burden of proving by a preponderance of the evidence that the ground does not apply. For substantive information on the application of mandatory bars, *see* Asylum Officer Basic Training Materials, *Mandatory Bars to Asylum and Discretion*.

If, after the interview, it is determined that the dependent is subject to a mandatory bar, the Asylum Officer:

- Writes a memorandum to the principal applicant's file (with a copy to the dependent file), outlining the evidence that indicates a bar applies to the dependent.
- Follows procedures in Section III.B.9, *National Security Matters, Including Known or Suspected Terrorists and Human Rights Abusers*, where applicable.
- Notifies via memorandum ICE Investigations or DRO (according to local practice) of name, date of birth, A-number, current address, and relevant convictions of dependent subject to a bar due to criminal activity.
- Processes the case:
    - as a "split decision" in accordance with Section III.E.9.a, above, if the principal applicant is eligible for an asylum approval;
    - as a referral in accordance with Section II.N.2.b, above, if the principal applicant is being referred to the IJ;
    - as a NOID or final denial in accordance with Section II.N.2.c or Section II.N.2.d, above, if the principal applicant is not eligible for asylum, but maintains a lawful status.
- Follows any local procedures requiring coordination with USCIS Area Counsel or ICE Office of the Principal Legal Advisor.

F. EMPLOYMENT AUTHORIZATION DOCUMENT (EAD)

1. Pre-reform Cases

An applicant, who submitted an asylum application prior to January 4, 1995, was eligible to apply for employment authorization at the time the asylum application was filed, and employment authorization was granted if the asylum application was found not frivolous. The document, referred to as an Employment Authorization Document ("EAD"), is renewable in one-year increments indefinitely so long as the asylum application remains pending or if asylum status is granted.

INA § 208(d)(2); 8 C.F.R. 208.7

2. Reform Cases

Asylum reform was designed to separate the issuance of an EAD from the submission of an asylum application. An applicant may not apply for an EAD until an asylum application has been pending for 150 days or the applicant has received a recommended approval or final approval of asylum. USCIS has 30 days from receipt to adjudicate the EAD application and cannot issue an EAD until the asylum application has been pending for 180 days or more.

This 180-day period is referred to as the 180-day clock ("KLOK"). Both the asylum program and EOIR have a target number of days to adjudicate an asylum application within the 180-day KLOK.

a. Asylum Program Time Frame

To sustain the timeliness goals of asylum reform, it has been the aim of the Asylum Division to adjudicate referrals of asylum applications filed on or after January 4, 1995 and pending within the jurisdiction of a local Asylum Office within 60 days from the date a complete application was filed with USCIS. This "60-day referral clock" is counted from the date USCIS accepts the application as complete (filing date in RAPS) until the Asylum Office serves an NTA on the applicant as evidenced by the updating of the OSSE screen in RAPS, less any stoppages of the clock due to delay requested or caused by the applicant. *See* AOBTC Lesson Plan, *Corps Values and Goals.*

b. EOIR Time Frame

Once an Asylum Office refers an application to the Immigration Court, the court has the remainder of the 180 days to adjudicate the asylum application before the applicant may be granted employment authorization. An applicant granted asylum is authorized to work incident to status, regardless of whether the grant takes place prior to 180 days from filing.

3. 180-Day Clock

Section 208(d)(2) of the INA provides that, unless the applicant is otherwise eligible for employment authorization, employment authorization cannot be granted on the basis of a pending asylum application prior to 180 days after the date the asylum application was properly filed. The 180-day clock remains running unless the applicant's actions cause an interruption or delay in the processing of the application.

The Clock Query (KLOK) screen in RAPS indicates how long the clock has been running, any stoppage (tolling) of the clock that has occurred at any time in the process, and the earliest possible date the applicant is eligible to apply for an EAD. Although the applicant cannot be granted an EAD before 180 days have passed, the applicant may apply after 150 days have passed, to give USCIS time to process the EAD application. If the asylum application is denied between the 150th and 180th days, the EAD application must be denied.

Actions by the applicant that would toll the clock include, but are not limited to, requests to reschedule, failure to appear for the interview or pick-up appointment, and failure to provide a competent interpreter, which may result in a rescheduling of the asylum interview.

If the Asylum Office denies the asylum application, the clock stops. The clock remains stopped, even if the applicant is subsequently placed into removal proceedings. This would occur, for example, if the Asylum Office Director used his or her discretion to issue an NTA to an applicant who was no longer in status, and who filed a Motion to Reopen and Reconsider which was dismissed. *See* Section III.M.3 below.

For a complete list of RAPS commands, which affect the 180-day clock, please refer to *Impact of RAPS Actions on the "KLOK"* (Appendix 20).

4. Employment Authorization of Asylees

Asylees are authorized to work in the United States incident to asylum status. In order to work in the United States, every prospective employee must show to a prospective employer certain documentation as proof of employment authorization. That proof may consist of, among other things, an unrestricted social security card and a state-issued driver's license. It may also consist of an unexpired employment authorization document (EAD) issued by USCIS. USCIS issues EADs to individuals granted asylum by USCIS or EOIR.

For a list of all documents that can be accepted by an employer as proof of employment authorization, consult Form I-9, Employment Eligibility Verification, available on the USCIS web site at http://www.uscis.gov/files/form/i-9.pdf.

Asylum Office personnel trigger the production and issuance of EADs for asylees granted by USCIS by updating RAPS (via the GLET command) with the date and manner of decision service. Once activated, the automated process produces and issues the EAD to the asylee by mail in 7 to 10 days. For further guidance, *see* Langlois, Joseph E. Final Procedures for the Automated Generation of I-766 EADs, Memorandum to All Asylum Office Personnel, 20 April 2007, 2 p., including attached procedures.

G. EXTENSIONS OF NONIMMIGRANT STAY

An applicant may submit an application to the Service Center to extend his or her period of nonimmigrant stay on either Form I-539 or Form I-129 (depending upon the type nonimmigrant status). This application can be made either before or after submission of an I-589.

8 C.F.R. 208.14(c)(1) requires the issuance of charging documents to an alien who appears deportable, excludable, or removable and is ineligible for a grant of asylum. Therefore, an Asylum Office must refer to the Immigration Court applicants who are found ineligible for asylum status and whose periods of nonimmigrant stay have expired, regardless of whether the applicants have applications to extend their authorized periods of nonimmigrant stay pending with USCIS. This referral should occur even if the applicant submitted the application to extend his or her period of authorized stay timely (before the nonimmigrant stay expired) and the applicant did not otherwise violate the terms of his or her status.

The fact that an applicant has applied for an extension of nonimmigrant stay does not prevent DHS from placing the individual in proceedings before the Immigration Court. Therefore, AOs treat such individuals as out-of-status when their authorized periods of stay have lapsed for purposes of scheduling a pick-up and processing a referral rather than a denial, if the applicant is ineligible for asylum. It is recommended that Asylum Office personnel check CLAIMS before concluding that an extension has not been granted, as the request to extend may have been approved by USCIS, but the applicant has not yet received notice.

H. EXTENSIONS TO SUBMIT DOCUMENTATION

1. Requested by Applicant at Conclusion of Interview

If the applicant requests additional time to submit evidence after an asylum interview, or if the applicant failed to submit the required certified translations of documents or evidence of relationship to dependents included in the application, the AO may, in his or her discretion, grant a brief extension of time after consultation with an SAO. The SAO determines the length of the extension, taking into consideration the type of documentation the applicant wishes to submit. When appropriate, the SAO takes into account any extensions granted to the applicant in submitting documentation for purposes of measuring the AO's timeliness in completing the case. The AO issues either a *Pick-up Notice* or *Mail-out Notice* according to instructions by the SAO.

If the applicant is granted an extension, the AO completes a Form I-72 or office equivalent, listing the documents the applicant must submit. The AO gives the original to the applicant as a receipt, and places a copy on the right-hand side of the file.

The AO informs the applicant that his or her request to submit additional evidence or the granting of additional time to obtain required documentation will toll the EAD clock. To toll the clock, Asylum Office personnel place the case on "HOLD – AD" in RAPS until the applicant submits the documents. When the documents are submitted, the AO removes the case from HOLD so the EAD clock may resume. The AO reviews and considers timely submitted documentation in preparing his or her decision.

If the applicant fails to submit the documents by the requisite date, the AO removes the case from HOLD and processes the decision.

2. Requested by AO at Conclusion of Interview

The AO may request that an applicant submit additional, reasonably available corroborating documentation as evidence in support of the asylum claim. Because of time constraints a request for documents should only be made when both the AO and SAO determine that the documentation impacts upon the decision.

The SAO determines the length of time the applicant is given to submit the requested materials, taking into consideration the type of documentation USCIS is requesting. The AO issues either a *Pick-up Notice* or *Mail-out Notice* according to instructions by the SAO.

The AO completes a Form I-72 or office equivalent, listing the documents to be submitted by the applicant. The AO gives the original to the applicant as a receipt, and places a copy on the right-hand side of the A-file.

Form Required: I-72 or office equivalent

Because credible testimony may be sufficient to sustain a burden of proof and the AO is requesting the submission of documents that the asylum applicant might not have foreseen necessary, the clock is **not** tolled, and the AO does NOT place the case on "HOLD – AD" in RAPS. Only the Asylum Office Director or Deputy Director may, in the exercise of discretion, toll the clock pending the receipt of corroborating documentation requested by an AO.

3. Requested by Applicant after Service of *NOID*

The AO has discretion to grant a reasonable extension of time, generally no more than 30 days, to an applicant or representative who requests an extension to prepare a rebuttal. A request for an extension should only be denied if repetitive or abusive. The AO must send written notification to both the principal applicant and the representative, if any, if a request for an extension is denied. If the request for an extension is granted pursuant to a telephonic request, the AO must document the file with the amount of time that was granted and the expiration date. RAPS is updated to stop the clock during the extension, using "HOLD – AD."

I. FAILURE TO APPEAR

1. Asylum Interview – Applicant Submits Excuse

Asylum Office personnel update RAPS using the No Show (NOSH) command, to reflect that an applicant failed to appear for a scheduled interview. The updating of RAPS occurs within one (1) working day of the applicant's failure to appear for his or her asylum interview.

As a matter of Asylum Division policy, the Asylum Office will not issue a decision for 15 days after the interview date in order to give the applicant time to submit an excuse. An applicant's excuse for a failure to appear at an asylum interview is considered a request to reschedule an asylum interview. The excuse may include a change of address that transfers jurisdiction to another Asylum Office. If Asylum Office personnel deny the request to reschedule, they must notify the applicant.

See Section III.A on changes of address.

a. Excuse Submitted before Issuance of a Referral

The Asylum Office treats any written excuse received before the issuance of a referral as a request to reschedule the interview. The Asylum Office processes the case according to procedures for reschedule requests that are outlined below in Section III.T.

b. Excuse Submitted after Issuance of a Referral

Once the Asylum Office serves a charging document on the applicant and with the Immigration Court, the Asylum Office loses jurisdiction over the asylum application. Any excuse for failure to appear that the Asylum Office received after a referral is reviewed by the Asylum Office Director or Deputy Director for a determination of whether lack of proper notice or exceptional circumstances have been established. Failure to appear must be excused if notice of the interview was not mailed to the applicant's current address and that address had been provided to USCIS prior to the date the notice was mailed, or if the applicant demonstrates that the failure to appear was due to exceptional circumstances. Exceptional circumstances are defined in INA Section 240(e)(1) as "exceptional circumstances (such as serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien."

If lack of proper notice or exceptional circumstances are established prior to EOIR's making a final determination on the merits of the asylum claim, the Director must coordinate with USCIS Area Counsel and/or ICE Office of the Principal Legal Advisor (OPLA) to terminate proceedings. If the Asylum Office's error caused the entry of an *in absentia* removal order against the applicant, the Asylum Office Director coordinates with USCIS Area Counsel and/or ICE OPLA for a DHS Motion to Reopen for termination of proceedings. Asylum Office personnel reopen the case in RAPS using the REOP command, entering a "Y" in the "REVERSE A NO-SHOW CLOSE IN ERROR" field. The applicant is then set for a new interview in accordance with the Asylum Office's scheduling priorities.

c. Excuse Submitted after an Administrative Closure of the Asylum Application

After the Asylum Office administratively closes an application, it may be reopened at the request of either DHS or the applicant if jurisdiction has not transferred to EOIR and at least one (1) of the following scenarios applies:

- USCIS made an error in closing the case. An example is when an applicant submits a change of address to USCIS prior to the date the Asylum Office mails the *Interview Notice*. If USCIS made an error in notifying the applicant, the case must be re-opened and set for a new interview. *See* 8 C.F.R. 208.10.
- RAPS may automatically reopen an asylum application if the applicant applies for employment authorization.
- The applicant writes a letter to the Asylum Office asking to reopen his or her asylum application. The Asylum Office Director has the discretion to re-open a case for good cause, but re-opening is mandatory where the applicant establishes exceptional circumstances. *See* 8 C.F.R. 208.10, INA Section 240(e)(1).

To reopen a case in RAPS, Asylum Office personnel update the Reopen (REOP) screen, answering "Y" to the question "REVERSE A NO-SHOW CLOSE IN ERROR" if the Asylum Office closed a no-show case in error. This removes the stoppage of the EAD clock.

RAPS will automatically place the file in the appropriate priority category for interview scheduling purposes.

2. Asylum Interview – Applicant Fails to Submit Excuse

An applicant may fail to submit an explanation for his or her non-appearance at an asylum interview. Before an assumption is made that the applicant chose not to proceed with his or her asylum request, Asylum Office personnel determine whether the applicant's failure to appear was caused by the applicant or by USCIS.

a. Caused by USCIS

The Asylum Office reschedules an interview after a failure to appear caused by USCIS if at least one of the following scenarios applies:

- The file does not contain a copy of the applicant's *Interview Notice*.
- The file contains a properly executed Form G-28, but RAPS is not updated to include the representative's correct information and code.
- USCIS received notification of a change of address prior to the issuance of the *Interview Notice*, but failed to update RAPS before the Notice was issued.
- The address in RAPS is not correct in that an apartment number is missing, or the street is misspelled, etc.
- The *Interview Notice* is unreadable.

To reschedule a case:

- Update the Remove Case from Schedule (REMC) screen, indicating that rescheduling is at the fault of "INS".
- Update Attorney/VOLAG Update (REPR) screen, if necessary.
- Update the Address Change (MOVE) screen, if necessary.

See Section III.T on rescheduling asylum interviews.

A rescheduling at the fault of USCIS is not counted against the applicant when determining whether any future request to reschedule meets the "good cause" requirement.

b. Caused by the Applicant

A failure to appear may be deemed caused by the applicant if all of the following are present:

- The file contains a copy of the applicant's *Interview Notice*.
- If the file contains a properly executed Form G-28, RAPS is updated to include the representative's correct information and code.
- The address in RAPS at the time of interview scheduling was the most recent as provided by the applicant at the time.
- The address on the applicant's *Interview Notice* matches the address in RAPS at the time of interview scheduling, and does not contain a missing apartment number, or misspelling of a street name, etc.
- The *Interview Notice* is readable.

i. Applicant is a parolee

If the applicant who failed to appear was paroled, Asylum Office personnel take the following actions:

- Update the Admin Close Update (CLOS) screen, indicating that the application is closed for interview failure to appear (C5) or referred (if not in valid status).
- Review the appropriate part of Section III.N to determine whether parole remains valid, whether charging documents will be issued, and, if so, what type. If parole remains valid, process the case in accordance with Section III.J.2.b.iii, below. If parole is being terminated, insert the following language after "You failed to appear…" on the referral letter:

  > "Enclosed please find a Notice to Appear (Form I-862), which constitutes written notice of termination of your parole status [8 C.F.R. 212.5(d)(2)(i)], and which places you under removal proceedings."

ii. Applicant is deportable or removable

If the file contains sufficient evidence of an applicant's deportability, the Asylum Office refers the application to the Immigration Court. Asylum Office personnel:

- Update the Admin Close Update (CLOS) screen, indicating that the application is referred for an interview no-show (C5).
- Indicate on the CLOS screen that the Asylum Office will issue an NTA/referral (Place "Y' in the "Send to IJ " section and an "X" in the "NTA Required" section).
- Prepare the case as a referral.

iii. Applicant is in a valid status or the file does not contain sufficient evidence of inadmissibility or deportability

The Asylum Office administratively closes the application according to the following instructions:

- Update the Admin Close Update (CLOS) screen, indicating that the application is closed for an interview no-show (C5).
- Indicate on the CLOS screen that the Asylum Office will **NOT** issue an NTA/referral (Place "N' in the "Send to IJ " section).
- Issue to the principal applicant a *Dismissal of Asylum Application – Failure to Appear* (Appendix 31) letter.
- Local Asylum Office policy dictates whether the Asylum Office retains the file or sends it to the NRC.

3. Pick-up Appointment

If a principal applicant or dependent 14 years old or older fails to pick-up the decision after being given a *Pick-up Notice,* Asylum Office personnel update the Pick-up No-Show (PUNS) screen for each individual on the case who fails to appear. The EAD clock stops as of the pick-up appointment date once RAPS is updated. The decision is then mailed to the applicant.

J. FILE MANAGEMENT

Asylum Office personnel enter all A-files, T-files, and W-files into NFTS when the Asylum Office receives them from another location or office personnel create them within the records section.

1. Multiple A-Numbers

During the processing of a case, an AO may discover that the applicant has more than one A-number. The AO must request the additional files(s). The additional file(s) may contain information previously not available to the AO that helps to establish the applicant's alienage and deportability, or his or her eligibility to file an affirmative asylum application. The file(s) may also contain information that pertains to the asylum claim.

The AO may refer to information contained in most other files pertaining to the applicant and develop lines of questioning during the asylum interview based on that information, if relevant. This information may be used in credibility determinations if it is material to the asylum claim. However, an AO is **prohibited** from using any information pertaining to a legalization or SAW case in the adjudication of an asylum claim. See section B.8 above.

a. Consolidating Multiple A-files

If at least two A-files exist for one applicant, USCIS consolidates the A-files. Local Asylum Office policy dictates who is responsible for file consolidation. Prior to consolidating the A-files, a thorough review must be made to clearly establish that they refer to the same person. Any doubt should be resolved in favor of not consolidating the A-files.

When file consolidation results in a new primary A-number different than the RAPS records, Asylum Office personnel follow instructions in the next section to reflect the consolidation in RAPS.

For guidance on consolidating A-files, including required CIS updates, see Records Operations Handbook, Part II-14 (File Consolidation, Mergers and Unconsolidations), Available on the USCIS Intranet at http://ors.uscis.dhs.gov/roh/.

After consolidating A-files, the individual who performed the file consolidations sends the applicant the *Notice of File Consolidation* letter (Appendix 21).

b. Recording File Consolidation in RAPS

RAPS allows users to change the A-number of an applicant when consolidation of multiple A-files results in a new primary A-number for an applicant, and view the history of A-number changes associated with an A-number. This functionality is available *only* when the survivor A-number is not already in RAPS.

If both records being consolidated exist in RAPS, Asylum Office personnel:

- Print all pages of the CHIS and CSTA screens of the secondary A-number and file them on the non-record side of the primary A-file.
- Delete the secondary record from RAPS using DELC.
- Update the information of the primary record in RAPS to reflect any information learned from the additional records, if necessary.

If the primary A-number is not in RAPS and the A-number in RAPS has been consolidated and no longer exists as a primary A-number, Asylum Office personnel follow the instructions below regarding the CHAN command.

i. CHAN

The Change an A-number (CHAN) command is used to change the A-number associated with a record in RAPS. Access to the CHAN command is limited to the users who have registered with the Office of Information Resources Management (IRM) for access to the Delete Case (DELC) function (generally two per office).

An authorized user desiring to change the A-number of an applicant should enter the command CHAN and the old (also known as "subordinate" or "consolidated") A-number on the command line of RAPS. The CHAN screen will show the current A-number ("Old A-number"), the applicant's name, date of birth, sex, nationality, current case status, date of filing, case control office, an indicator of whether there is an I-881 on file, and whether there is a special group code applied to the case. The user will be prompted to enter the new A-number ("New A-Number"). Press enter after typing in the number. The user will then be prompted to answer yes or no ("Y/N") to the question, "Do you wish to Change the Existing A-number to the New (Y/N)?" Enter the applicable response and press ENTER.

When two A-files have been consolidated, the Case History (CHIS) screen of the new A-number will display two actions: "A-Number Changed (New)" and "A-Number Changed (Old"), each with the corresponding A-number on the left. The case history of the new A-number will contain all the case history of the old A-number. The old A-number is automatically deleted as an independent record in RAPS. The history of the change in A-numbers is also available to be viewed in the A-Number Change History (ANCH) screen of either A-number, as discussed in the next section.

ii. ANCH

The A-Number Change History (ANCH) permits users to view prior or subsequent A-number(s) for a particular A-number. Users may notice a longer than usual pause while RAPS searches the database when this command is entered. The result screen shows the secondary A-number ("Old A-number"), the new primary/survivor A-number ("New A-number"), the date the change was made in RAPS ("Change DT") and the user ID associated with the action. The user will be prompted to enter "P" to view prior A-number changes and "S" to view subsequent A-number changes.

> *Example:* A-file 88-888-888 is consolidated into A-file 77-777-777. Therefore, in RAPS, A-number 88-888-888 was changed to A-number 77-777-777. If "P" (for "prior") is entered in the ANCH screen for A77-777-777, the result will display A88-888-888 as the old A-number, and A77-777-777 as the new A-number. If "S" (for "subsequent") is entered in the ANCH screen for A77-777-777, no history will display, since A77-777-777 has not been changed to another A-number.
>
> Even though A88-888-888 has been deleted as a case in RAPS, the A-number change history is still viewable by using the ANCH command. In the case discussed above, if "S" is entered in the ANCH screen for A88-888-888, the result screen will display A88-888-888 as the old A-number, and A77-777-777 as the new A-number. If "P" is entered, no history will be displayed unless other A-numbers were previously consolidated into A88-888-888.

c. Adjudicating a Claim when the Asylum Office has not Received the Multiple A-file(s)

An AO may make a decision on the asylum claim based upon the information available to him or her when the multiple A-files cannot be obtained within the normal case processing time, subject to the guidance in this section.

A determination to place a case on hold and wait for an A-file must be made in consultation with the SAO, as it may impact on how the case will be processed (Pick-up vs. Mail-out). As a general rule, the processing of an asylum application should not be upheld pending receipt of the other A-files that pertain to an applicant, except:

- when a legally correct and sufficient decision cannot be made without looking at the applicant's other A-file(s), OR
- when the applicant is eligible for asylum. An Asylum Office may not issue an *Asylum Approval* until all A-files are consolidated. If, however, 90 days have passed since the initial attempt to obtain the A-file(s), follow procedures in Section III.J.4.a or Section III.J.4.b. A recommended approval may be issued pending the receipt of the other files, unless there is an indication that evidence of ineligibility is contained in the other file(s).

2. Requesting Copies of A-Files from the Law Enforcement Support Center (LESC) – DRAFT

In order to request an A-file from the Law Enforcement Support Center (LESC), Asylum Office personnel send an e-mail to LSC.Records@dhs.gov with the following information:

- Alien Registration Number (A#)
- Requestor name and telephone number
- Reason for the request
- Official mailing address
- DHL account number

If the subject of the A-file is in custody, the LESC will ship the file to the Asylum Office. If the subject of the A-file is not in custody and there is no record relating to the subject in the National Crime Information Center (NCIC), the LESC will ship the file to the Asylum Office.

If the subject of the A-file is not in custody and there is a record relating to the subject in the National Crime Information Center (NCIC), the LESC will not release the A-file, but Asylum Office personnel can request an electronic copy. Such requests for electronic copies of A-files at the LESC must be coordinated through the Eastern Forms Center (EFC).

After first making a request to the LESC to determine whether the LESC can transfer the A-file, designated Asylum Office personnel e-mail Form FC-076, A-File Scanning Request, to the EFC at the e-mail address provided on the form. If the Asylum Office is requesting copies of more than one A-file, Asylum Office personnel should list the A-files in priority order.

Upon receipt of Form FC-076, EFC personnel at the LESC facility will scan the A-file in its entirety and save it as two Adobe Acrobat pdf files, one pdf file for the left side of the A-file and one pdf file for the right side of the A-file. The EFC personnel will then copy the pdf files to a compact disc and forward the compact disc to the requesting office. The EFC will send an e-mail to the requesting office as notification that the compact disc is en route.

When the Asylum Office receives compact discs from the EFC, Asylum Office personnel respond to the original e-mail from the EFC to acknowledge receipt. Asylum Office personnel print paper copies of the pdf files on the compact discs and add them to the T-file. Asylum Office personnel also keep the compact disc in the T-file.

3. Work Folders ("W-files")

A W-file is an "in-house" folder created in the absence of both an A-file and a T-file. A work folder contains non-record copies of correspondence or other materials. Under **no** circumstances should a W-file leave the office in which it was created. If the A-file is not located, and it becomes necessary to send the file out of the office for further processing, the W-file must be converted into a T-file.

4. Temporary Files ("T-files")

The Service Center will generate a T-file whenever a review of the various DHS databases indicates an applicant has a pre-existing A-number. In addition, any DHS office may create a T-file when it becomes necessary for the office to take action on a case in the absence of the A-file. For further guidance on creating and using T-Files, *see* Records Operations Handbook (ROH), Part II-04, Available on the USCIS Intranet at http://ors.uscis.dhs.gov/roh/. Part II-04 of the ROH also provides instructions on joining T-files to A-files (referred to as a "merger").

If an AO must use a T-file during the adjudication of an asylum claim, the *Asylum/NACARA 203 Processing Sheet for T-Files* (Appendix 62) is completed. Asylum Office personnel immediately order the A-file in CIS, and place a copy of the 9504 screen on the right-hand side of the T-file. DACS, NAILS, and EOIR (PF11 on the 9101 screen in CIS) must be checked prior to the interview. In addition, Asylum Office personnel must make an effort to obtain the A-file and document the efforts on the processing sheet. This effort includes calling the office that possesses the A-file.

Williams, Johnny N. Responsibilities of Adjudicators, Memorandum to Regional Directors, et al., 13 November 2002, 2p.

If any records check is positive, Asylum Office personnel follow existing procedures to obtain and resolve the cause for the positive records check. The resolution of the hits must be documented in writing before adjudication on a T-file, preferably attached to the processing sheet.

a. Interviewing an Applicant When the Asylum Office Cannot Locate an A-file or T-file

If the Asylum Office cannot locate an A-file or T-file, or has not received the file from another USCIS or DHS office, the interview may proceed only if the AO is able to obtain a copy of the applicant's I-589 from the applicant or another USCIS or DHS office with the file. If the I-589 is received, a T-file is created to store the applicant's records until the A-file is located or received.

If an I-589 is not available, the Asylum Office reschedules the interview using the Remove Case from Schedule (REMC) command, indicating the rescheduling is at the fault of "INS". Asylum Office personnel make a concerted effort to locate the file. If, upon the applicant's return, the Asylum Office still cannot locate the file, the applicant may be asked to submit a new application directly to the Asylum Office for further processing. An asylum interview may not be conducted unless the AO has at least a copy of the I-589.

b. Adjudicating an Application on a T-file

An Asylum Office may issue a *Referral, NOID*, *Final Denial,* or *Recommended Approval* on a T-file or administratively close a case unless there are reasonable grounds for believing information in the A-file would materially impact on the decision. A determination to wait for an A-file must be made in consultation with the SAO, as it may impact on how the case will be processed (Pick-up vs. Mail-out). If a decision is made on a T-file because the A-file could not be located or obtained after established procedures were followed, this must be documented on the *Asylum and NACARA § 203 Background Identity and Security Checklist* (Appendix 1 of the *Identity and Security Checks Procedures Manual*), which is reviewed and signed by an SAO prior to decision issuance. **When any background check has a positive result (*i.e.*, a confirmed or possible matching record exists), adjudication on a T-file cannot proceed until the Asylum Office Director or Deputy Director has reviewed and concurred in the decision.** This authority may not be delegated.

An Asylum Office may NOT issue an *Asylum Approval* on a T-file, except as indicated below, this section.

i. CIS Indicates Another DHS Office has the A-file

By the time the Asylum Office is ready to issue a final decision, the Asylum Office, at a minimum, must have ordered the A-file in CIS and called the office that possesses it. There are several reasons why an A-file may not be sent to the Asylum Office, and they are usually recorded in CIS on the 9504 screen:

- M – The A-file is missing and the office is doing a special search.
- I – The A-file was transferred to the office that requested it (REQUEST FCO field); however, either that office did not receive it or confirm it into CIS as having been received, so it is still "in transit" according to the system.
- A – An application for another benefit is in process so the office cannot release the A-file.
- D – The A-file is under docket control, so the applicant was or is currently in the DACS system.
- F – The A-file was found, but not sent. A reason could be that it is needed in the office for something other than the processing of an application.
- P – The A-file is currently being used by ICE Investigations
- N – The A-file was not found in the location according to the office's file control system. It is temporarily lost.

If **90 days** have passed since the Asylum Office made its initial attempt to obtain the A-file and the office holding the file cannot release it, Asylum Office personnel add to the *Asylum/NACARA 203 Processing Sheet For T-Files*:

"Initial attempt" refers to the date in CIS when the A-file was requested, or when the first contact was made to the office holding the A-file in order to obtain the A-file, whichever is earlier.

- A brief explanation that the Asylum Office is issuing an *Asylum Approval* because 90 days have passed since an initial attempt was made to obtain the file.
- A brief outline of the information from CIS that explains why the A-file was not transferred to the Asylum Office.
- A brief outline of the attempts that were made to obtain the A-file, referencing any documents in the T-file that evidence steps taken to obtain the A-file.

In addition, Asylum Office personnel update the A-file Receipt Confirmation (AFIL) screen, indicating that the office made a diligent search for the file.

An SAO signs the memo to ensure the Asylum Office took proper and complete steps to obtain the A-file. Asylum Office personnel then prepare the case as an *Approval*. **If any security check has a hit of information pertaining to the applicant, the Director or Deputy Director must concur in the decision on the *Asylum and NACARA § 203 Background Identity and Security Checklist.***

ii. CIS Indicates the Asylum Office has the A-file

In some cases, CIS may indicate that an A-file is within the Asylum Office; however, the A-file is not in its proper NFTS location, or NFTS indicates that the A-file was sent to another office but CIS was not updated.

(a) A-file not in its NFTS location

The records supervisor must perform a diligent search of the Asylum Office in order to locate the A-file, and record in the T-file all of the attempts to locate the A-file.

If 90 days have passed since Asylum Office personnel performed the initial diligent search, the office performs another diligent search. If the A-file still cannot be found, Asylum Office personnel include on the T-file processing sheet the following information:

- Brief explanation that the Asylum Office is issuing an *Asylum Approval* because 90 days have passed and the A-file cannot be located.
- Brief outline of information from CIS that shows the A-file has been designated as Missing "M."
- Brief outline of the attempts that were made to locate the A-file.

An SAO signs the memo to ensure the Asylum Office took proper and complete steps to obtain the A-file. Asylum Office personnel then prepare the case as an *Approval*. For further guidance on missing and lost A-files, *see* Records Operations Handbook (ROH), Part II-22, Available on the USCIS Intranet at http://ors.uscis.dhs.gov/roh/.

(b) A-file sent to another office but CIS was not updated

NFTS may indicate that an A-file was sent to another office; however, CIS was not updated to show the new office location. Asylum Office personnel must:

- Update CIS to show the correct A-file location.
- Request the A-file in CIS.

Follow the instructions in Section III.J.4.b.ii(a) above if the Asylum Office does not receive the A-file within the 90-day period, and the case is ready for an *Asylum Approval*.

5. Record Order

Prior to submitting the file for the next step in processing, all staff members are responsible for seeing that the file is maintained in record order. Record order is as follows (*listed from top to bottom*):

ASYLUM DIVISION A-FILE RECORD ORDER

Record Side (left hand side)	Non-Record Side (right hand side)
• Form G-28, Appearance as Representative (if any) • ANSIR sheet (if referral) • NTA • Top portion of I-94 showing asylum approval (if issued) • Decision Letter (e.g. Referral, Final Approval, etc.) • Rebuttal to NOID (if any) • Assessment or NOID* • DRL Response (if any) • Pick-Up Notice/Mail-out Notice • Record of Applicant and Interpreter Oaths • Waiver of Presence of Representative (if any) • Interview Notices (in reverse chronological order) • Acknowledgement of Receipt mailer • Change of Address notification (if any) • FD-258 Fingerprint Card (if any) • Sworn statement taken at interview, if any • I-589 Application for Asylum (w/ photo(s) attached) • Applicant-specific supporting documentation for I-589 • General country conditions documentation submitted by applicant in support of I-589 • G-325A Biographic Information submitted with asylum application (if any) • Advance Parole document, if any • Form I-765, Application for Employment Authorization • Additional copies of I-589 packet • Previously submitted asylum applications (if any)	• Asylum and NACARA § 203 Background Identity and Security Checklist, with required screen prints • Memos to file (if any, in chronological order) • I-213 (if required) • AO's interview notes • Non-record Correspondence (in reverse chronological order) • Service Center Checklist and database checks conducted by Service Center • Miscellaneous I-797 (if any, in reverse chronological order) * It is not necessary to place a copy of a principal applicant's assessment or NOID in a dependent's file. However, the file must contain copies of the decision letter (e.g., Referral Notice) if the dependent's A-number is listed on it.

K. IDENTITY AND SECURITY CHECKS

For guidance on background identity and security checks, with the exception of the information contained in this section, please refer to the *Identity and Security Checks Procedures Manual*. The manual contains guidance on all required security checks, and the appendices to the manual contain all document templates used in the completion of those checks.

1. Failure to Follow Requirements for Identity Check Procedures

The procedures in this section govern the processing of the asylum application of an individual who has failed to follow requirements for fingerprint processing and other identity check procedures.

Langlois, Joseph E. Procedures for Applicants Who Fail to Comply with Fingerprint Processing Requirements, Memorandum to Asylum Office Directors, et al., 20 August 2002, 8 p.

An applicant fails to comply with identity check procedures if he or she fails without good cause to:

8 C.F.R. 208.10

- for applications filed before June 15, 2004, appear for an appointment for fingerprinting at an Application Support Center (ASC)
- for applications filed on or after June 15, 2004, appear for an appointment for biometrics collection, including enrollment in US-VISIT, and, for applicants between the ages of 12 years and 9 months and 75 years, fingerprinting at an ASC
- complete a sworn statement regarding his or her criminal history, if required
- submit requested documentation such as final disposition of an arrest from a RAP sheet or a required "no record" statement within 60 days from the date of the request.

8 C.F.R. 208.10

Failure to comply with identity check procedures may result in dismissal of the asylum application or a waiver of the right to an adjudication before an Asylum Officer (referral to EOIR). If an applicant fails to appear at an ASC for fingerprinting and biometrics collection within the required 14 day-day period, RAPS will also automatically stop (toll) the 180-day employment authorization KLOK. For more detail on fingerprinting and biometrics collection, see Section VI of the *Identity and Security Checks Procedures Manual*. See also Appendix 20, *Impact of RAPS Actions on the "KLOK."*

a. Excusing a Failure to Comply with Identity Check Procedures

Asylum Office Directors have discretion to excuse a failure to comply with identity check procedures if the applicant demonstrates good cause. Good cause is decided on a case-by-case basis by taking into account the individual circumstances of the applicant. It will be very difficult for applicants to show good cause for failure to attend an ASC appointment because applicants are provided a two-week window within which to report to the ASC. In order to establish good cause, the applicant must present evidence that there was not a single day during the two-week period that the applicant or dependent reasonably could have gone to the ASC appointment.

A failure to comply with identity check procedures must be excused if the applicant demonstrates that the failure was the result of exceptional circumstances or the notice was not mailed to the applicant's current address and the address had been provided to the Asylum Division prior to the date the notice was mailed. 8 C.F.R. 208.10. In other words, Asylum Office Directors have *discretion* to excuse the failure to appear for reasons meeting the lower, "good cause" standard, but *must excuse* the failure both for reasons meeting the higher, "exceptional circumstances" standard and for improper notice as described in 8 C.F.R. 208.10.

Exceptional circumstances are established by showing circumstances no less compelling than serious illness of the applicant or serious illness or death of the applicant's spouse, child, or parent. See Section 240(e)(1) of the Immigration and Nationality Act (INA).

Asylum Office Directors may exercise discretion to excuse a failure to comply with identity check procedures for good cause until jurisdiction passes to EOIR with the filing of a charging document. If the applicant establishes either exceptional circumstances or improper notice (e.g., a timely address change notice was discovered in the wrong file) and the applicant has already been placed in proceedings before EOIR, Asylum Office Directors must coordinate with the ICE Office of the Principal Legal Advisor (OPLA) for a motion to terminate EOIR proceedings and reopen the case before the Asylum Office. If EOIR has already decided the case and denied asylum, the Asylum Office Director discusses with the local branch of ICE OPLA whether a Motion to Reopen or to Reconsider would be appropriate. If assistance is needed in resolving such cases, contact HQASM.

Asylum Office Directors should contact HQASM for procedures for excusing a dependent's failure to comply with identity check procedures where the derivative asylum application was dismissed for such failure and the former dependent demonstrates either exceptional circumstances or improper notice under 8 C.F.R. 208.10 after the final approval was issued to the principal applicant.

b. Notice to the Applicant

i. Notifying the Applicant of a Request for Documents or Appointment for Sworn Statement

Asylum Office personnel issue requests for final court dispositions and appointments for sworn statements under the following circumstances and with the following documents:

- Applicant with a criminal record: If the Asylum Office does not have a mechanism in place to obtain official final disposition records (such as coordination with ICE District Investigations), the Asylum Office mails a *Request for Final Court Disposition(s)* (Appendix 23) letter to the principal applicant, which gives him or her 60 days to submit the required documentation.
- Applicant with rejected or waived fingerprints: If the FBI has rejected an individual's fingerprints on two separate occasions or a fingerprint requirement has been waived, the individual must swear/affirm that he or she does not have a criminal record through the completion of a sworn statement. In addition he or she must provide a "no record" statement from the police department in each U.S. locality where he or she has resided during the last five years, and provide the final disposition of any arrest. Asylum Office personnel issue to the applicant a *Appointment for Sworn Statement/Request for Evidence (Rejection of Fingerprints)* (Appendix 24) letter (rejected prints) or an *Appointment for Sworn Statement/Request for Evidence (Waiver of Fingerprints)* (Appendix 25).

All correspondence discussed in this section that is directed to a dependent separate from the principal should be addressed to the dependent alone and copied under separate cover to the principal applicant.

- Applicant 75 years of age or older: An applicant aged 75 and older must swear/affirm that he or she does not have a criminal record through the completion of a sworn statement. If the applicant must be called in to complete the sworn statement, Asylum Office personnel issue the applicant an *Appointment for Sworn Statement/Request for Evidence (Waiver of Fingerprints)* (Appendix 25).

If the applicant fails without good cause to provide the requested documentation or respond to the request for a sworn statement by 60 days after the issuance of one of these letters to the applicant at the last address he or she provided, Asylum Office personnel process the case in accordance with procedures in Section III.K.1.d, below.

c. Verification of Compliance with Fingerprinting Requirements

Prior to or at the time an applicant appears for his or her scheduled asylum interview, Asylum Office personnel should verify whether the principal applicant and each dependent have complied with fingerprinting requirements, i.e., that the principal applicant and all dependents required to be fingerprinted have had their fingerprints taken at an ASC. If the evidence indicates that the principal applicant and all dependents have complied with fingerprinting requirements, the asylum interview should proceed as usual. However, if the principal applicant or any dependent has not been fingerprinted, the asylum interview should be rescheduled, along with the fingerprinting appointments of those who have not been fingerprinted, in accordance with the guidance set forth in Section II.I.2 above, *Asylum Office Verifies that Applicant Complied with Fingerprinting Requirements*.

d. Cancellation of the Recommended Approval and Dismissal or Referral of the Asylum Application

An applicant who has failed to comply with identity check procedures without good cause or exceptional circumstances will not receive an asylum interview, as explained in Section II.I.2 above, *Asylum Office Verifies that Applicant Complied with Fingerprinting Requirements*. The guidance below applies to recommended approvals for failure to comply with identity check procedures issued before promulgation of the procedures in Section II.I.2.

i. Principal Applicant Failed to Comply with Identity Check Procedures

If the recommended approval of the principal applicant is cancelled and the asylum application dismissed or referred for failure to comply with identity check procedures, the actions taken in the case apply to any dependents in the case as well, regardless of whether dependents complied with identity check procedures. Asylum Office personnel:

- Prepare the *Cancellation of Recommended Approval and Referral (Failure to Follow Identity Check Procedures)* (Appendix 26) or *Cancellation of Recommended Approval and Dismissal (Failure to Follow Identity Check Procedures)* (Appendix 27) letter addressed to the principal and all dependents, depending on whether or not the applicant is maintaining lawful status.
- Update RAPS as follows:
- On the DINT screen, enter "C" and the A-numbers of the principal and all dependents to record the issuance of the cancellation of recommended approval letter.
- Remove the PDEC of GR using the CORR screen for the principal and all dependents.
- On the FDEC screen, update principal and dependents as follows:

Status	Decision Code	Deport Code
Out-of-Status	I7	A1 (NTA), or A5 (I-863), if applicable
In-Status	D7	A6

- Serve the applicant by mail and follow regular procedures for post-service processing in Section II.R, *Post Service Processing*, above.

ii. Principal Complied with Identity Check Procedures, but Dependent Failed to Comply

These procedures apply when the principal applicant complied with identity check procedures, but one or more dependents failed to comply. Asylum Office personnel:

- Prepare the *Cancellation of Recommended Approval and Referral (Failure to Follow Identity Check Procedures)* (Appendix 26) or *Cancellation of Recommended Approval and Dismissal (Failure to Follow Identity Check Procedures)* (Appendix 27) letter addressed to the dependent, depending on whether or not the dependent is maintaining lawful status.
- Prepare the final asylum approval of the principal applicant and all eligible dependents for issuance at the same time as the cancellation letter for the dependent who failed to comply with identity check procedures.
- Update RAPS as follows:
- On the DINT screen, enter "C" and the dependent's A-number to record the issuance of the cancellation of recommended approval letter.
- Remove the PDEC of GR on the CORR screen for the dependent who failed to comply.
- Enter an FDEC of G1 for the principal and all eligible dependents, and D7 (regardless of status) for the dependent whose application is being dismissed. The deportation code for the dismissed dependent is A6 (no deportation) if he or she is in-status. If out-of-status, enter A1 if an NTA will be issued or A5 if a *Notice of Referral to Immigration Judge* (Form I-863) will be issued.
- Serve the applicant by mail and follow regular procedures for post-service processing as described in Section II.R, *Post Service Processing*, above.

8 C.F.R. 208.2

L. JURISDICTION

1. USCIS Jurisdiction

The USCIS Asylum Division has jurisdiction to adjudicate the asylum application filed by an alien physically present in the U.S., unless and until a charging document has been served on the applicant and filed with EOIR, placing the applicant under the jurisdiction of Immigration Court. For procedures governing cases in which USCIS does not have jurisdiction because the applicant is not physically present in the United States, *see* Section III.D, *Departing the U.S. Before a Final Decision*.

Special rules may apply to ABC/NACARA applicants. See the ABC/NACARA Procedures Manual.

The Asylum Division does not take jurisdiction over applicants described in 8 C.F.R. 208.2(c)(1), who are directed to file their asylum applications with the local USCIS District Director or ICE SAC for issuance of an I-863 and forwarding to the Immigration Court for an "asylum-only" hearing (stowaways, VWP overstays/violators, crewmembers). The authority to issue an I-863 may, in certain cases, delegated to Asylum Office Directors. For guidance on handling cases described in 208.2(c)(1), please *see* Section III.L.3, *Aliens Not Entitled to Proceedings Under INA Section 240*.

Aguirre, Eduardo. Delegation to Asylum Office Directors of District Director Authority and Discretion to Issue Form I-863, Notice of Referral to Immigration Judge, to Certain Asylum Applicants,

Once a charging document is served on an applicant **and** filed with EOIR, the Asylum Office no longer has jurisdiction to adjudicate the applicant's I-589. Jurisdiction remains with EOIR until proceedings have been terminated or the applicant departs from the U.S. Administrative closure of EOIR proceedings is not sufficient to return jurisdiction to USCIS. If the Asylum Office discovers that an applicant is under the jurisdiction of EOIR, Asylum Office personnel take the following action:

Memorandum for Regional Directors, et. al., 26 July 2004, 2p.

8 C.F.R. 208.2(b)

a. EOIR Jurisdiction Discovered Prior to Service of Final Decision

Asylum Office personnel:

- If discovered before the interview is completed, cancel or suspend the asylum interview.
- If discovered after the interview but prior to the Pick-Up date, send applicant *Notice of Change in Decision Service from Pick-Up to Mail-Out* (Appendix 33) if there is sufficient time for notice to the applicant. If there is insufficient time, or the applicant appears for the pick-up, inform the applicant in person that USCIS does not have jurisdiction over the asylum application because the application is under the exclusive jurisdiction of EOIR. Remove any interview and decision data from RAPS using the Case Correction (CORR) and Remove Case from Interview Schedule (REMC) commands.
- Print the EOIR screen from RAPS and place in the file.
- Close the case in RAPS using the CLOS screen with close reason "IJ Jurisdiction" (C4).
- Indicate on the CLOS screen that the Asylum Office will **NOT** issue an NTA/referral (Place "N' in the "Send to IJ " section).
- For a principal applicant, issue a *Notice of Lack of Jurisdiction* (Appendix 59) letter. For a dependent, issue a *Denial of Derivative Asylum Status* (Appendix 19) letter.
- Transfer the file to the ICE Office of the Principal Legal Advisor (OPLA) if the applicant is currently in proceedings or to ICE Investigations or DRO (depending on local policy) if the applicant has a final order.

b. EOIR Jurisdiction Discovered After Service of Final Decision

i. Asylum Office referred applicant to the IJ or issued final denial

Asylum Office personnel:

- Remove decision data from RAPS using the Case Correction (CORR) command.
- Close the case in RAPS using the CLOS screen with close reason "IJ Jurisdiction" (C4).
- Indicate on the CLOS screen that the Asylum Office will **NOT** issue an NTA/referral (Place "N' in the "Send to IJ " section).
- Issue a *Notice of Lack of Jurisdiction* (Appendix 59) letter to the applicant.
- Transfer the file to ICE OPLA if the applicant is currently in proceedings or to ICE Investigations or DRO (depending on local policy) if the applicant has a final order.

ii. Asylum Office issued recommended approval

Asylum Office personnel:

- Prepare a short memo to the file that states why the record of the individual warrants a reversal of the decision to approve asylum status. Place the memo on the right-hand side of the A-file at the very top in order to alert the Trial Attorney to the processing before the Asylum Office.
- Update the Admin Close Update (CLOS) screen, indicating the case is under IJ jurisdiction (C4).
- Indicate on the CLOS screen that the Asylum Office will **NOT** issue an NTA/referral (Place "N' in the "Send to IJ " section).
- Prepare and issue a *Cancellation of Recommended Approval (Lack of USCIS Jurisdiction)* (Appendix 22).
- Transfer the file to ICE OPLA if the applicant is currently in proceedings or to ICE Investigations or DRO if the applicant has a final order.

iii. Asylum Office issued final approval

Asylum Office personnel follow procedures outlined in Section III.Ufor rescission of asylum based on lack of jurisdiction.

2. Asylum Office Geographical Jurisdiction

There are eight (8) Asylum Offices in the United States: Arlington, Chicago, Houston, Los Angeles (Anaheim, CA), Miami, Newark (Lyndhurst, NJ), New York (Rosedale, NY), and San Francisco. Each Asylum Office has jurisdiction over all affirmative asylum applications filed by asylum applicants who reside within its geographical territory except for aliens described in the previous section as being under the exclusive jurisdiction of EOIR or aliens not entitled to proceedings under section 240 of the INA (see Section III.L.3 below).

See 8 C.F.R. 100.4(f) for a list of Asylum Offices and their jurisdictions.

a. Residence of Applicant

8 C.F.R. 208.4(b)(1) requires an applicant to file an I-589 with the Service Center servicing the Asylum Office having jurisdiction over the applicant's place of residence. "Residence" is defined in 101(a)(33) of the INA as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."

A college student, for example, may move to another state during his or her summer vacation and submit an I-589. Although the individual may intend to return to college, which is located outside of the Asylum Office's jurisdiction, the student is, nevertheless, entitled to file for asylum with the Asylum Office having jurisdiction over his or her place of residence during the summer vacation.

An Asylum Office Director may, in his or her discretion, adjudicate an application for a college student when his or her permanent home address falls within the jurisdiction of the office, or make a similar accommodation for a migrant worker who frequently moves between jurisdictions.

There are instances when an Asylum Office may believe that an applicant does not live at an address he or she provides at an asylum interview. The address may be known to Asylum Office personnel as one that is linked to the location of a "boilerplate" asylum application preparer, or a "drop box." In these instances, an Asylum Office Director may exercise discretion to request proof that the applicant lives within the jurisdiction of the Asylum Office in order to determine whether the office has jurisdiction over the applicant. Any inquiries into or requests for proof of residence must be reasonable in light of the specific circumstances of the applicant including, but not limited to, language and cultural barriers, the availability or lack of family or financial resources, and the availability or inability to obtain documentation in the applicant's name.

Indicators that an applicant may not reside in the jurisdiction of the Asylum Office may arise before, during, or after the asylum interview.

If the Asylum Office requires evidence of an applicant's residence, the AO or SAO:

- Depending on the procedural stage of the case, cancels or terminates the interview.
- If the interview has already begun, explains to all parties (applicant, interpreter, representative) the reason for terminating the interview.
- Completes a *Request for Evidence to Establish Residence* letter (Appendix 38), providing the original to the applicant and maintaining a copy in the file.
- Places the case on HOLD-AD in RAPS. This will stop the EAD clock.

Check with local Asylum Office management about whether an AO must consult with an SAO or the Director before requesting evidence of an applicant's residence.

If the applicant submits evidence that establishes his or her residence within the jurisdiction of the Asylum Office, Asylum Office personnel remove the case from HOLD, and reschedule the asylum interview using the Remove Case from Schedule (REMC) command, indicating the rescheduling is at the fault of the applicant. The case can then be set for interview in accordance with regular scheduling priorities.

If the evidence submitted by the applicant or available in the file establishes the applicant's residence in the jurisdiction of another Asylum Office, Asylum Office personnel update the MOVE and TRAN screens and transfer the file to the office having jurisdiction.

If the applicant fails to submit evidence, or the evidence does not reasonably establish that the applicant lives within the jurisdiction of the Asylum Office, the Asylum Office conducts an asylum interview, exploring all factors that impact on the exercise of discretion. *See* AOBTC Lesson Plan, *Mandatory Bars to Asylum and Discretion.* After an interview, the applicant's asylum application may be referred as a matter of discretion if the negative factor (the applicant's failure to be forthcoming about his or her residence in the United States) outweighs the positive factors in the case. Discretionary referrals are submitted to HQASM/TRAQ for review. If HQ concurrence is received, the referral is processed in accordance with regular procedures. The reason for the referral on the *Referral Notice* is explained in the "Other reason for referral section" as follows:

"On [date], USCIS requested proof of your residence in accordance with 8 C.F.R. 103.2(b). You failed to submit evidence or the evidence you submitted was insufficient to establish your residence in the jurisdiction of this or any other Asylum Office. Because evidence indicates you were not forthcoming about your place of residence in the United States and provided false information on your asylum application, your asylum application is being referred to the Immigration Court, as a matter of discretion, using the address you provided on the asylum application and where you received notice of your asylum interview, which was conducted on [date]."

HQASM will consult with the USCIS Office of Chief Counsel regarding whether individuals who appear to be in-status may be referred and placed into removal proceedings on the basis of their failure to provide a valid address to USCIS. Until this issue is resolved, please notify HQASM-Operations of any such cases.

3. Aliens Not Entitled to Proceedings under Section 240 of the INA

Certain categories of aliens enumerated in 8 C.F.R. 208.2(c)(1) are entitled to only limited Immigration Judge hearings for consideration of asylum and withholding or deferral of removal applications only. The six so-called "asylum-only" categories are applicants who applied for asylum after April 1, 1997 and are:

- Crewmembers;
- Stowaways who pass the credible fear standard;
- Applicants for admission under the Visa Waiver Permanent Program (VWP) (in the inspections context);
- VWP overstays;
- Aliens ordered removed under INA Section 235(c) (security and related grounds); and,
- Nonimmigrants admitted pursuant to INA 101(a)(15)(S) (witnesses and informants).

Please note that the VWP was preceded by the Visa Waiver Pilot Program (VWPP), which ended in 2000. Applicants who were admitted under the VWPP are processed in the same manner as applicants admitted under the VWP.

The asylum program does not take jurisdiction to consider affirmative asylum applications from members of these six categories. The regulations currently direct such individuals not under the jurisdiction of EOIR to file their asylum applications directly with the District Director, who will issue an I-863 and forward the asylum application to the Immigration Court. 8 C.F.R. 208.4(b)(5). The USCIS District Director's authority to accept I-589s in these circumstances has been delegated to Asylum Office Directors. When the Asylum Office encounters an application from a member of one of the six "asylum-only" categories, the Asylum Office issues the I-863 and forwards the I-863 and asylum application to the appropriate Immigration Court. When encountering such a case, Asylum Office personnel take the following actions:

Aguirre, Eduardo. Delegation to Asylum Office Directors of District Director Authority and Discretion to Issue Form I-863, *Notice of Referral to Immigration Judge*, to Certain Asylum Applicants, Memorandum to Regional Directors, Asylum Office Directors, et al., 26 July 2004, 2p.

- If the interview has not yet taken place, cancel or suspend the interview.
- Copy any documents that evidence the applicant's status and place them in the file.
- Print any IBIS SQ94 screens that show the applicant's entry into the U.S. and place them in the file.

See the IBIS SOP and Section IV of the Identity and Security Checks Procedures Manual for guidance on conducting SQ94 queries in IBIS.

If the applicant was ordered removed under INA Section 235(c) or admitted pursuant to INA Section 101(a)(15)(S), contact HQASM Operations for further guidance before proceeding. For other "asylum-only" category cases, depending on local Asylum Office policy, either issue a *Pick-up Notice* to the applicant, or serve the necessary documents on the applicant while he or she is still in the Asylum Office. In either case, Asylum Office personnel:

- Prepare a *Referral Notice*, and at "Other Reasons for Referral," write: "You are an alien [insert applicable language from 8 C.F.R. 208(c)(1)(i)-(vi), e.g. "crewmember who has been refused permission to land under Section 252"] and filed an asylum application on or after April 1, 1997. USCIS does not have jurisdiction over your case and only an Immigration Judge may hear your claim. Your Form I-589 *Application for Asylum and for Withholding of Removal* will be forwarded to the Immigration Judge."
- Prepare a Form I-863, *Notice of Referral to Immigration Judge*, placing a checkmark in the box next to item 3 and in the appropriate box indicating the category of case.
- Prepare a Form I-213, if required.
- Copy the I-589 for the Immigration Judge.
- Administratively close the asylum application on the Close Case (CLOS) screen, indicating the reason for closure as "IJ Jurisdiction" (C4), placing a "Y" in the "Send to IJ" field.

The following guidance, specific to certain of the above categories, is provided to clarify when the above procedures apply.

a. Crewmembers

i. Crewmembers who applied for asylum on or after 4/1/97

An Asylum Office does not take jurisdiction to adjudicate an asylum claim filed on or after April 1, 1997 by a crewmember, as defined in the INA. As used in the INA, the term crewmember only pertains to an alien who last arrived in the U.S. on a vessel in the capacity of a working crewman and: 8 C.F.R. 208.2(c)(1)(i)

- is applying for a landing permit;
- was inspected and refused admission; or
- was inspected and admitted as a D-1 or D-2 nonimmigrant.

An alien who arrived in any other manner is not considered a crewmember for INA purposes, even though the alien may possess a D nonimmigrant visa or be regularly employed as a crewmember. For example, a person regularly employed as a crewman but who was last admitted as a B-2 tourist or a C-1 alien in transit to a vessel, or who arrived without inspection, would not be classified as a crewmember for INA purposes. In such a case, the Asylum Office may take jurisdiction to adjudicate the application (provided the applicant in not under the jurisdiction of EOIR).

A crewmember who last arrived in a working capacity on a vessel, was inspected and paroled (e.g. for medical treatment), and is still maintaining parole status is processed for asylum purposes as any other parolee. *See* Section III.N. However, if parole status has expired or been terminated, the alien reverts to an applicant for a landing permit and the guidance in this section applies.

ii. Crewmembers who applied for asylum prior to 4/1/97

The Asylum Office takes jurisdiction over asylum claims filed by crewmembers prior to April 1, 1997. If the crewmember is found ineligible for asylum and is not maintaining lawful immigrant, nonimmigrant or Temporary Protected Status, Asylum Office personnel process the crewmember's application as a regular referral, issuing an I-862 (NTA). 8 C.F.R. 208.2(b)

b. Stowaways

An arriving alien who has been identified *by inspections* as a stowaway is not entitled to make an affirmative asylum application or to removal proceedings pursuant to INA Section 240. *See* INA Section 235(a)(2), 235(b)(1). Stowaways are interviewed by Asylum Officers for credible fear. 8 C.F.R. 208.30. For procedures relating to stowaways, refer to the *Credible Fear Procedures Manual*. If inspections identified the applicant as a stowaway, but the applicant absconded before the credible fear process could be completed, and the applicant later files an I-589 with USCIS, the Asylum Office interviews the applicant for credible fear and issues an I-863 as follows: 1) for asylum-only proceedings if credible fear is found; **or** 2) for IJ review if a negative credible fear decision is made and the alien requests review. If no credible fear is found, and the applicant does not request IJ review, Asylum Office personnel refer the stowaway to local ICE Detention and Removal (DRO) for removal from the U.S. For more detailed guidance on processing true stowaways, *see Procedures Manual - Credible Fear Process*. 8 C.F.R. 208.2(c)(1)(ii)

An applicant who testifies that he or she traveled to the United States by concealing him or herself on a ship, but jumped ship or otherwise absconded without being identified by DHS as a stowaway is *not* processed as a stowaway. The Asylum Office accepts affirmative asylum applications from these individuals and treats them as having entered without inspection (EWI).

c. Visa Waiver Permanent Program (VWP) Applicants

8 C.F.R. 208.2(c)(1)(iii), (iv)

The Asylum Office does not take jurisdiction to adjudicate the asylum application of a principal applicant who was admitted under the VWP **unless**:

- The applicant was inspected and properly admitted under the Visa Waiver Program (VWP) **and**
- The I-589 was **filed before** the expiration of the 90-day period of authorized stay under the VWP.

-OR-

- The application was **filed before April 1, 1997**, regardless of when the 90-day period of admission expired.

The evidence required to support a finding of proper admission under the VWPP is discussed in the next section. For the purposes of these procedures, proper admission **does not include** admission by fraud. For example, if the asylum applicant filed his or her I-589 after April 1, 1997 and before the expiration of his or her 90-day period of admission under the VWPP, but was admitted through the use of fraudulent documents, the Asylum Office does not have jurisdiction to adjudicate the I-589. If the Asylum Office does not have jurisdiction over the application, Asylum Office personnel follow procedures in Section III.L.3 above, *Aliens Not Entitled to Proceedings under Section 240 of the INA.*

When the Asylum Office takes jurisdiction to adjudicate an asylum application pursuant to the above procedure, the Asylum Office retains jurisdiction to complete adjudication of the case, even if the 90-day period of admission expires before the Asylum Office completes processing of the case. The application is processed identically to other asylum applications for interview and decision, except that for referrals, an I-863 *Notice of Referral to Immigration Judge* is prepared instead of an NTA. In RAPS, the deportation code is A5. The status at entry to be input in RAPS on the I589 screen is "WB – Visitor Without Visa 90 Da [*sic*]."

i. Evidence of Admission Under the VWP

An applicant must produce evidence of his or her admission (whether *bona fide* or *male fide*) to the U.S. under the VWP for the Asylum Office to process the case using the procedures in this section relating to applicants admitted under the VWP. When an applicant has been admitted as a VWP visitor, these procedures apply regardless of whether the applicant gained admission properly and lawfully or by falsely claiming to be a national of a VWP-designated country (including presentation of a counterfeit or impostor passport from such country).

The fact that an applicant cannot establish entry as a VWP applicant does not necessarily mean that he or she failed in the burden of proof as to entry for purposes of the one-year filing deadline, because manner of entry is not necessarily determinative of date of entry. AOs should consult the one-year filing deadline lesson plan for standard of proof issues.

If the applicant claims admission under the VWP (either with genuine or fraudulent or fraudulently obtained documents), he or she must present a passport or signed I-94W card evidencing the admission, or the Asylum Officer must confirm the applicant's admission under the VWP in IBIS or another DHS system containing entry information. An applicant's credible testimony or sworn statement will ordinarily not suffice for the Asylum Office to treat the applicant as having been admitted as a VWP visitor, but Asylum Office Directors maintain the discretion to permit the filing of I-863s based on sworn statements alone if it is determined, in coordination with USCIS Area Counsel or ICE Office of the Principal Legal Advisor (OPLA), that proceedings will not be terminated. Forms I-94W for VWP visitors bear the notation "WB" for business visitors and "WT" for visitors for pleasure.

If an applicant's claim of admission under the VWP cannot be substantiated as described above, the Asylum Office does not consider the applicant as having been admitted under the VWP, and the procedures in this section do not apply. The manner of entry for the applicant is recorded as "unknown" on the I589 screen in RAPS, and the AO proceeds with the interview and adjudication of the claim. If such an applicant is to be referred to the Immigration Judge, Asylum Office personnel issue an NTA (not an I-863) containing an NVD1 or NVD2 charge, depending on local office policy.

If the applicant is able to establish his or her admission into the U.S. under the VWP, even through the use of a fraudulent passport, Asylum Office personnel determine jurisdiction and process the case according to the guidance contained in this section.

ii. Dependents Admitted under the VWP

The Asylum Office takes jurisdiction over a dependent who entered the U.S. as a VWP visitor when taking jurisdiction over the principal applicant, regardless of when the application was filed or whether the 90-day period of authorized stay has expired. The dependent's status at entry in RAPS is "WB."

A dependent who entered as a VWP visitor who is being referred to the Immigration Judge should receive an I-863 instead of an NTA, even if the principal applicant is receiving an NTA. When preparing the referral letter for the principal, Asylum Office personnel insert the following language in the "Other" section of the referral letter:

"Your dependent, (name, A#), was admitted to the U.S. as a Visa Waiver Program (VWP) visitor under Section 217 of the Immigration and Nationality Act, and has remained longer than authorized. A VWP visitor is entitled to only limited Immigration Judge proceedings to review his or her claim for asylum. Therefore, he or she is being issued a Form I-863 for such a proceeding in accordance with 8 C.F.R. 208.2(c)(1) and 217.4(b)."

The deportation code in RAPS is "A5."

iii. Applicant Paroled into U.S. During Visa Waiver Pilot Program (VWPP) Contingency Plan

Applicants from VWP-designated countries who were paroled into the U.S. during the interim period between the expiration of the Visa Waiver Pilot Program and the enactment of the Visa Waiver Permanent Program Act (May 1, 2000 – October 30, 2000) are processed as parolees. *See* Section III.N, *Parolees*, in this manual. *See* Langlois, Joseph E. Asylum Division. Visa Waiver Pilot Program (VWPP) Contingency Plan Guidance, (Washington, DC: 10 May 2000), 1p. A visitor paroled under the contingency plan should have a passport and Form I-94W with the word "admitted" crossed out and the word "paroled" written in its place. The paroled code for these cases was "CP."

See 8 C.F.R. 217.2(a) for the list of designated countries.

iv. Guam Visa Waiver Program

The Asylum Office has jurisdiction to adjudicate asylum applications filed by applicants admitted to Guam pursuant to the Guam Visa Waiver Program (GVWP). The application is processed identically to other asylum applications for interview and decision, except that for referrals, an I-863 *Notice of Referral to Immigration Judge* is prepared instead of an NTA. In RAPS, the deportation code is A5.

References:
INA Section 212(l)
8 C.F.R. 212.1(e)

4. Federal Court Jurisdiction

For the purpose of applying appropriate law, the AO must ascertain the federal court jurisdiction applicable to the alien's place of residence. The AO determines jurisdiction by the address of the applicant's residence, regardless of the address of the Asylum Office or the location of the interview.

5. Applicants for Admission at Land Border Ports of Entry

An applicant for admission at a land border port of entry is ineligible to make an affirmative application for asylum. *See* INA Section 208(a)(1). Applicants for admission at land border ports of entry generally will be placed in expedited removal proceedings and referred for a credible fear interview pursuant to 8 C.F.R. 208.30.[3] For guidance relating to credible fear determinations in the context of expedited removal, refer to the *Credible Fear Procedures Manual – Credible Fear Process.*

See Cronin, Michael D. Aliens Seeking Asylum at Land Border Ports-of-Entry, Memorandum to Michael A. Pearson, INS Office of Field Operations, 29 January 2002, 3p.

Applicants seeking asylum at a land border port of entry may also be subject to the U.S.-Canada Safe Third Country Agreement, if they are arriving from Canada. See Section III.P.4 below for additional information on this agreement.

The RAPS special group code "BOR," which was formerly used to designate the case of an applicant who was in Mexico or Canada awaiting an affirmative asylum interview has been disabled from future use in a case with a filing date on or after January 29, 2002.

M. MOTIONS TO REOPEN AND RECONSIDER

An Asylum Office Director, or his or her designee, need only consider a motion to reopen or reconsider for a case that has received a *Final Denial* from an Asylum Office. Because referred cases have not received a final decision, they are not entitled to reconsideration; however, an Asylum Office Director may seek to terminate an NTA that was served on the Immigration Court if he or she believes an egregious error may have been committed. Terminating an NTA must be coordinated with USCIS Area Counsel and/or the ICE Office of the Principal Legal Advisor (OPLA). If the Asylum Office Director elects to pursue termination of an NTA due to commission of an egregious error, no action in RAPS is necessary to record acceptance of the motion.

Jurisdiction over a motion rests with the Asylum Office Director who has jurisdiction over the applicant's place of residence, even if that Director did not issue the decision that the applicant seeks to reopen or reconsider.

1. Types of Motions

The applicant or his or her representative of record must submit any motion within 30 days of the decision that the motion seeks to reopen or reconsider, except that failure to file a motion to reopen before this period expires may be excused in the discretion of the Asylum

8 C.F.R. 103.5

[3] Cubans, however, are placed into removal proceedings pursuant to section 240 of the INA rather than in expedited removal proceedings. *See* Ahern, Jayson P. Treatment of Cuban Asylum Seekers at Land Border Ports of Entry, Memorandum to Directors, Field Operations Director, Preclearance Operations, 10 June 2005, 3p. (plus attachment).

Office Director where it is demonstrated that the delay was reasonable and was beyond the control of the applicant. Either a principal or a dependent may file a motion to reopen or reconsider.

a. Motion to Reopen

A motion to reopen must state new facts to be provided at the time of the submission of the motion and must be supported by affidavits or other documentary evidence.

b. Motion to Reconsider

A motion to reconsider must claim that the decision was based on a misapplication of law or policy and must be supported by pertinent precedent case law. The motion must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

2. Asylum Office Processing of a Motion

A Form I-290B, *Notice of Appeal*, or any other DHS form, and filing fee are not required for either type of motion. When the Asylum Office receives a motion, Asylum Office personnel update the MTR INITIATED BY APPLICANT – DATE field on the Motion to Reopen or Reconsider (MTRC) screen in RAPS to show the date that the Asylum Office received the motion. An update indicating "MTR FILED BY PRINCIPAL" or "MTR FILED BY DEPENDANT" will appear on the Case History (CHIS) screen.

3. Denying or Dismissing a Motion

The Asylum Office Director denies or dismisses a motion that does not meet applicable requirements. Asylum Office personnel prepare and issue to the applicant and any representative of record a written notice of denial or dismissal. The written notice indicates that the denial or dismissal is based upon either not meeting applicable requirements or a failure to file timely. Asylum Office personnel also update the DECISION field on the Motion to Reopen or Reconsider (MTRC) screen in RAPS, indicating whether the motion was denied for "NO NEW INFORMATION" (D1) or "NO NEW ARGUMENT" (D2) or whether the motion was dismissed as an "UNEXCUSED UNTIMELY MTR" (D3). An update indicating "MOTION TO REOPEN DENIED" will appear on the Case History (CHIS) screen.

An Asylum Office Director has prosecutorial discretion to place an alien not in valid immigration status into proceedings before the Immigration Court. Please note that for reform cases, the 180-day clock is stopped upon entry of a final denial in RAPS. Issuance of an NTA subsequent to a final denial will have no effect on the stopped clock. The clock will start anew if the applicant files a new asylum application with EOIR.

See Appendix 20, *Impact of RAPS Actions on the "KLOK"*, for further information

a. Referred Cases

When the Asylum Office dismisses a motion made in a case that was previously referred, the asylum applicant continues to pursue his or her application in the Immigration Court. No action in RAPS is necessary after the dismissal of a motion in a case that was previously referred.

b. Final Denials

When the Asylum Office denies or dismisses a motion, the applicant may submit a new Form I-589. That application shall be subject to the same prohibitions on filing as any other newly filed asylum application. Because the Service Centers are not trained to intake new asylum applications on cases that have previously been denied, the applicant may file the application directly with the Asylum Office.

See Section III.C.2on filing a new asylum application after issuance of a final denial.

4. Granting A Motion

The Asylum Office must grant the motion if the applicant met regulatory requirements. Asylum Office personnel notify the applicant and any representative of record in writing that the Asylum Office granted the motion. The Director, or his or her designee, determines whether the applicant will receive another interview or whether the case will be processed solely on the evidence in the record. Asylum Office personnel update the DECISION field on the Motion to Reopen or Reconsider (MTRC) screen in RAPS, indicating that the motion was granted (G1). An update indicating "MOTION TO REOPEN GRANTED" will appear on the Case History (CHIS) screen. Asylum Office personnel also indicate whether a re-interview will be required next to the RE-INTERVIEW REQUIRED (Y/N) field and whether the Asylum Office needs the applicant's A-file next to the REQUEST A-FILE (Y/N) field. Placing a Y next to the RE-INTERVIEW REQUIRED (Y/N) field will make the case available for scheduling, and placing a Y next to the REQUEST A-FILE (Y/N) field will initiate a File Transfer Request in CIS.

See Section II.J.13on re-interviews.

a. Asylum Office Upholds Decision to Deny/Refer

If the Asylum Office upholds the original decision to deny or refer, Asylum Office personnel issue to the applicant either a *Final Denial* or a *Referral Notice*, depending upon the applicant's immigration status at the time the office makes a decision, and prepare the case for either a *Referral* or *Denial*. The previous information in RAPS should be deleted on the CORR screen to allow for the updating of the most recent decision on the merits of the claim. The AO then enters a new FDEC for the case. An update indicating "FINAL DECISION – ASYLUM DENIED" will appear on the Case History (CHIS) screen.

b. Asylum Office Overturns Decision to Deny/Refer

If the Asylum Office overturns the original decision to deny or refer, Asylum Office personnel prepare the case as either a *Recommended Approval* or *Asylum Approval*, depending upon the status of the identity and security checks. The previous information in RAPS should be deleted to allow for the updating of the most recent decision on the merits of the claim.

N. PAROLEES INELIGIBLE FOR ASYLUM

This section outlines the processing procedures for parolees who are found ineligible for asylum status. For additional guidance, *see* Langlois, Joseph E. Asylum Division. Processing Parole Cases, Memorandum to Asylum Office Directors, 21 September 1998.

1. Pre-April 1, 1997 Parolees and Advance Parolees

a. Applicants with Valid Parole Granted for the Purpose of Applying for Asylum

Asylum Office personnel:

- Prepare a *NOID*
- If the applicant's rebuttal overcomes the reasons for denial, the case should be prepared as an approval.
- If the applicant's rebuttal does not overcome the reasons for denial, or the applicant fails to submit a rebuttal, the AO continues with the next steps.

The Asylum Office denies an applicant in parole status because until an NTA is served, the applicant's parole status remains valid. Once an NTA is

- Prepare a *Final Denial – Parole* (Appendix 58), NTA, and Form I-213, if required. To prepare the NTA on the OSCG screen in RAPS, use the charge PRL1 to charge as an intending immigrant, PRL2 for nonimmigrants. PRL1 should be sufficient for most cases, but PRL2 may be appropriate on occasion. Consult with local USCIS Area Counsel or ICE Office of the Principal Legal Advisor (OPLA) for the appropriate charges.
- Update an FDEC of D1-D7 in RAPS, with a deport code of A1.

b. Applicant with Valid Parole Granted for Other Reasons

If an applicant was paroled for a purpose other than to apply for asylum, and it appears to Asylum Office personnel that the purpose for parole has been served, Asylum Office personnel should consult with the office that granted the parole. If the office that granted the parole agrees that the purpose for parole has been served and should be terminated, the case is processed according to instructions in Section III.N.1.a above. If parole will not be terminated, Asylum Office personnel:

- Prepare a *NOID*
- If the applicant's rebuttal overcomes the reasons for denial, the AO prepares the case as an approval.
- If the applicant's rebuttal does not overcome the reasons for denial, or the applicant fails to submit a rebuttal, the AO prepares a standard *Final Denial* letter, which does not refer to termination of parole, and updates an FDEC of D1-D7 in RAPS, with a deport code of A6.

c. Applicant with Expired or Terminated Parole

If an applicant's parole is expired or terminated at the time of decision issuance, Asylum Office personnel process the case as a referral, using the charges discussed in Section III.N.1.a, above, for the NTA.

2. Applicants who were Paroled on or after April 1, 1997 (not pursuant to advance parole)

In the case of an applicant who was paroled into the U.S. on or after April 1, 1997, and the parole was not pursuant to advance authorization for parole prior to departure from the U.S., the AO takes the following action, depending upon the validity of the applicant's parole and the applicable inadmissibility grounds.

a. Parole Valid at the Time of Preliminary Decision

An AO issues a *NOID* to an applicant found ineligible for asylum whose parole is valid or has not been terminated by the time the case is initially prepared for a decision.

b. Parole Valid at Time of Final Decision

i. Applicant paroled to apply for asylum

Because the purpose of the applicant's parole has been accomplished, parole must be terminated. Asylum Office personnel follow instructions in Section III.N.2.d.i below, if the applicant is inadmissible to the U.S. under INA Section 212(a)(6)(c) or 212(a)(7) (expedited removal grounds).

If the applicant is inadmissible to the U.S. under sections of the INA other than 212(a)(6)(c) or 212(a)(7), Asylum Office personnel follow instructions in Section III.N.1.a above. The applicant is not subject to expedited removal, so a credible fear determination is not required.

ii. Applicant paroled for reasons other than to apply for asylum

If it appears to Asylum Office personnel that the purpose for parole has been served, Asylum Office personnel should consult with the office that granted the parole. If the office that granted the parole agrees that the purpose for parole has been served and should be terminated, Asylum Office personnel follow instructions in Section III.N.2.d below. If parole is not terminated, Asylum Office personnel following instructions in Section III.N.2.b.i above.

c. Parole is Expired or Terminated at the Time of Interview

This section applies to applicants whose parole has already expired or was terminated by the time of the asylum interview.

i. Applicant is inadmissible under INA Section 212(a)(6)(c) or 212(a)(7)

At the asylum interview, the AO:

- Informs the applicant that, if the Asylum Office does not approve the asylum application, he or she will be subject to expedited removal.
- Describes the expedited removal (ER) process before the asylum interview begins.
- Asks the applicant protection questions, as required under the Convention Against Torture (CAT), in addition to the questions about mandatory bars. These questions are necessary in the event the AO finds that the applicant does not have a credible fear of persecution.
- Performs a regular affirmative asylum interview.

If the applicant is found eligible for asylum, the AO prepares the case as an approval.

If the applicant is found <u>ineligible</u> for asylum, the AO must make a credible fear finding.

(a) AO finds credible fear of persecution OR torture:

- The AO places an assessment of the credible fear claim at the end of the affirmative asylum assessment.
- The AO prepares the case as a referral.
- Asylum Office personnel notify the local ICE DRO unit that an NTA was issued on an alien who is subject to expedited removal.

(b) AO does NOT find a credible fear of persecution OR torture:

- The AO places an assessment of the credible fear claim at the end of the affirmative asylum assessment.
- The Asylum Office submits the case to HQASM/TRAQ for a mandatory review.
- If HQASM/TRAQ does not concur, the Asylum Office amends the decision and processes the case under the section immediately above.
- If HQASM/TRAQ concurs in the decision, the Asylum Office must re-interview the applicant under credible fear procedures, so the case should be given to the APSO Supervisor. The Asylum Office also notifies the local ICE DRO unit of an alien who is subject to expedited removal.

ii. Applicant is inadmissible under a section of the INA other than 212(a)(6)(c) or 212(a)(7)

Asylum Office personnel follow instructions in Section III.N.1.c. The applicant is not subject to expedited removal, so a credible fear determination is not required.

d. Parole Expired or is Terminated after the Interview but Before a Preliminary or Final Decision

This section applies to applicants: (1) who were previously issued a *NOID* but the parole has either expired or the parole is terminated before a final decision (FDEC), or (2) whose parole was valid at the time of interview, but the parole expired or was terminated before a preliminary decision (PDEC).

i. Applicant is inadmissible under INA Section 212(a)(6)(c) or 212(a)(7)

The AO must determine whether the applicant has a credible fear of persecution or torture based upon the information gathered at the time of the interview and in any rebuttal, if the applicant was previously issued a *NOID*.

- If a *NOID* was issued the AO prepares a memo to the file that contains the credible fear determination.
- If a *NOID* was not issued, the AO places an assessment of the credible fear claim at the end of the affirmative asylum assessment.

After making a credible fear determination, the AO processes the case according to instructions in Section III.N.2.c.i above.

ii. Applicant is inadmissible under a section of the INA other than 212(a)(6)(c) or 212(a)(7)

The applicant is not subject to expedited removal, so a credible fear determination is not required. The application is processed as a referral or referral after *NOID*, with the charges described in Section III.N.1.a above.

3. Dependents Who Are Parolees

There are instances when the dependent is a parolee, but the principal applicant was not paroled. If the Asylum Office is referring the principal applicant to the Immigration Court, the following special procedures must occur for the dependent who was paroled:

a. Dependent Paroled Prior to April 1, 1997 or Pursuant to Advance Parole

i. Parole expired or terminated

The AO refers the dependent to the Immigration Court along with the principal applicant if the dependent was paroled for the purpose of applying for asylum, the parole has expired, or the Asylum Office is terminating the parole of a dependent who was paroled for reasons other then to apply for asylum. If the parole is expired, no special procedures apply. If the Asylum Office is terminating parole, Asylum Office personnel insert the following paragraph in the *Referral Notice* directly before the paragraph on employment authorization, or if the application was filed before January 4, 1995, directly before the closing salutation:

> "The attached Notice to Appear (Form I-862) for your [spouse/child], [Name], [A-number], constitutes written notice of termination of [his or her] parole pursuant to 8 C.F.R. 212.5(d)(2)(i)."

ii. Parole valid

If the dependent was paroled for reasons other than to apply for asylum and that parole remains valid, the Asylum Office normally does not terminate parole. If parole is not terminated, the AO uses the standard *Referral Notice*; however, the name and A-number of the dependent is *not* included on the *Notice*. The AO also inserts the following paragraph directly before the paragraph on employment authorization, or if the application was filed before January 4, 1995, directly before the closing salutation:

> "Because your **[spouse/child], [Name], [A-number]**, who was listed on your asylum application as a dependent, does not appear deportable or removable, we are not placing him or her in Immigration Court proceedings along with you."

b. Dependent Paroled After April 1, 1997

If the dependent's parole remains valid or is not terminated, the AO follows instructions in Section III.N.3.a.ii. If the dependent's parole has expired or is terminated, Asylum Office personnel should refer the dependent to the Immigration Court along with the principal applicant. In the rare case, a dependent with expired or terminated parole may be subject to expedited removal, but, for the sake of administrative efficiency and to keep the family together, Asylum Office personnel should issue NTAs to all members of the family together.

O. PRE-REFORM VS. REFORM APPLICATION PROCESSES

The term *pre-reform* applies to applications filed prior to January 4, 1995. January 4, 1995, is the date that reform regulations took effect following a Presidential mandate to streamline the affirmative asylum process. The term *reform* applies to applications filed on or after January 4, 1995.

The main differences between a pre-reform application and a reform application relate to an applicant's ability to obtain employment authorization, and DHS's ability to use an I-589 to establish alienage and deportability. First, applicants who filed for asylum prior to reform were not required to wait 150 days before filing a request for employment authorization. Second, some charging documents issued by an Asylum Office based upon information gleaned from an I-589 were rejected by Immigration Judges because they have generally taken the position that charging documents based solely on an asylum application filed prior to January 4, 1995, are insufficient. For all other purposes, the processing of pre-reform and reform applications is the same.

See Section III.F of this manual for more information on employment authorization.

1. Overview of Processing Procedures – Pre-Reform vs. Reform

Prior to asylum reform, AOs either approved or denied asylum applications; they did not refer applications to the Immigration Court.

If an applicant was not eligible for an approval of asylum, an AO issued a *NOID*, regardless of the applicant's immigration status. The applicant was then given thirty (30) days to offer evidence in rebuttal to the reasons stated in the NOID. If the AO's decision did not change after a rebuttal was considered, or if no rebuttal was received, a *Final Denial* letter and charging documents were issued to any alien who was deportable or excludable. The applicant could then submit a new asylum application before the Immigration Judge. Applicants in valid immigrant, nonimmigrant, parole status, or temporary protected status were not placed in deportation or exclusion proceedings and were issued only the *Final Denial* letter.

Under reform, after an interview has taken place, an AO finds an applicant: (1) eligible for an approval of asylum; or (2) ineligible for an approval of asylum. If an applicant in category (2) appears deportable or removable, the Asylum Office provides him or her a *Referral Notice*, indicating the reason(s) for the referral, and initiates removal proceedings by scheduling a hearing in Immigration Court and issuing an NTA. A referral is not a final decision in the case, and an Immigration Judge will hear the applicant's claim anew. An applicant in category (2) who is in-status receives a *Final Denial* letter without an accompanying NTA at the time the final decision is rendered.

2. Applications Interviewed before January 4, 1995 but Still Pending a Final Decision

There may be still be a small number of asylum applications pending for applicants who were interviewed prior to January 4, 1995, but whose applications are still pending a final decision. If the Asylum Office marked the case with a special group code, then the reason for its pending status may result from an HQASM policy that suspended final adjudication of the I-589. If a special group code is not present, Asylum Office personnel process the case for a final decision according to the following instructions:

a. Applicants Eligible for Asylum Status

If the applicant is eligible for asylum status, the Asylum Office prepares the case for an approval. In some cases, an additional interview may be required, and all security checks must be complete and current before issuing the approval.

b. Applicants Ineligible for Asylum Status

An applicant who was interviewed prior to reform may have an expectation that his or her case will be processed according to procedures in place at the time of interview. However, because current regulations only give an AO the authority to deny asylum to an applicant who is in-status, a *Final Denial* cannot be issued to an applicant who is deportable or removable. Because the applicant's prior interview occurred over 10 years ago, the Asylum Office should re-interview the applicant and process the case per regular reform procedures.

Different rules are in place for *ABC* applicants. *See* *ABC-NACARA Procedures Manual* for more information.

c. Evidence of Deportability/Removability

If required by the Executive Office for Immigration Review in the jurisdiction of the Asylum Office, Asylum Office personnel may have to obtain evidence of deportability or removability from documents other than the pre-reform I-589, particularly in the case of a no-show. Examples of possible sources of evidence are:

Entered Without Inspection	Admitted to the U.S.
• I-765 applications in the file	• IBIS SQ94 data
• CLAIMS data	• I-94 and/or passport, when available
• I-213 (completed by an office other than asylum)	• I-765 applications in file
	• CLAIMS

In addition to the above supporting evidence, the Asylum Office may be required to prepare an I-213, even if not normally required with the referral of a reform case. An I-213 can be prepared with the RAPS Forms Generation Module on the OSCG/OSCP screens.

P. PROHIBITIONS ON FILING AN ASYLUM APPLICATION

Certain aliens are not eligible to apply for asylum; however, only an AO or an IJ can make this determination after an interview has been conducted. Therefore, the Service Center and the Asylum Office accept asylum applications without regard to whether a prohibition on filing may apply. *See* Langlois, Joseph E. Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR, Memorandum to Asylum Office Directors, et al., 4 January 2002, 14p.

8 C.F.R. 208.4

1. Categories of Aliens who May not Apply for Asylum

The categories of aliens who are prohibited from filing for asylum are listed below. These prohibitions only apply to an applicant who applies for asylum on or after April 1, 1997:

- Any alien who has not filed an application for asylum within one year of last arrival in the U.S., unless the alien establishes changed circumstances that materially affect his or her eligibility for asylum or extraordinary circumstances directly related to the delay in filing.
- Any alien who previously has been denied asylum as a principal applicant by an Immigration Judge or the BIA (EOIR), unless the alien establishes the existence of changed circumstances that materially affect the applicant's eligibility for asylum.

If the applicant was a dependent on a prior I-589 that was denied by the IJ or the BIA, the prohibition on filing does not apply. 8 C.F.R. 208.14(f)

- Any alien who may be removed to a "safe third country" pursuant to a bilateral or multilateral agreement. As discussed in Section III.P.4 below, the U.S. and Canada currently have an agreement, which restricts access to the asylum system of a partner country for aliens arriving from the other partner country in certain circumstances.

Background information and procedural guidance relating to the prohibitions against filing an asylum application are outlined below.

2. One-Year Filing Deadline

Any asylum applicant who applied for asylum on or after April 1, 1998 (or April 16, 1998, for those applying with USCIS), must establish that he or she filed for asylum within one year from the date of last arrival in the U.S. or establish that he or she is eligible for an exception to the one-year filing requirement based on changed circumstances that materially affect the applicant's eligibility for asylum or extraordinary circumstances directly related to the delay in filing the application. An application with a filing date on or before April 15, 1998, is not subject to the one-year filing deadline as implemented by the Asylum Division. Although April 1, 1998, is the effective date provided by regulation for those who arrived before April 1, 1997, the INS extended an administrative 14-day grace period for applications filed with the INS. This 14-day period only applies to those applications filed in the first 15 days of April 1998.

INA §§ 208(a)(2)(B), (D) and 8 C.F.R. 208.4(a)(2), (4).

Only an Asylum Officer, IJ, or the BIA is authorized to make the determination of whether the applicant established an exception to the one-year filing deadline. An asylum interview is the method USCIS uses to determine an applicant's eligibility to apply. Therefore, asylum applications are accepted for filing regardless of whether the applicant filed timely.

a. Calculating the One-Year Period and Determining the Filing Date

The methods for calculating the one-year period within which the applicant was required to file and determining the filing date and substantive guidance for the adjudication of cases affected by the one-year filing deadline are contained in the AOBTC Lesson Plan *One-Year Filing Deadline*.

b. Interview

Regardless of the filing date of an application, Asylum Officers are to give all applicants an asylum interview. This includes pre-interview familiarization with general country conditions and post-interview research of specific country conditions relevant to the applicant's situation, where applicable.

c. Analysis and Assessment

i. Applicant Established an Exception to the One-Year Filing Deadline

When an applicant has established an exception to the one-year filing deadline, Asylum Officers must include a brief analysis of the one-year filing deadline issue in the assessment to grant or refer. The analysis should include the changed and/or extraordinary circumstances established and a finding that the applicant filed within a reasonable time given the circumstances. If the exception(s) established are based on country conditions, country reports must be cited.

ii. Applicant Did Not Establish an Exception to the One-Year Filing Deadline

Referral of an application based on the one-year filing deadline is mandatory for applicants who meet all of the following criteria:

- The I-589 was filed on or after April 16, 1998.

  AND

- The applicant has not established by "clear and convincing" evidence that he or she filed an application for asylum within one year of his or her last arrival by establishing either:
  1) clear and convincing evidence that the date of last arrival is within the applicable 1-year period **or**
  2) clear and convincing evidence that the applicant was outside the United States during the year immediately preceding the filing date.

  AND

- No changed circumstances or extraordinary circumstances apply, or if any do apply, the application was not filed within a reasonable period of time given those circumstances.

(a) Assessment Requirements

When a case is referred to the IJ based on the one-year filing deadline, officers are not required to include in the referral assessment a full account of the material facts of the applicant's claim, nor must they discuss whether an applicant has established past persecution or has a well-founded fear. The assessment must include all of the following information:

- brief biographical information about the applicant such as age, gender, country(ies) of birth and citizenship; date, place, and manner of last arrival including date status expired, if applicable; and the date the I-589 was filed
- identification of the protected characteristic(s) (race, religion, nationality, political opinion, or membership in a particular social group) relevant to the applicant's claim and a brief statement of the harm feared (e.g., "Applicant fears she will be persecuted by the FARC on account of her political opinion.")
- a statement and supporting analysis of the finding that the applicant was found ineligible for an exception based on changed circumstances relating to country conditions because: 1) there was no change in country conditions, 2) the change occurred before April 1, 1997, 3) the change did not materially affect the applicant's asylum eligibility, or 4) the I-589 was not filed within a reasonable time after the change, considering delayed awareness if applicable. This finding and analysis must be supported by a specific description, with citations, of country conditions pertinent to the protected characteristic(s) relevant to the applicant's claim, if any. The time period covered by the description and citations is determined on a case-by-case basis, and may depend on whether a change in country conditions has been asserted by the applicant. Generally, the relevant country conditions would be the period beginning approximately 24 months before the date of filing and ending on the date of the decision in the case.

  Note: There may be cases in which country conditions are not relevant to the determination of changed circumstances because a change in country conditions would not materially affect the applicant's eligibility for asylum (e.g., where the applicant has not established a nexus between the feared harm and a protected characteristic, the applicant is subject to a mandatory bar, and/or claims no fear of returning to his or her country of origin.)

  In such a case, no description or citation of country conditions information is required to support the finding of no changed circumstance materially affecting the applicant's asylum eligibility. The Asylum Officer should include in the assessment the statement, "Any change in country conditions would not materially affect the applicant's eligibility for asylum because (the applicant has not established a protected characteristic, entered the U.S. solely for economic reasons, etc.)" and an explanation of the reasons for the finding. A finding that country conditions are not relevant would not be appropriate merely because the Asylum Officer would have found the applicant ineligible for asylum. This finding should be reserved for cases such as those where the applicant clearly has no protected characteristic, no fear, or is clearly subject to a mandatory bar.
- a statement demonstrating that other possible changed and extraordinary circumstances relating to the applicant's case were examined, but the applicant was found ineligible for an exception based on those circumstances and why (for example, the circumstances are not deemed extraordinary, or the changed circumstances did not materially affect the applicant's asylum eligibility), OR, if the applicant was found ineligible for an exception based on an unreasonable delay in filing after changed or extraordinary circumstances, a thorough analysis of why the Asylum Office found the delay in filing to be unreasonable given those circumstances.

Note: There may be exceptions to these requirements. If the information is unavailable, the assessment must contain an explanation of the reasons why a required item is not included. For example, if the Asylum Officer found that the applicant's country of citizenship was not established, or the applicant has not established a protected characteristic, the Asylum Officer should explain his or her finding.

(b) Country Conditions Citations

Except as indicated above, an assessment to refer based on the one-year filing deadline must reflect that the officer reviewed country conditions to confirm that there has been no change that materially affects the applicant's eligibility for asylum. When country conditions are relevant to the applicant's asylum eligibility, the assessment must contain at least two country conditions citations to support a finding that the applicant has not established an exception based on changed circumstances. The time period covered by the citations is determined on a case-by-case basis, but generally must cover the period beginning 24 months preceding the filing date, and ending on the date of the decision. It is preferable that the two citations be from different sources, however they may be from the same issuing organization or agency if another source cannot be found. These guidelines have been developed as a minimum safeguard to document that, where required, country conditions have been examined for changed circumstances before an application is referred. Certain cases may require a broader review of country conditions or citations to more than two sources. For further guidance on using and citing appropriate country conditions, *see* AOBTC Lesson Plan, *Country Conditions Research and the Resource Information Center (RIC)*.

Although the burden of proof is on the applicant to establish the exception, Asylum Officers must consult country conditions information relevant to the applicant's claim, where appropriate, to determine whether there are changed country conditions that materially affect the applicant's eligibility for asylum. For more discussion about the "cooperative" role of the Asylum Officer and the applicant's burden of proof, *see* AOBTC Lesson Plan, *One-Year Filing Deadline*.

d. Date of Entry (DOE) in RAPS

The date of entry is recorded in RAPS according to whether the applicant met his or her burden of proof. Regardless of the claimed manner of entry, whenever the applicant has failed to meet the burden of proof with respect to his or her last arrival date, no date shall be entered into the DOE (Date of Entry) field on the I589 or OSCG screens. When the field is left blank, the words "UNKNOWN DOE" will automatically be printed on the NTA and the I-213 (where applicable). Asylum Officers must address any credibility issues relating to the date of entry in the assessment. For guidance on the applicant's burden of proof and determining the appropriate standards of proof required for entry dates, *see* AOBTC Lesson Plans *One-Year Filing Deadline* and *Asylum Eligibility Part IV – Burden of Proof and Evidence*.

e. Preparing the Decision

i. Applicant Established an Exception

Asylum Office personnel process the approval, referral, and denial of the application of an applicant who established an exception to the one-year filing deadline in accordance with regular decision procedures. *See* Section II.N, *AO Prepares the Decision*.

ii. Applicant Did Not Establish an Exception

Asylum Office personnel process a referral based solely on the one-year filing deadline in accordance with regular referral procedures, except for the entry of the FDEC decision code and the issuance of the referral letter. The decision code for a one-year filing deadline referral is **I5**. The referral letter specific to one-year filing deadline referrals is Appendix 54, *Referral – 1-Year Deadline*.

3. Previous Denial of Asylum by EOIR

a. Receiving the I-589

An applicant who was previously denied asylum by an IJ or the BIA (EOIR) may file his or her I-589 with a Service Center or with an Asylum Office directly. An application that has been filed with a Service Center should be forwarded to the Asylum Office having jurisdiction over the applicant's address for input into RAPS.

For further guidance on cases previously denied asylum by EOIR, *see* Langlois, Joseph E. Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR, Memorandum to Asylum Office Directors, et al., 4 January 2002, 14p.

On the same day of receipt, an I-589 initially filed at an Asylum Office is date-stamped and brought to the attention of an SAO or QA/T, depending on local policy. *See* Section II.C.2, *I-589 Filed Directly with the Asylum Office*. The SAO or QA/T determines whether the I-589 fits into one of the categories for which direct filing is permitted. After the SAO or QA/T determines that the applicant is permitted to file directly with the Asylum Office because of a prior denial by EOIR, Asylum Office personnel review it to ensure completeness. An incomplete application should be returned to the applicant with a written explanation of what is missing and instructions to re-submit the application.

When a complete I-589 has been received, Asylum Office personnel check the applicant's personal information against CIS, DACS and RAPS for duplicate A-files. Asylum Office personnel locate and order the applicant's A-file(s), and create a T-file pending receipt. If there is a prior record of the applicant in RAPS, Asylum Office personnel take the following actions on the same day the application was received:

i. Applicant was a Principal on the Prior Application

- Print both pages of the CSTA screen containing the information about the previous asylum application. Place the printouts on the right-hand side of the file.
- Delete the information from the previous asylum application from RAPS using the Reset Interview (REIN) command. Delete the filing date of the previous application using the CORR screen, and enter the new filing date.
- Update biographical and entry information on the I589 screen, if applicable.
- If the Asylum Office that accepts the application is not the same office that adjudicated the previous application, the Asylum Office that has the new application must contact the Asylum Office that adjudicated the previous application to request that it update RAPS as indicated above, and update the MOVE and TRAN screens to transfer the case to the Asylum Office with jurisdiction over the new application.

ii. Applicant was a Dependent on the Prior Application

- Print all pages of the CSTA and CHIS screens and place on the right-hand side of the file.
- Create a new record of the applicant in RAPS as a principal, using the New Case (NEWC) command, in conjunction with the Reset Interview (REIN) command. Delete the filing date of the previous application using the CORR screen, and enter the new filing date.
- Update the biographical and entry information on the I589 screen, if applicable.
- If the Asylum Office that accepts the application is not the same office that adjudicated the previous application, the Asylum Office that has the new application must contact the Asylum Office that adjudicated the previous application to request that it update RAPS as indicated above, and update the MOVE and TRAN screens to transfer the case to the Asylum Office with jurisdiction over the new application.

b. Eligibility to Apply

An individual who was previously denied asylum as a principal applicant by an IJ or the BIA (EOIR) may not file a new application for asylum on or after April 1, 1997, unless there are changed circumstances which materially affect the applicant's asylum eligibility. INA Section 208(a)(2)(C), (D); 8 C.F.R. 208.4(a)(3), (4).

If the applicant was a dependent on a prior I-589 that was denied by the IJ, the prohibition on filing does not apply. 8 C.F.R. 208.14(f)

A prior denial of asylum by an Asylum Officer does not invoke the prohibition on filing a new asylum application. 8 C.F.R. 208.4(a)(3). An Asylum Office may consider a new affirmative asylum application from an applicant who was previously denied asylum by an Asylum Officer as long as the applicant remains within the jurisdiction of the Asylum Division pursuant to 8 C.F.R. 208.2. New asylum applications filed by applicants previously denied asylum by an Asylum Officer are adjudicated according to regular procedures except that:

- Guidelines regarding case assignment discussed below in this section should be followed whenever practicable; and
- Substantial deference should be accorded to prior determinations made by an Asylum Officer regarding previously established facts, including credibility findings, unless clear error is present.

c. Jurisdiction

In most cases in which an applicant is denied asylum by an IJ or the BIA, the Asylum Division does not have jurisdiction over a subsequently filed application, because necessarily a charging document had been served on the applicant and filed with EOIR, which then retains exclusive jurisdiction under 8 C.F.R. 208.2. However, if the applicant left the United States after being denied asylum by EOIR and then returned, the Asylum Division may have jurisdiction to consider an affirmative asylum application filed by that applicant in the following instances:

- applicant was removed from or departed the United States under an order of removal, deportation or exclusion, and subsequently made a **legal** entry
- applicant departed the United States **after the expiration** of a voluntary departure period, thus becoming subject to a deportation or removal order, and subsequently made **legal** entry
- applicant departed the United States **before the expiration** of a voluntary departure period, and subsequently made a **legal or illegal** entry.

These procedures **do not apply** to applicants who entered the United States illegally after having been removed, deported, excluded or after having left the United States while under an order of removal, deportation, or exclusion, and are therefore appear to be subject to reinstatement of the prior order, unless ICE has specifically declined to reinstate the order in a particular case. INA Section 241(a)(5); 8 C.F.R. 241.8. For procedures governing applicants who may be subject to reinstatement of a prior removal order, *see* Section III.S, *Reinstatement of a Prior Order.*

Examples:

1. A second A-file is discovered for an applicant. Upon examination of that file, Asylum Office personnel note that it contains a 1995 Immigration Judge order denying asylum and ordering deportation. No appeal was filed. The asylum applicant was lawfully admitted in June 2001 on a B-2 visa, and subsequently filed an affirmative asylum application. The Asylum Office has jurisdiction to consider the new affirmative asylum application because the applicant made a legal entry after departing under the deportation order.

2. During pre-interview preparation, the Asylum Officer discovers a 1989 Immigration Judge order denying asylum and granting voluntary departure. The file contains a record verifying the applicant's timely voluntary departure. The applicant crossed the border illegally into the United States in August, 2001 and applied for asylum. The Asylum Office has jurisdiction to consider the new affirmative asylum application even though the applicant made an illegal entry because the applicant re-entered the U.S. after timely complying with the voluntary departure order.

3. The Asylum Officer discovers through the FBI clearance process that the applicant was denied asylum in 1997 and ordered removed. The applicant claims never to have left the United States, and there is no evidence of departure and subsequent entry. The Asylum Office does not have jurisdiction to consider the new affirmative asylum application because the applicant has not departed and re-entered the U.S. The applicant's asylum application remains under the exclusive jurisdiction of EOIR.

4. A review of the EOIR screen shows that the applicant was previously denied asylum by an Immigration Judge and was granted voluntary departure. The applicant filed an appeal with the Board of Immigration Appeals, which was dismissed some time later. She departed the U.S. after the expiration of the voluntary departure period, and thus became subject to a removal order. She was admitted to the U.S. in April 2001 with a passport she acknowledges is fraudulent. The Asylum Office does not have jurisdiction to consider the new affirmative application because the applicant left the United States under a removal order and the applicant's subsequent entry was not lawful. The applicant may be subject to reinstatement.

d. Case Assignment

If the applicant is applying for the second time in the same Asylum Office that issued the prior adverse decision, Asylum Office personnel will make a reasonable attempt to assign the case to the same officer who made the original decision. This is to promote consistency with prior factual determinations and discourage forum shopping through the submission of another asylum application in the absence of changed circumstances. If the same Asylum Officer is unavailable, the case should be assigned to an officer supervised by the same SAO who signed off on the original decision. If the original AO and SAO are unavailable, the case may be randomly assigned according to regular office procedures.

e. Interview

In order to determine whether there are changed circumstances that materially affect the applicant's eligibility for asylum, the Asylum Officer interviews the applicant and reviews the record regarding the previous application (including any findings made by EOIR that may be in the file) for a thorough understanding of the basis for the applicant's claim. The focus of the interview reflects the procedural stage of the case in that the Asylum Officer is determining whether there has been a change in circumstances after the decision on the original application, and is not entertaining an appeal of the decision made by EOIR. The Asylum Officer need not re-visit the details of the original asylum claim, unless it is necessary to the determination of asylum eligibility once the applicant has established changed circumstances. Findings of fact made by EOIR, including credibility determinations, must be upheld and cannot be reconsidered. The application of law to the applicant's original case also must be upheld, unless the applicant establishes changed law material to his or her eligibility for asylum. Therefore, the interview focuses on whether any changed circumstances have occurred after the applicant was denied asylum by EOIR that may materially affect the applicant's eligibility for asylum, and any information needed to make an asylum eligibility determination if changed circumstances are established.

f. Determination and Assessment

Asylum Officers determine whether there are changed circumstances using the same guidance outlined in the AOBTC Basic Training Materials Lesson Plans, *One-Year Filing Deadline* and *Mandatory Bars to Asylum and Discretion*. The entire file, including the prior application, supporting evidence, and previous assessment or decision is reviewed prior to making a determination in the case.

i. Applicant Established Changed Circumstances that Materially Affect Asylum Eligibility

If the applicant established changed circumstances that materially affect his or her eligibility for asylum, the Asylum Officer makes a determination of asylum eligibility based on the merits of the claim, keeping in mind that factual determinations made by EOIR may not be reconsidered, and legal determinations must be upheld except to the extent that there has been a change in the law. Regardless of whether the application is denied, referred or approved, the assessment (or *NOID*, if applicable) will contain (in addition to the information specified in the applicable decision template):

- a brief statement that the applicant was previously denied asylum by EOIR,
- an explanation of the changed circumstances established,
- how the changed circumstances materially affect the applicant's asylum eligibility,
- an analysis of the merits of the claim in light of the changed circumstances.

Where the established changed circumstances relate to country conditions, the Asylum Officer must cite to country conditions reports to support the finding.

ii. Applicant Did Not Establish Changed Circumstances that Materially Affect Asylum Eligibility

If the applicant did not establish changed circumstances that materially affect his or her eligibility for asylum, the application will be referred or denied based on the prohibition on filing for asylum after a prior denial by EOIR. Asylum Officers are not required to include in the assessment or *NOID* a full account of all material facts or an analysis of the applicant's asylum claim. The assessment or *NOID* must include:

- brief biographical information about the applicant such as age, gender, country(ies) of birth and citizenship; date, place, and manner of last arrival including date status expired, if applicable; and the date the I-589 was filed.
- identification of the protected characteristic(s) (race, religion, nationality, political opinion, or membership in a particular social group) relevant to the applicant's claim and a brief statement of the harm feared (e.g., "Applicant fears he will be persecuted by the LTTE on account of his political opinion.").
- a statement of any circumstances that were considered in the determination of whether the prohibition against filing for asylum applies.
- a statement and an explanation of the finding that there were no changed circumstances, OR, if the applicant established the existence of changed circumstances, why the circumstances were not found to materially affect his or her asylum eligibility.
- Where country conditions are relevant to the determinations of changed circumstances, the assessment must contain a minimum of two country conditions citations supporting the finding that the applicant failed to establish a change in country conditions or that any change in country conditions materially affects the applicant's asylum eligibility. It is preferable that the two citations be from different sources, however they may be from the same issuing organization or agency if another source cannot be found.
- If country conditions information is not relevant to the determination of changed circumstances because it would not materially affect the applicant's asylum eligibility, the AO includes in the assessment the statement, "Any change in country conditions would not materially affect the applicant's eligibility for asylum because (the applicant has not established a protected characteristic, is subject to a mandatory bar, etc.)" and an explanation of the reasons for the finding of no protected characteristic, the bar, or other reason country conditions would not materially affect the applicant's asylum eligibility.

g. HQASM/TRAQ Review

HQASM/TRAQ will review and provide feedback on each case involving a prior denial by EOIR before the decision is issued, regardless of whether the case is approved, referred, or a NOID issued. Asylum Office personnel should scan the case documents and e-mail them to the "ASYLUM QA – AFFIRMATIVE" mailbox. If the materials cannot be scanned to a file size of less than 9MB, Asylum Office personnel send them to HQASM/TRAQ via DHL at 20 Massachusetts Ave., NW, Suite 3300, Washington, D.C. 20529. Asylum Office personnel should alert HQASM/TRAQ in advance of any case sent via DHL.

h. Preparing the Decision

Asylum Office personnel process the approval, referral, and denial of the application of an applicant who established changed circumstances materially affecting his or her eligibility for asylum after a prior denial by EOIR in accordance with regular decision procedures. *See* Section II.N, *AO Prepares the Decision*.

Asylum Office personnel process a referral or denial based solely on a prior denial by EOIR in accordance with regular decision procedures, except for the PDEC or FDEC decision codes: I6 for out-of-status (FDEC), or D6 for in-status cases (PDEC and FDEC). The referral letter for prior denial cases is Appendix 55, *Referral – Prior Denial*.

4. U.S.-Canada Safe Third Country Agreement – DRAFT

Effective December 29, 2004, the *Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made in Transit and at Land Border Ports-of-Entry* provides for the return of certain categories of asylum seekers arriving in one partner country from the other partner country. The *Agreement* allocates responsibility for two types of asylum claims: those made at land border ports-of-entry along the U.S.-Canada border, and those made in transit by aliens being removed through one country by the other. An asylum seeker attempting to make a claim at a land border port-of-entry or upon removal while in transit will be required to return to the other country and make his or her claim there. For asylum seekers arriving at a land border port-of-entry, the *Agreement* provides certain important exceptions that may permit them to seek protection in the U.S. instead of Canada. For example, there is an exception for persons who have a spouse, parent, child, sibling, grandparent, aunt, uncle, niece, or nephew ("anchor relative") in the country where they are seeking asylum, so long as that anchor relative has lawful status other than visitor status, or is 18 years or older and has a pending asylum claim in that country. There is also an exception for unaccompanied minors.

A report concerning the U.S.-Canadian *Agreement* is available on the USCIS website by clicking on Services and Benefits, then Humanitarian Benefits, then Asylum.

The Federal Register Notice implementing the agreement (69 FR 228) is available at http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/04-26239.htm.

Please note that asylum seekers who are subject to the provisions of the *Agreement*, and who demonstrate an exception to the *Agreement*, will in most cases be subject to expedited removal and will not be permitted to apply affirmatively for asylum. For additional information on this process, *see* the draft AOBTC Lesson Plan, *Safe Third Country Threshold Screening*.

Q. QUALITY ASSURANCE REVIEW

There are two entities involved in quality assurance issues within the asylum program; (1) HQASM/TRAQ; (2) the QA/T at the local Asylum Office.

1. HQASM/TRAQ

The nature of certain cases requires the Asylum Office to notify HQASM/TRAQ before a decision may be issued to an applicant.

a. Quality Assurance Referral Sheet

The *Quality Assurance Referral Sheet (Referral Sheet)* lists the types of cases that must be sent to HQASM/TRAQ. All cases on the *Referral Sheet* require a written response from HQASM/TRAQ before the Asylum Office may serve the decision on the applicant. Because HQASM/TRAQ may periodically change the types of cases it lists on the *Referral Sheet*, the QA/T is responsible for maintaining copies of the current *Referral Sheet*. The current version of the *Referral Sheet* can be found on the AVL under Quality Assurance, which is under Affirmative Asylum in the HQ Asylum Division Section.

Langlois, Joseph E. Issuance of Revised Quality Assurance Referral Sheet and Instructions on Submission of Certain Claims for Quality Assurance Review, Memorandum to Asylum Office Directors, et al., 9 February 2007, 2p.

Cases submitted to HQASM/TRAQ for review include cases involving terrorism or suspected terrorism, some persecutors, and cases that are likely to be publicized. For guidance on handling terrorism/suspected terrorism cases, see Section IX of the *Identity and Security Checks Procedures Manual*. See also Aytes, Michael, Scialabba, Lori, and Sposato, Janis. National Security Reporting Requirements, Memorandum for Asylum Office Directors, et al., 16 February 2007, 4p. (plus attachment) and Langlois, Joseph. Revised Instructions for Processing Asylum Terrorist/Suspected Terrorist Cases, Memorandum for Asylum Office Directors and Deputy Directors, 26 January 2005, 3p.

b. Submission of Quality Assurance Referral Packet to HQASM/TRAQ

The QA/T coordinates all submissions to HQASM/TRAQ and maintains a log to track them in order to follow up with HQASM/TRAQ. The QA/T should consult with HQASM/TRAQ prior to submitting any case for which the pick-up date has not be cancelled. If it is agreed that the case will be reviewed before the pick-up date, the pick-up date should be clearly noted on the *Referral Sheet*.

To submit a case to HQASM/TRAQ, each Asylum Office must prepare a "Quality Assurance Referral Packet" that includes:

- Completed *Quality Assurance Referral Sheet*
- Copy of the *Assessment* or *NOID*
- Copy of all I-589s filed by the applicant
- Copy of the interview notes
- Copy of any relevant supporting documentation (e.g., affidavit, arrest warrant, passport)

Do not include copies of generalized country conditions materials; however, if the AO relies on a specific article that is not readily available, a copy should be included in the packet.

Local Asylum Office policy dictates who is responsible for assembling the packet.

Before sending the packet to HQASM/TRAQ, either the QA/T or an SAO removes any decision entered into RAPS by the AO and places the case on HOLD – HQ in RAPS. Asylum Office personnel should scan the case documents and e-mail them to the "ASYLUM QA – AFFIRMATIVE" mailbox. If the materials cannot be scanned to a file size of less than 9MB, Asylum Office personnel send them to HQASM/TRAQ via DHL at 20 Massachusetts Ave., NW, Suite 3300, Washington, D.C. 20529. Asylum Office personnel should alert HQASM/TRAQ in advance of any case sent via DHL.

c. Comments from HQASM/TRAQ

Neither the *QA Referral Sheet* nor any comments from HQASM/TRAQ remain part of the A-file. The QA/T collects and maintains the response and the accompanying *Assessment*/*NOID* (including a rewrite) for the purpose of identifying issues that may need analysis and discussion during weekly Asylum Office trainings.

2. QA/T at the Local Asylum Office

Each Asylum Office has at least one (1) QA/T position. This position was created to facilitate local quality assurance, liaise with HQASM/TRAQ, and to conduct trainings. Additional responsibilities may be placed upon a QA/T depending upon the needs of the Asylum Office as determined by the Director or Deputy Director. *See* Langlois, Joseph E. The Role of the Quality Assurance & Training Coordinator, Memorandum to Asylum Office Directors and QA/Ts, 17 December 1998, 11p.

R. RAPS REPORTS

1. Types of Reports

a. Officer Casebook (RACCAS01)

The Officer Casebook is a weekly report that assists SAOs and AOs in monitoring individual AO caseloads. The report shows cases assigned to an AO and their status within the asylum adjudication process. SAOs and AOs must routinely review the Casebook to ensure its accuracy, paying particular attention to Part I of the Casebook, which shows cases that have been interviewed and are still pending a decision by the AO. If a case appears on the report for which the AO does not believe he or she is responsible, the AO must investigate the case and discuss it with the Supervisory Asylum Officer, and report the same to the Security Officer (SO) and Computer Security Officer (CSO).

i. Part I – Cases Pending Initial Write-up

Part I lists the A-numbers of cases that were interviewed by an individual AO, but have no decision entered in RAPS.

ii. Part II – Referrals Pending OSSE

Part II lists the A-numbers of cases that have an FDEC entered, but charging documents have not been served on the applicant and OSSE has not been updated in RAPS.

iii. Part III – PDEC Denials Pending FDEC or DENY

Part III lists the A-numbers of cases with PDECs of D1-D7, but without a final decision entered. When a *NOID* has been issued, the number of days since the service of the *NOID* is listed (using the date of DINT in RAPS). Part III also included cases with an FDEC of D1-D7 (final denial), but no denial letter has been served and/or the DENY screen has not been updated.

iv. Part IV – PDEC Grants Pending FDEC or GLET

Part IV lists the A-numbers of:

- cases with PDECs of GR or GC, but without a final decision,
- cases with FDECs of G1, but the grant letter has not been served and/or the GLET screen has not been updated.

b. Officer Activity Report (RACFIN00)

This is a biweekly report that lists all cases interviewed, closed, or given a preliminary or final decision by an AO during the reporting period. AOs attach this report to their biweekly *Asylum Officer Accuracy, Productivity and Timeliness Worksheet*, in connection with Part III: Calculating Timeliness.

c. Cases with PDEC "GR" and All FD-258 Ready (RACGRL00)

This is a weekly report that lists all cases with a PDEC of GR (recommended approval) where the results of the FBI fingerprint check for the applicant and all dependents are NONIDENT. This report also indicates whether the primary names and aliases for the applicant and all dependents have cleared. CFP cases are flagged with an "X." This report allows an asylum office to identify the recommended approvals that are ready for an asylum approval so that the cases may be processed to completion within 30 days of the FBI clearance.

d. Fingerprint IDENT and 2nd Reject (RACFBI02)

This is a weekly report that lists all cases where the results of the FBI fingerprint check for an applicant is IDENT, or the fingerprints have been rejected twice by FBI as unclassifiable. This report allows an Asylum Office to identify which cases need follow-up processing in accordance with the *Identity and Security Checks Procedures Manual*.

e. No-Show Cases Open 15-Days or More (RACNSH00)

This is a weekly report that lists all cases where at least 15 days have passed since the Asylum Office marked the case with an "N/S" in the INTERVEW DATE field on the CSTA screen, and are still pending a decision. Asylum Office personnel use this report to process "no-show" cases according to the procedures on failure to appear in Section III.I.

f. IBIS Responses Requiring Reconciliation (RACIBISH)

This is a daily report that lists applicants who may be the subject of records in the Inter-Agency Border Inspection System (IBIS). Asylum Office personnel perform an on-line query of IBIS and a file review, if necessary, for each individual on the list to determine if the individual in IBIS and the individual in RAPS are the same person. Whatever the outcome of the query, Asylum Office personnel update the results in RAPS using the Records Check Update (RCDS) screen in order to confirm the review of the IBIS hit flag. Until this step is completed, no decision on the case can be updated in RAPS. After the migration of the National Automated Immigration Lookout System (NAILS) into IBIS, this report replaced the NAILS Record Check Hit Report (RACINNA2), which used to identify cases with lookout hits via a RAPS/NAILS interface.

For additional information on RACIBISH *see* the *Identity and Security Checks Procedures Manual*.

g. DACS Record Check Hit Report (RACINDA2)

This is a daily report that lists applicants who may be the subject of records in DACS. Asylum Office personnel perform an on-line query of DACS and a file review, if necessary, for each individual on the list to determine if the individual in DACS and the individual in RAPS are the same person. Whatever the outcome of the query, Asylum Office personnel must update the results in RAPS using the Records Check Update (RCDS) screen in order to confirm the review of the DACS hit flag. Until this step is completed, no decision on the case can be updated in RAPS.

For additional information on RACINDA2 *see* the *Identity and Security Checks Procedures Manual.*

h. Name Change Report (RACNCG00)

RAPS generates a weekly report in each Asylum Office with the A-numbers of files that were updated using the NCHG command. Asylum Office Directors establish local policy to ensure that all name changes are compared to CIS and when appropriate, CIS is updated by Asylum Office personnel with special update access to CIS. The "ALIASES" field in CIS should also be updated if appropriate.

i. US-VISIT Watchlist Reports

In connection with the Asylum Division's replacement of IDENT-Asylum with US-VISIT, all historical IDENT-Asylum biometric data were uploaded into US-VISIT in order to match the biometrics of asylum and NACARA 203 applicants previously enrolled into IDENT-Asylum ("historical records") with any and all information contained in US-VISIT. The compiled results were then uploaded into RAPS.

Once RAPS contained accurate US-VISIT information on all applicants previously enrolled into IDENT-Asylum, as well as those enrolled directly into US-VISIT after the ASC began sending fingerprint records to US-VISIT, the Asylum Division created three new Watchlist hit reports for distribution to all Asylum Offices. The reports are described below:

i. Watchlist Hits Requiring Reconciliation: Cases Pending Decision Service

The cases listed in this section have Watchlist hits that have not been reconciled in RCDS and have not been updated in RAPS with a GLET, DENY, OSSE, or CLOS (CLOS and OSSE update in the case of closed cases requiring NTA issuance).

ii. Reconciled Watchlist (RW) Hits: Cases Pending Decision Service

The cases listed in this section have been reconciled in RCDS and have not been updated in RAPS with a GLET, DENY, OSSE, or CLOS (CLOS and OSSE update in the case of closed cases requiring NTA issuance).

iii. Watchlist Hits Requiring Reconciliation: Granted, Denied and Closed Cases

The cases listed in this section have Watchlist hits that have not been reconciled in RCDS and have been updated in RAPS with a GLET, DENY, or CLOS (excluding C4 "IJ Jurisdiction" closures and all closed cases with NTA issuance).

2. Security Procedures for Reports

Each Asylum Office has a Security Officer (SO) and a Computer Security Officer (CSO). Both individuals are responsible for examining the Officer Casebooks for abnormalities and investigating any perceived anomaly, such as an update of a case in RAPS showing the officer ID of an AO no longer employed by the Asylum Office. *See* Langlois, Joseph E. Office Security Procedures, Memorandum to Asylum Offices, 16 April 1999, 2p. Every anomaly is to be investigated, with the results of investigations documented by the SO, and periodically reported in writing to the Director.

AOs are responsible for ensuring the accuracy of both their Officer Casebook and their Officer Activity Report. An AO must investigate any case that appears on either report that he or she believes is incorrectly assigned, and must report the same to the SAO, SO and the CSO. SAOs should also review the reports for each AO he or she supervises. Abnormalities are to be reported to the SO and CSO for investigation.

S. REINSTATEMENT OF A PRIOR ORDER

8 C.F.R. 241.8

Different procedures may apply for *ABC* cases. *See* the *ABC/NACARA Procedures Manual*.

If an applicant returns to the U.S. illegally after having been removed from the U.S., or departed voluntarily while under an order of removal, deportation or exclusion, the individual is subject to a reinstatement of the prior order. This does not include an individual who is granted voluntary departure and leaves the U.S. before expiration of the voluntary departure period. An individual who is subject to a reinstatement of a prior order is not eligible for any relief under the INA, including asylum, but may seek withholding of removal under section 241(b)(3) of the INA or deferral of removal under Article 3 of the *Convention Against Torture*.

Whether a prior order will be reinstated is under the purview of the ICE Special Agent in Charge (SAC).

1. Determining Whether an Applicant is Subject to Reinstatement of a Prior Order

Often, the Asylum Office becomes aware that an applicant is subject to reinstatement of a prior order when it receives an IDENT FBI response or when verifying identity in US-VISIT. An AO may also discover this information at the time of the interview, or shortly thereafter, when the Asylum Office receives an A-file after an interview has been conducted on a T-file.

When Asylum Office personnel determine that the applicant is subject to a reinstatement of a prior order, the Asylum Office must contact the ICE SAC having jurisdiction over the applicant's place of residence, to see whether he or she will pursue a reinstatement of the prior order. The processing of the asylum application stops until the Asylum Office is notified either that the prior order has been reinstated or that the SAC will not reinstate the order. For this reason, the Asylum Office must ensure that it is contacted when the SAC reaches a decision.

If the Asylum Office discovers the applicant is subject to a reinstatement of a prior order at the time of the interview, local procedures dictate whether there is immediate follow-up with the local ICE Investigations office. The AO may serve a *Mail-Out Notice* (Appendix 12) on the applicant if a *Pick-Up Notice* would normally be required. If the applicant has already been served the *Pick-Up Notice*, Asylum Office personnel send the applicant a *Notice of Change in Decision Service from Pick-Up to Mail-Out* (Appendix 33), if the information is discovered a sufficient period of time before the pick-up date. Otherwise, the IIO/CR informs the applicant that his or her decision is not ready for service at the time he or she appears on the pick-up date.

2. ICE SAC Action

The ICE SAC and the Asylum Office coordinate the transfer of the A-file throughout the reinstatement process. If the ICE SAC declines to pursue reinstatement of the prior order, the Asylum Office continues to process the asylum application.

If the ICE SAC decides to pursue reinstatement of a prior order, he or she issues to the applicant a Form I-871, *Notice of Intent/Decision to Reinstate Prior Order*. The applicant is given an opportunity to respond to the written notice before a final determination is made.

8 C.F.R. 241.8

3. Asylum Office Action When a Prior Order is Reinstated

Once the prior order has been reinstated, the applicant is not permitted to apply for asylum or any other benefit under the INA.

The applicant is eligible to apply for withholding or deferral of removal under Section 241(b)(3) of the INA and under the *Convention Against Torture*. The fact that an individual applied for asylum does not automatically entitle him or her to a "reasonable fear" interview. Pursuant to the reasonable fear case procedures, a "reasonable fear" interview is conducted only if the applicant is specifically referred to an Asylum Office by the office that reinstated the order. If the Asylum Office issued a *Recommended Approval* letter, a reasonable fear interview is automatic.

See 8 C.F.R. 208.31 for procedures on conducting a reasonable fear interview. *See also* Draft *Reasonable Fear Procedures Manual*.

Once a DHS Officer serves Form I-871 on an applicant, the Asylum Office administratively closes the asylum application on the CLOS screen in RAPS using close code "CO-Reinstatement" regardless of whether a "reasonable fear" interview will be conducted. If the ICE SAC refers an applicant for a reasonable fear interview, an AO interviews the applicant and adjudicates the claim pursuant to reasonable fear procedures. The AO enters data on the case into APSS in accordance with reasonable fear procedures.

a. Cases with no decision, cases with a decision other than Recommended Approval, and Recommended Approvals for which the *Recommended Approval* Letter has not been issued

When the Asylum Office receives a copy of Form I-871, Asylum Office personnel:

- Administratively close the case in RAPS. The reason for the closure is "Reinstatement" (CO). Indicate that an NTA/referral will **NOT** be issued to the applicant (Place "N" in the "Send to IJ" field).
- Prepare a *Dismissal of Asylum Application (Reinstatement of a Prior Order)* (Appendix 29)
- Serve the letter by either regular or certified mail, depending upon local Asylum Office policy.

b. *Recommended Approval* Letter has been Issued

When the Asylum Office receives a copy of Form I-871, Asylum Office personnel:

- Administratively close the case in RAPS. The reason for the closure is "Reinstatement" (CO). Indicate that an NTA/referral will **NOT** be issued to the applicant. (Place "N" in the "Send to IJ" field).
- Prepare a *Cancellation of Recommended Approval (Reinstatement of a Prior Order)* (Appendix 28).
- Serve the letter by either regular or certified mail, depending upon local Asylum Office policy.

The SAO coordinates with the local ICE district office in order to arrange for the service of an M-488, *Information about Reasonable Fear Interview*, and schedule a "reasonable fear" interview.

T. RESCHEDULE REQUESTS

All requests to reschedule must be made by the applicant in writing by either sending a letter to the Asylum Office or completing a *Case Reschedule History* (Appendix 9) at the Asylum Office. Asylum Office staff may not honor a request to reschedule received telephonically. If a telephonic request is received, Asylum Office personnel notify the caller of the requirement to make the request in writing by mail, fax or in person, that the request must include the reason for the request and any associated evidence, and that the written request must be received less than 15 days after the interview date.

1. Requests to Reschedule Interview

As a matter of Asylum Division policy, the Asylum Office reschedules an interview if it is the applicant's **first** request for a rescheduling, and the request is received prior to the interview date.

If a request to reschedule an interview is made on or 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."

a. Evaluating a Reschedule Request

"Good cause" may be defined as a "reasonable excuse for being unable to appear for an asylum interview." What may be a reasonable excuse for one applicant may not be reasonable when looking at the circumstances of another applicant. Therefore, it is extremely important to review the excuses and requests for a rescheduling on a case-by-case basis before determining whether the request to reschedule will be honored.

This "good cause" standard does not apply if the rescheduling was done due to a procedural fault by the Asylum Office. *See* Section III.I on failure to appear for an interview.

An Asylum Office must reschedule an asylum interview if the applicant presents exceptional circumstances for his or her inability to appear or the interview notice was not mailed to the most recent address provided by the applicant and received by USCIS prior to issuance of the interview notice, regardless of how many times the applicant may have previously requested a rescheduling of an interview.

If the Asylum Office honors the request to reschedule, Asylum Office personnel update the Remove Case from Schedule (REMC) command, indicating the rescheduling is at the request of the applicant. RAPS will schedule a new interview and generate an *Interview Notice* according to the automatic scheduling priorities. The clock will stop until the applicant appears for the next interview.

The clock stops running only when the applicant requests rescheduling. If an interview is rescheduled at the fault of USCIS, the clock continues to run. Asylum Office personnel update the REMC command, indicating the rescheduling is at the fault of USCIS (designated as INS in RAPS).

b. Abuse of Rescheduling Policy

Local Asylum Office policy dictates how each office will handle multiple requests for rescheduling, when it appears that the requester is either causing undue delay of the interview, or is abusing the office's 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 may use the sample *Rescheduling of an Asylum Interview* letter (Appendix 31).

In addition, the *Case Reschedule History* (Appendix 9) form contains a line at the bottom of the page where an Asylum Office can record how many times the case has been rescheduled. Each Asylum Office may determine whether to use this section of the form or delete it.

2. Applicant Requests to Reschedule Pick-up Date

If an applicant informs an AO that he or she cannot appear on the date and time indicated on the *Pick-up Notice*, the AO informs the applicant of the consequences of his or her failure to appear (i.e., if the applicant is to be referred, the clock will stop until the applicant appears before the IJ). If the applicant has special circumstances, he or she may, be given a pick-up date that is not within the usual timeframe of decision service if the following criteria are met:

- The applicant presents a reasonable excuse why he or she is unable to appear on the date and time given to other applicants interviewed that day.
- The SAO concurs in the decision to give the applicant a special pick-up date.

If the AO gives the applicant a special pick-up date, it must be *prior* to the regularly scheduled pick-up date, or a date that will ensure that the Asylum Office complies with its "60-day referral clock." Unless exceptional circumstances are established, the Asylum Office will not honor a request to reschedule a pick-up date after one has been issued.

If Asylum Office personnel entered the pick-up date in RAPS prior to the interview and that date was changed by the AO and SAO at the time of the interview, the date previously-entered into RAPS will need to be removed and a new date entered using the Pick-Up Scheduling (PUSH) command.

3. Canceling a Pick-up Date at the Fault of USCIS

Once the Asylum Office issues a *Pick-up Notice*, Asylum Office personnel must serve the decision on the appointed date and time. An Asylum Office cannot cancel a pick-up date unless extraordinary circumstances are present. An SAO determines the circumstances on a case-by-case basis.

If the Asylum Office must cancel a pick-up date, the applicant must be notified in advance, if possible. If there is sufficient time before the applicant is scheduled to appear at the Asylum Office, Asylum Office personnel send the applicant a *Notice of Change in Decision Service from Pick-up to Mail-out* (Appendix 33). A copy of the Notice remains in the applicant's file. Asylum Office personnel also remove the pick-up date in RAPS by accessing the Pickup Scheduling (PUSH) Screen.

U. RESCISSION OF AN ASYLUM APPROVAL

There may be instances when an Asylum Office learns that an applicant was either under the jurisdiction of EOIR or outside of the U.S. at the time of the asylum approval. However, lack of jurisdiction over an asylum application is not grounds for termination under 8 C.F.R. 208.24. When the Asylum Office did not have jurisdiction to hear the claim, the Asylum Office must move to reconsider the asylum approval pursuant to 8 C.F.R. 103.5(a)(5)(ii) in order to pursue rescission of asylum status.

Langlois, Joseph E. Rescission of Asylum Based on Lack of Jurisdiction, Memorandum to Asylum Office Directors, et al., 9 February 2001, 3p.

1. Issue Motion to Reconsider

If the Asylum Office did not have jurisdiction over the asylum application at the time of approval, the Asylum Office sends the asylee a *Motion to Reconsider* (Appendices 35 or 36) letter, pursuant to 8 C.F.R. 103.5(a)(5)(ii). Asylum Office personnel use the letter that corresponds to the reason for rescission, which is either that the applicant was in proceedings before EOIR or was outside of the U.S. at the time of the final approval. If the applicant was under the jurisdiction of EOIR with another A-number, Asylum Office personnel consolidate the A-files and the A-numbers. Asylum Office personnel attach to the *Motion to Reconsider* any unclassified documents that were relied upon to determine that USCIS did not have jurisdiction over the asylum application at the time of the final approval.

If the Asylum Office did not have jurisdiction over a derivative application, but did have jurisdiction over the principal's application, Asylum Office personnel should direct the letter to the dependent with a copy sent to the principal applicant. The clause at the end of the first paragraph, "as well as the grant of asylum to any dependent included in your asylum application," should be deleted.

When issuing the *Motion to Reconsider*, Asylum Office personnel enter the date that USCIS initiated the *Motion to Reconsider* in the MTR INITIATED BY USCIS – DATE field on the Motion to Reopen or Reconsider (MTRC) screen. An update indicating "MTR ISSUED FOR CASE BY USCIS" will appear on the Case History (CHIS) screen.

The initiation date refers to the date that the letter is placed in an envelope and put in the out-going mail.

2. Wait 45 days or until response is received, whichever comes first

The asylee is given 45 days from the date of the motion (30 days + 15 days for receiving and reviewing the mail) to respond to the *Motion to Reconsider*.

If the Asylum Office receives a response to the *Motion to Reconsider*, Asylum Office personnel enter a Y in the REBUTTAL/WAIVER RECVD field and the date that the Asylum Office received the response in the IF YES, DATE RECVD field on the Motion to Reopen or Reconsider (MTRC) screen. An update indicating "REBUTTAL/WAIVER RECEIVED" will appear on the Case History (CHIS) screen.

If the Asylum Office does not receive a response to the *Motion to Reconsider*, Asylum Office personnel enter an N in the REBUTTAL/WAIVER RECVD field on the MTRC screen.

3. Review response, if any, and issue letter affirming or rescinding grant

If the asylee submits a timely response to the motion, and it rebuts the reasons provided for the proposed rescission, Asylum Office personnel send the asylee an *Affirmation of Asylum Grant After Motion to Reconsider* (Appendix 38) affirming the asylum grant. Asylum Office personnel also update the DECISION and DECISION DATE fields on the Motion to Reopen or Reconsider (MTRC) screen, using the decision code C1 – ASYLUM GRANT AFFIRMED. An update indicating "ASYLUM GRANT AFFIRMED BY USCIS" will appear on the Case History (CHIS) screen.

If the Asylum Office does not receive a timely response or the response fails to overcome the reasons to rescind, Asylum Office personnel take the actions described below to rescind the asylum grant.

If there are derivative asylees who obtained asylee status through an I-730, their status must also be rescinded. They may be added to the applicant's case in RAPS prior to these actions using the I730 command.

a. Rescission based on EOIR jurisdiction

Asylum Office personnel take the following actions to rescind an asylum grant based on EOIR jurisdiction:

- Send the former asylee a *Notice of Rescission of Asylum Grant* (Appendix 37), notifying him or her that the grant of asylum has been rescinded. If the asylee received asylum as a derivative, remove the sentence "the grant of asylum to any dependent included in your asylum application is also rescinded" from the rescission notice.
- Take the following steps in RAPS *in this order*:
    - Enter the decision code C2 – ASYLUM GRANT RESCINDED in the DECISION field and the date of the decision in the DECISION DATE field on the MTRC screen. This will automatically delete the final grant decision. An update indicating "ASYLUM GRANT RESCINDED BY USCIS" will appear on the CHIS screen.
    - Administratively close the asylum application. The reason for the closure is "IJ JURISDICTION" (C4). Indicate that an NTA/referral will **NOT** be issued to the applicant. (Place an "N" in the "Send to IJ" section.)
- Transfer the file to the ICE Office of the Principal Legal Advisor (OPLA) if the former asylee is currently in proceedings or to ICE Investigations or DRO (depending upon local procedures) if the former asylee has a final order.

b. Rescission based on applicant's lack of physical presence in U.S.

If it is determined that the applicant was not in the United States at the time of the asylum approval, USCIS lacked jurisdiction to approve asylum, and the prior grant of asylum must be rescinded. However, the actions to take after rescission will depend on whether the applicant received advance parole or not, whether the applicant traveled back to the country of feared persecution, and whether the absence from the United States affects the applicant's substantive claim. There may be some circumstances in which the applicant will be required to file a new I-589, but, in other cases, it may be appropriate to grant the I-589 again, with a new approval date. Until final guidance is provided on these rare cases, please contact the HQASM Operations team for guidance if you intend to rescind a grant of asylum based on an applicant's absence from the U.S. at the time of approval. HQASM Operations will provide instruction for the language to incorporate in the *Notice of Rescission of Asylum Grant* (Appendix 37), based on the particular circumstances of the case, as well as further actions to take on the applicant's case.

c. Rescission grounds apply only to dependent

If the rescission grounds apply only to a dependent, only the asylee status of the dependent is rescinded. Asylum Office personnel follow the steps outlined in Sections III.W.a and III.W.b in order to rescind a dependent's asylee status. The CURRENT STATUS field on the Case Status (CSTA) screen for the principal will indicate "Prin Granted, Dep Rescinded" if only the dependent's asylee status is rescinded. An update indicating "DEPN GRANT RESCINDED BY USCIS" will appear on the CHIS screen.

V. TERMINATION OF AN ASYLUM APPROVAL

1. Overview of Termination Proceedings

a. Grounds for Termination of Asylum Status

The Asylum Office initiates a proceeding to terminate asylum status granted by USCIS when prima facie evidence indicates that at least one (1) of the following circumstances is present:

- There is a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted.
- As to an application filed on or after April 1, 1997, one or more of the conditions described in Section 208(c)(2) of the INA exist, summarized below:
    - the alien no longer meets the definition of a refugee due to a fundamental change in circumstances;
    - the alien is a persecutor, danger to the security of the U.S., described in terrorist grounds of inadmissibility, or firmly resettled in another country; or the alien was convicted of a particularly serious crime or there are serious reasons to believe the alien committed a serious nonpolitical crime outside the U.S.;
    - the alien may be removed pursuant to a safe third country agreement;
    - the alien voluntarily re-availed him- or herself of the protection of the country of feared persecution by returning to such country with the reasonable possibility of obtaining or having obtained permanent resident status with the same rights and obligations of other permanent residents of the country;
    - the alien has acquired a new nationality and enjoys the protection of that country.

- As to an application filed before April 1, 1997, the alien no longer has a well-founded fear of persecution due to a change of country conditions in the alien's country of nationality or last habitual residence, or the alien has committed any act that would have been grounds for a mandatory denial of asylum under 8 C.F.R. 208.13(c)(2), summarized below:
    - the alien was convicted of a particularly serious crime;
    - the alien was firmly resettled in another country;
    - the alien is a danger to national security;
    - the alien has been convicted of an aggravated felony;
    - the alien order, incited, assisted, or otherwise participated in persecution of others on account of one or more of the five protected grounds;
    - the alien is involved in terrorist activities as described in INA Section 212(a)(3)(B)(i)(I) [engaged in], (II) [reasonably likely to engage in after entry], and (III) [incited with an intent to cause death or serious bodily harm], unless there are no reasonable ground to believe the asylee is a danger to national security.

INA § 208(c)(2), (3); 8 C.F.R. 208.24

Termination of asylum status for the principal asylee results in termination of any derivative status, whether derivative status was gained at the same time of the original asylum grant or through the approval of an I-730, *Refugee/Asylee Relative Petition*. The termination does not preclude the former derivative from applying for asylum or withholding of removal on his or her own. When grounds for termination apply to a derivative alone, the derivative asylum status is terminated without effect on the principal asylee's status, and documents discussed in this section are issued to the derivative asylee alone.

b. Standards of Proof Relevant to Termination Proceedings

Before asylum may be terminated, the Asylum Office issues to the asylee a *Notice of Intent to Terminate (NOIT)* listing the ground(s) for the intended termination and containing a summary of the evidence supporting the ground(s). To issue a *NOIT,* the Asylum Office must have information establishing a *prima facie* case supporting termination. In order to terminate asylee status, USCIS has the burden of establishing one or more of the termination grounds in 8 C.F.R. 208.24 by a *preponderance of the evidence*. In other words, to begin termination proceedings through the issuance of a *NOIT*, the Asylum Office must have information that, on its face, indicates that asylum termination *may* be appropriate, but need not have the higher level of evidence required to terminate asylee status.

After the issuance of the *NOIT*, the disclosure of other facts and circumstances in the termination interview may cause the Asylum Office to find that there is insufficient evidence to meet the preponderance of the evidence standard required to terminate asylee status. For more discussion regarding standards of proof, *see* AOBTC Lesson Plan, *Asylum Eligibility Part IV: Burden of Proof, Standards of Proof, and Evidence*.

If the Asylum Office possesses information that does not rise to the level of a *prima facie* case in support of termination but that raises questions about the viability of the asylee's status, the Asylum Office may request a *voluntary* interview with the asylee. If the asylee does not cooperate, the Asylum Office may coordinate with the Office of Fraud Detection and National Security (FDNS), ICE Investigations, or (as in the case of overseas information or where otherwise appropriate) with HQASM to develop the information further.

c. Asylum Office Jurisdiction and Choice of Procedure for Terminating Asylum Granted by USCIS

Termination proceedings can only be initiated after an *Asylum Approval* has been issued, and may be initiated even if the individual has adjusted to LPR status. The Asylum Office does not have jurisdiction to terminate asylum granted by EOIR. If the Asylum Office receives a request to take action to terminate asylum that was granted by EOIR, the Asylum Office refers the requester to USCIS Area Counsel or the ICE Office of the Principal Legal Advisor (OPLA).

When USCIS initiates termination proceedings, it may do so by initiating and conducting termination proceedings at the Asylum Office pursuant to guidance in this manual, or USCIS may elect to issue an NTA concurrently with a *Notice of Intent to Terminate Asylum Status by EOIR* (Appendix 43) to vest the Immigration Court with jurisdiction over the termination proceedings. *See* 8 C.F.R. 208.24(f).

The Asylum Office that handles issues related to the termination of asylum status, including conducting termination proceedings, if any, is the Asylum Office with jurisdiction over the asylee's place of residence (or, if detained, place of detention). The Asylum Office that conducts termination proceedings may update the REVO screen regardless of whether that office issued the asylum grant.

2. Sources of Adverse Information

a. Overseas Source

An Asylum Office should not take action on adverse information received directly from an overseas DOS consular or overseas DHS immigration officer before submitting it to HQASM for review. DHS and DOS have established a protocol requiring that any adverse information supplied by a DOS consular officer be directed to HQASM for review. If the source of the adverse information is a DHS office overseas, the adverse information must also be forwarded to HQASM for review. Asylum Office personnel refer to HQASM any inquiries or information received by the Asylum Office directly from an overseas source. The Asylum Office should not take further action before receiving written instructions from HQASM.

i. HQASM receipt of adverse information

When HQASM receives adverse information from either the DOS or an overseas DHS office, HQASM personnel:

- Receive and review the cable or correspondence containing the adverse information.
- Determine jurisdiction over the case (HQASM should forward the information to the appropriate entity if the Asylum Division does not have jurisdiction over the case).
- Create a W-File that contains a copy of the adverse information. The work folder remains at HQASM.
- Make appropriate entries into the HQ Overseas Asylum Fraud Interdiction Log ("HQ Log") and request transfer of the individual's A-file to HQASM.

If HQASM requests the A-file, upon its receipt, HQASM personnel photocopy the original Form I-589, interview notes, and other relevant information, and place copies in the Work Folder. HQASM also confirms receipt of the file by updating NFTS and the HQ Log.

If HQASM determines that the adverse information is not related to a termination ground for asylum (because, for example, the alleged fraud is wholly unrelated to the asylee's asylum claim), HQASM forwards the adverse information from an overseas source to HQFDNS.

ii. Transmittal of adverse information to the Asylum Office

If HQASM determines that the adverse information establishes a prima facie case for termination and, therefore, warrants a termination interview, HQASM prepares a memorandum to the Asylum Office Director having jurisdiction over the individual's place of residence requesting that the Asylum Office issue a Notice of Intent to Terminate Asylum Status (NOIT) or other appropriate action.

The memo to an Asylum Office Director *does not* recommend that asylum status be terminated. The transmittal memo provides a brief outline of the information and merely concludes that there is sufficient adverse information to warrant NOIT issuance and to conduct a termination interview, where all the facts of the case can be more fully developed and evaluated by an AO.

If HQASM determines that adverse information related to a termination ground for asylum is insufficient for NOIT issuance but warrants further review, HQASM prepares an FDNS referral sheet and forwards the referral sheet and A-file (if applicable) to the Asylum Office Director for further action by the FDNS IO.

HQASM attaches the transmittal memo to the A-file for shipment to the appropriate Asylum Office Director for further action. After the Asylum Office Director receives the A-file and memo from HQASM, the Asylum Office Director will forward the file/file information to the AO responsible for termination and the FDNS IO. The AO responsible for termination and the FDNS IO will coordinate file handling and information sharing on the case.

The Asylum Office must send the draft *NOIT* to HQASM for review before it may be served on the applicant and any representative of record. Similarly, a subsequent memorandum to the file recommending either termination or continuation of asylum status (described below in section V.5.) must be sent to HQASM for review before a final decision is made.

b. Domestic Source – Asylee in the U.S.

An Asylum Office may receive from within DHS or another domestic source outside DHS adverse information that indicates that an individual's asylum status should be terminated. The Asylum Office Director, or designee, should review any adverse information received and institute termination proceedings when it establishes a *prima facie* case in support of termination based on one or more of the grounds provided in 8 C.F.R. 208.24. The Asylum Office Director will share the adverse information and file/file information with the FDNS IO.

Yates, William R. Protocols for Handling Asylee Adjustment Cases That May Warrant Initiation of the Asylum Status Termination Process, Memorandum to Regional Directors, et al., 19 July 2004, 16p.

Unless HQASM received the information and therefore brought it to the attention of the Asylum Office, HQASM need not act as an intermediary between the Asylum Office and the entity providing the information. HQASM also does not need to review the *NOIT* or a recommendation to terminate or continue the individual's asylum status, unless the case otherwise falls within one of the categories for HQASM/QA review, when requested in a particular case, or if the case involves classified information, as discussed below.

See Section III.V.3.b on classified information.

c. Domestic Source – Asylee Applying for Admission at a Port of Entry

An Asylum Office may receive a request from another DHS component to issue a *NOIT* to an asylee who is seeking re-admission to the U.S. The Asylum Office may only issue the NOIT if there is evidence establishing a *prima facie* case in support of termination.

8 C.F.R. 208.24(g)

3. Notifying Asylee of USCIS's Intent to Terminate Asylum Status

Prior to the termination of a grant of asylum, the Asylum Office notifies the individual of USCIS's intent to terminate asylum status through the issuance of a *Notice of Intent to Terminate* (*NOIT*). The *NOIT* template used depends on whether the termination proceedings will be conducted by the Asylum Office or EOIR. Circumstances under which a USCIS asylum grant may be terminated by EOIR are discussed below. In either case, the *NOIT* notifies the asylee of the grounds for termination, and includes a summary of the unclassified supporting evidence that constitutes grounds for termination.

Required Materials: Appendices: *Notice of Intent to Terminate Asylum Status by USCIS* (39), *Notice of Intent to Terminate Asylum Status by EOIR* (42)

When the Asylum Office serves the *NOIT*, Asylum Office personnel enter the date of service in the ISSUE DATE – NOIT ONLY field on the Termination of Asylum (REVO) screen. When Asylum Office personnel enter a date in the ISSUE DATE – NOIT ONLY field, an update indicating "NOIT ISSUED" will appear on the Case Status (CHIS) screen.

"Date of service" refers to the date that the letter is placed in an envelope and put in the out-going mail.

Upon service of the *NOIT*, Asylum Office personnel also enter an interview date, which must be at least 30 days after the service of the *NOIT*, in the TERMINATION INTERVIEW DATE field on the REVO screen. Entry of an interview date is required at the same time that the date of *NOIT* issuance is entered on the REVO screen. When Asylum Office personnel enter a date in the TERMINATION INTERVIEW DATE field, an update indicating "TERMINATION INTERVIEW" will appear on the CHIS screen.

Generally, the Asylum Office may disclose to the asylee unclassified evidence constituting or supporting grounds for termination, including unclassified materials from the Department of State or other government agencies. If there is a question as to what may be disclosed to the asylee in notifying him or her of the grounds for termination, HQASM should be contacted.

The Asylum Office may not disclose information about third parties in the *NOIT*. If the material from another agency contains information about a third person, the Asylum Officer should summarize the document, omitting the information about that individual and redact those portions of the document, if it is attached to the *NOIT*.

Asylum Office personnel attach a Legal Provider List to the *NOIT* when sending it to the individual. The *NOIT* must be personally served on the asylee within the meaning of 8 C.F.R. 103.5a(a)(2). This includes mailing a copy by registered or certified mail, return receipt requested, to the asylee's last known address. See Section III.A above for guidance on determining an asylee's most recent address. Because a significant amount of time may have passed since the asylum approval, Asylum Office personnel review the A-file, RAPS, CLAIMS, AR-11, and other available DHS systems for the most current address for the *NOIT*.

As noted above, if the Asylum Office conducts the termination proceedings, the termination interview is set for at least 30 days after the date of mailing of the *NOIT*. The asylee may waive this 30-day period and request an earlier interview, or may waive the interview entirely and admit the allegations in the *NOIT* in writing. A written waiver form is included as an attachment to the *NOIT* for this purpose. If the Asylum Office receives a written rebuttal, a request for an earlier interview, or a waiver of the interview, Asylum Office personnel enter the date received in the DATE REBUT/WAIVER RECVD field on the REVO screen. If the Asylum Office receives a request for an earlier interview, Asylum Office personnel may enter a date sooner than 30 days after the date of mailing of the *NOIT* in the TERMINATION INTERVIEW DATE field after Asylum Office personnel enter the date the request for an earlier interview was received in the DATE REBUT/WAIVER RECVD field. When Asylum Office personnel enter a date in the DATE REBUT/WAIVER RECVD field, an update indicating "REBUTTAL/WAIVER TO NOIT RECEIVED" will appear on the CHIS screen.

a. Termination by EOIR When the Asylum Office Issued the *Asylum Approval*

8 C.F.R. 208.24(f)

Generally, an Asylum Office terminates asylum status when the asylum approval was issued by an Asylum Office. An Immigration Judge (IJ) may also terminate asylum status at any time after an Asylum Office has issued a *NOIT* to an asylee.

The majority of the asylees whose asylum status is reviewed by an IJ are those individuals who will be or have already been placed into proceedings by another branch of DHS or are being detained based on a criminal conviction. The Asylum Office Director may elect to send an AO to a facility to conduct a termination interview and complete the adjudication, or can choose to have the individual's asylum status reviewed by the IJ in the context of a removal or deportation proceeding. However, there may be other circumstances where the Director feels it is appropriate to issue an NTA concurrently with the *NOIT* to vest jurisdiction over the termination proceedings with the Immigration Court.

If the Director determines that an IJ will review the individual's asylum status, the following occurs:

- The Asylum Office obtains a copy of the court disposition, indicating the criminal record of the asylee, and a copy of the NTA (charging document), if any.
- Asylum Office personnel prepare a *Notice of Intent to Terminate Asylum Status by EOIR* (Appendix 43), which indicates the IJ's role in reviewing the individual's asylum status.
- Asylum Office personnel serve the *NOIT* and a Legal Provider List on the asylee either by certified mail or in-person by an Investigator. If in-person service is accomplished, the Asylum Office must obtain a copy of the *NOIT* signed by the asylee in order to verify receipt.
- When the Asylum Office serves the *NOIT* on the asylee, Asylum Office personnel enter the date of service in the OR NOIT + NTA field on the REVO screen. When Asylum Office personnel enter a date in the OR NOIT + NTA field, an update indicating "NOIT + NTA ISSUED" will appear on the CHIS screen, and Asylum Office personnel will be automatically transferred to the NTA Generation (OSCG) screen to prepare the NTA.

  Unless the *NOIT* is served in person, "date of service" refers to the date that the letter is placed in an envelope and put in the out-going mail.
- Asylum Office personnel consult with USCIS Area Counsel or the ICE Office of the Principal Legal Advisor (OPLA) to prepare and issue an NTA with the appropriate charge(s). If an NTA has already been issued, it may or may not be necessary for counsel to file an amended NTA. Whether the Asylum Office or another DHS component places the asylee in proceedings, Asylum Office personnel update the IJ Hearing (HEAR) screen in RAPS with the IJ hearing information.

Asylum Office personnel request that the USCIS Area Counsel or ICE OPLA and any other DHS component involved in the case notify the Asylum Office if asylum is terminated. The Asylum Office may not update the REVO screen to show that an individual is no longer an asylee unless the Immigration Judge terminates asylum status.

b. Classified Information

In some cases, the adverse information from either an overseas or domestic source that constitutes grounds for termination will include classified terrorist or criminal information supplied by the Department of State or other sources. An AO must not disclose the details of the classified information to the asylee, either in the *NOIT* or later at the termination interview, in order to protect the security of the classified operation or the safety of a confidential informant. The AO who conducts the interview and reviews the information must have the proper security clearance according to the level of the classified information.

If the information is from an overseas source, the transmittal memorandum from HQASM to the Asylum Office will suggest the appropriate disclosure of information, as needed, including suggested language to be included in the *NOIT* to balance security concerns with the need to provide an asylee with a meaningful opportunity to rebut. HQASM will also be available to discuss the issue with the interviewing AO. If the information is from a domestic source, the Asylum Office Director will liaise with HQASM to inform the AO what information may be disclosed, and to what degree of detail.

An AO may <u>not</u> at any time disclose the identity of a confidential informant (or information that could reasonably lead to discovery of the identity of the informant), or the nature of an undercover or otherwise classified (e.g., terrorist or security) operation.

4. Conducting the Termination Interview

The AO places the individual, dependent family members, and the interpreter, if any, under oath. The AO, asylee, and interpreter, if any, complete a *Record of Applicant and Interpreter Oaths* (Appendix 2).

If a dependent entered the U.S. pursuant to an I-730 that was granted based upon the principal's asylum approval, the AO updates the I-730 Data Entry (I730) screen in RAPS. This adds the dependent to the principal's asylum claim.

The nature of the termination interview is nonadversarial, and the conduct of the interview is consistent with the procedural aspects of an asylum interview as outlined in Section II.J, *AO Conducts an Asylum Interview*, except that the termination interview need only explore issues relevant to termination of asylum. If the individual fails to appear for the termination interview, the Asylum Office waits fifteen (15) calendar days from the date of the interview before taking further action to see if the individual submits an excuse for his or her failure to appear or a request to reschedule the interview.

5. Making a Determination

USCIS has the burden of establishing that a preponderance of the evidence supports termination. For guidance on the preponderance of the evidence standard, see the AOTBC Basic Training Materials, *Asylum Eligibility IV: Burden of Proof and Evidence*.

If the reason for termination is based upon fraud, an AO may not affirm the grant of asylum based on a new "true" story offered by the alien for the first time at the termination interview. In most cases the Asylum Officer will not have a new I-589 reflecting the new "true" story, nor will the DOS or overseas information supplier, if any, have had the opportunity to review and comment on the new claim. More importantly, after having committed fraud in the affirmative system, the appropriate forum for the individual to present a new asylum claim is in defensive proceedings where adversarial methods such as cross-examination can further test the veracity of the new story.

a. Asylee Appeared for the Interview

If the individual appears for the interview, the AO makes a recommendation either to terminate or to continue the individual's asylum status based upon evidence presented. The Asylum Officer prepares a memorandum for the file recommending either termination or continuation of asylum status, depending upon whether a preponderance of the evidence supports termination. The memo includes a summary of the asylee's testimony, the original claim, the adverse information considered, and an analysis of why asylum status should be terminated or continued.

b. Asylee Failed to Appear for the Interview

If the individual fails to appear for the interview and the failure to appear is not excused in accordance with 8 C.F.R. 208.10, the Asylum Office follows the same procedures as discussed in Section III.X.5.a above, except that the recommendation memo also includes a brief statement of the circumstances surrounding the failure to appear, whether any excuse was submitted and, if so, why the excuse was insufficient.

If the evidence constitutes less than a preponderance of the evidence and therefore appears insufficient to terminate asylum status, the Asylum Office Director may elect to coordinate with USCIS Area Counsel, the Office of Fraud Detection and National Security (FDNS), the ICE Office of the Principal Legal Advisor (OPLA), and/or ICE District Investigations to follow up on the case and possibly issue an NTA when there are sustainable charges.

c. HQASM Review

When HQASM review is required because the case falls within one of the categories of cases that require Headquarters Quality Assurance review or as discussed in Section III.V.2.a., above, the Asylum Office must ensure that HQASM receives the following documents for review before preparing the case further:

- QA Referral Sheet,
- *NOIT*,
- I-589 with supporting documentation,
- Original assessment to grant,
- Interview Notes from original asylum interview and termination interview, if any,
- Memo to the file recommending termination or continuation of asylum status,
- Evidence presented by the individual at the time of the termination interview, if any,
- Draft of Notice of Termination of Asylum Status or Notice of Continuation of Asylum Status.

Asylum Office personnel should scan the case documents and e-mail them to the "ASYLUM QA – AFFIRMATIVE" mailbox. If the materials cannot be scanned to a file size of less than 9MB, Asylum Office personnel send them to HQASM/TRAQ via DHL at 20 Massachusetts Ave., NW, Suite 3300, Washington, D.C. 20529. Asylum Office personnel should alert HQASM/TRAQ in advance of any case sent via DHL.

Once HQASM concurs in the decision, or if the Asylum Office does not need to obtain concurrence, Asylum Office personnel prepare the case either for termination or continuation of asylum status.

d. Asylum Office Terminates Asylum Status

The AO prepares:

- *Notice of Termination of Asylum Status* (Appendix 41),
- Form I-213, if required,
- NTA.

Termination of asylum status applies to the principal as well as all individuals who obtained derivative asylum status from the principal, whether granted as dependents on the I-589 or through an I-730 *Refugee/Asylee Relative Petition*. *See* 8 C.F.R. 208.24(d), 208.21(g). The *Notice of Termination of Asylum Status* (Appendix 41) can be used to terminate either a principal or a derivative asylee. If terminating a derivative asylee, Asylum Office personnel do not use any of the language pertaining to dependents in the *Notice*.

If the asylee appeared for the interview, Asylum Office personnel record T2 (Asylum Terminated) next to the TERMINATION DECISION field on the REVO screen. Asylum Office personnel also record the date of termination in the TERMINATION DATE field and record the reason for termination (either R1 (Changed Country Conditions), R2 (Fraud in Application), or R3 (Grounds for Denial Act)) next to the REASON FOR TERMINATION field. Before Asylum Office personnel may finalize entry of the decision, RAPS will remind Asylum Office personnel that a preponderance of the evidence is required to terminate asylum status. Asylum Office personnel press PF9 to terminate asylum status or PF3 to cancel the termination decision. Asylum Office personnel may also press PF3 to cancel the termination decision at any time before it becomes final. If Asylum Office personnel go through with the decision to terminate asylum status, an update indicating "ASYLUM STATUS TERMINATED" will appear on the Case History (CHIS) screen. The FINAL DECISION field on the Case Status (CSTA) screen will reflect "GRANT TERMINATED" and the reason for the termination. Asylum Office personnel also indicate to what immigration status (if any) the former asylee should be restored next to the RESTORE TO STATUS field on the REVO screen.

Supervisory Asylum Officers (SAOs) may reverse a final decision to terminate asylum status by pressing PF1. If an SAO elects to reverse a final decision to terminate asylum status, the SAO will need to reenter the information pertaining to the final grant of asylum into RAPS on the Final Decision (FDEC) screen.

If the asylee failed to appear for the interview, the failure to appear is not excused in accordance with 8 C.F.R. 208.10, and the Asylum Office intends to terminate asylum status based on a preponderance of the evidence, Asylum Office personnel follow the steps in the two paragraphs above to terminate asylum status. On the REVO screen Asylum Office personnel also record that the individual failed to appear for the interview by recording an X next to TERMINATION INTV NO-SHOW.

If the asylee failed to appear for the interview, the failure to appear is not excused in accordance with 8 C.F.R. 208.10, and the evidence constitutes less than a preponderance of the evidence and therefore appears insufficient to terminate asylum status, Asylum Office personnel follow the steps in Section III.X.5.b above. On the REVO screen Asylum Office personnel also record that the individual failed to appear for the interview by recording an X next to TERMINATION INTV NO-SHOW. However, Asylum Office personnel do not terminate the individual's asylum status.

Regardless of whether the individual is an LPR or an asylee, after asylum status is terminated, the Asylum Office must place the individual before the Immigration Court. Asylum Office personnel note the deportation code on the REVO screen by recording either A1 (NTA Required), A5 (I-863), or A6 (No Deportation) next to the DEPORTATION CODE field and then place a charge and allegation on the NTA that corresponds to the reason for termination (e.g., commission of fraud, criminal conviction, etc.). Asylum Office personnel should consult the DHS field manual that lists all allegations and charges that DHS uses for NTAs and local USCIS Area Counsel and/or the ICE Office of the Principal Legal Advisor (OPLA) for appropriate charges to list on the NTA.

If the termination grounds apply only to a dependent, only the asylee status of the dependent is terminated. If the derivative asylee status of an individual who was admitted pursuant to an I-730 is terminated, the NTA is prepared with the appropriate deportability charges under INA Section 237, most likely 237(a)(1)(B) [present in the U.S. in violation of law], with any additional charges. Asylum Office personnel send the *Notice of Termination of Asylum Status* (Appendix 41) to the dependant with a copy to the principal asylee.

If the asylee was paroled on or after April 1, 1997, not pursuant to advance parole, Asylum Office personnel must follow the procedures outlined in Section III.Q when preparing to initiate removal proceedings. The termination of an asylee's status, in and of itself, does not negate the possibility that the asylee has a credible fear of persecution or torture.

If HQ review is required, Asylum Office personnel should scan the case documents and e-mail them to the "ASYLUM QA – AFFIRMATIVE" mailbox. If the materials cannot be scanned to a file size of less than 9MB, Asylum Office personnel send them to HQASM/TRAQ via DHL at 20 Massachusetts Ave., NW, Suite 3300, Washington, D.C. 20529. Asylum Office personnel should alert HQASM/TRAQ in advance of any case sent via DHL.

e. Effect of Termination on Employment Authorization

8 C.F.R. 208.24(c)

Once asylum status is terminated, any employment authorization issued as a result of that status is automatically terminated. The former asylee must surrender any EAD issued under code "a5" (asylee) as soon as possible after termination of his or her asylum status. The Asylum Office Director will determine the appropriate method of surrender, for example to Asylum Office personnel, to an Assistant U.S. Attorney (in the case of an asylee whose asylum status is terminated on criminal grounds), or to ICE DRO in the case of an individual who is in custody. Asylum office personnel should also coordinate with USCIS District Office personnel to ensure that the former asylee's EAD information is properly updated in CLAIMS 3.

f. Asylum Office Continues the Individual's Asylum Status

The AO prepares:

- *Notice of Continuation of Asylum Status* (Appendix 42)

Asylum Office personnel record T1 (Asylum Continued) next to the TERMINATION DECISION field on the REVO screen. An update indicating "ASYLUM STATUS CONTINUED AFTER NOIT" will appear on the CHIS screen. The Case Status (CSTA) screen continues to reflect that the individual was granted asylum.

Asylum Office personnel serve the letter by either regular or certified mail, as dictated by local Asylum Office policy, and place a copy in the asylee's file. If HQ review is required, Asylum Office personnel also scan a copy of the *Notice of Continuation of Asylum Status* and e-mail it to the "ASYLUM QA – AFFIRMATIVE" mailbox.

6. FOIA Requests During Termination Proceedings

After the issuance of a NOIT, an asylee or his or her representative may file a request for information in the asylee's file pursuant to the Freedom of Information Act (FOIA). Termination proceedings are to be delayed until the asylee has been provided a response to his or her request, and the file is returned to the Asylum Office.

W. WITHDRAWAL REQUESTS

8 C.F.R. 103.2(b)(6)

An applicant may withdraw an affirmative asylum application at any time prior to the issuance of a decision. Asylum applicants are not required to withdraw their asylum applications in order to apply for or receive other immigration benefits. The decision to withdraw is the applicant's alone. The Asylum Office does not have authority to permit or deny an applicant the right to withdraw.

Procedurally, an applicant may choose to withdraw:

- Prior to the interview (by mail or in-person),
- On the day of the interview (in front of an IIO/CR or AO), or
- After the interview has been conducted, but before the decision has been served on the applicant.

"Decision" refers to the issuance and service of the applicant of an Asylum Approval, Final Denial or Referral.

Whatever the case, the Asylum Office must have written evidence of the applicant's intent to withdraw.

1. Documenting the Applicant's Intent to Withdraw

If the applicant or his or her representative of record sends a written withdrawal request to the Asylum Office, Asylum Office personnel take the action requested in the written notice.

If the applicant appears at the Asylum Office to withdraw his or her request, Asylum Office personnel give the applicant an *Declaration of Intent to Withdraw Asylum Application* (Appendix 43) to complete.

2. Closing the Case in RAPS

If the applicant is maintaining valid immigrant, nonimmigrant, or temporary protected status, or parole is not terminated or expired, Asylum Office personnel:

- Administratively close the case in RAPS. The reason for the closure is "withdrawal" (C3). Indicate that an NTA/referral will **NOT** be issued to the applicant (Place "N" in "Send to IJ" section).

RAPS generates an *Administrative Termination Mailer*, which Asylum Office personnel mail to the applicant. Local Asylum Office policy dictates whether the Asylum Office keeps the file or sends it to the NRC.

If the applicant is deportable or removable, the Asylum Office determines whether to initiate removal proceedings. Factors to consider include, but are not limited to: whether the file contains sufficient information to establish the applicant's alienage and deportability/inadmissibility, or whether the applicant may be eligible for an adjustment of his or her status in the near future. If charging documents will not be issued, update RAPS as indicated above.

See Section III.N on the documentation requirements for parolees.

If charging documents are to be issued, Asylum Office personnel:

- Administratively close the case in RAPS. The reason for the closure is "withdrawal" (C3). Indicate that an NTA/referral **will** be issued to the applicant (Place a "Y" in the "Send to IJ" section).
- Prepare NTA or I-863, as appropriate.
- Update OSSE upon service of the NTA or I-863.

X. DISMISSAL OF ASYLUM APPLICATION OF LAWFUL PERMANENT RESIDENT

According to statistical analysis, many A-numbers in RAPS appear in CIS as belonging to individuals who are LPRs, and who are not *ABC* applicants. On May 21, 1999, the INS published an interim rule in the *Federal Register* to amend 8 C.F.R. 208.14 by adding the following provision:

Langlois, Joseph E. Asylum Applicants who have Adjusted to Lawful Permanent Resident Alien (LPR) Status, Memorandum to Asylum Office Directors, 18 January 2000, 4p.

> (f) If an asylum applicant is granted adjustment of status to lawful permanent resident, the Service may provide written notice to the applicant that his or her asylum application will be presumed abandoned and dismissed without prejudice, unless the applicant submits a written request within 30 days of the notice, that the asylum application be adjudicated. If an applicant does not respond within 30 days of the date the written notice was sent or served, the Service may presume the asylum application abandoned and dismiss it without prejudice.

1. RAPS Report

Each Asylum Office periodically receives a report titled "Open Cases With LPR/USC Class Of Admission," (RACLPRAP) that lists all A-numbers within its control according to the Case Control Office (CCO) section of the Case Status (CSTA) screen, and which appear in CIS as belonging to an LPR. The Asylum Office uses this report to prepare a notice to each applicant. If a case is marked with a special group code in RAPS, that code will appear on the same line as the A-number.

2. Applicability to Special Groups

These procedures do not pertain to any case that is marked with a special group code that relates to a potential *ABC* class member (ABC, ABR, ABQ, ABN, ABA, ABB, ABZ). They do cover all other special group codes, which include:

- ABX
- FSB
- HDD
- HGT
- HGX
- ME1, ME2, ME3 and ME4 (unless the individual is also an ABC applicant)
- NCG
- TPS

The processing of an asylum application of an individual who is eligible for benefits under the ABC settlement agreement is governed by the 1990 asylum regulations and settlement agreement, which do not contain a similar provision allowing the Service to presume an abandonment of an asylum application. The interim rule at 8 C.F.R. 208.14 applies only to LPRs who are not eligible for *ABC* benefits, such as individuals who adjusted their status under Section 202 of NACARA.

3. Notice

The *Lawful Permanent Resident Notice* (Appendix 66) informs a non-*ABC* applicant, who appears in CIS as an LPR, that USCIS will presume an abandonment of the asylum application unless the applicant returns the signed and dated notice to the Asylum Office within 30 days of the date of the notice. To prepare a notice for service on an applicant and representative of record, if any, Asylum Office personnel compare the applicant's information in RAPS to the applicant's information in CIS (i.e., date of birth, name). If Asylum Office personnel have any doubts about whether an individual listed in RAPS is the same individual in CIS, the Asylum Office should **not** issue a notice to the applicant, and immediately schedule him or her for an asylum interview. If the applicant appears for the interview, an Asylum Officer can question the applicant about whether he or she is the same individual who is listed in CIS under the same A-number. If the applicant fails to appear for the interview, Asylum Office personnel process the case according to local procedures on "no-show" cases.

If Asylum Office personnel do not have any doubts that the individual in RAPS is the same individual in CIS, follow these steps:

- Pull the A-file of the principal applicant (principal applicant) and any dependent from the file room. If the A-file is not within the Asylum Office, create a T-file for the principal applicant and each dependent, and enter them into NFTS. It is not necessary to order an A-file from another office if it is not within the Asylum Office.
- If the office does not have the A-file, find the principal applicant's most recent address by checking RAPS, CLAIMS 3, and AR-11.
- If the office has the A-file, also check any documents in the file along with the systems checks to find the most recent address.
- If the most recent address is in CLAIMS 3 or AR-11, print the screen that contains the most recent address. If necessary, update RAPS by using the MOVE screen.
- Print the MOVE screen, and place the printout in the principal applicant's file. It is not necessary to place a copy in the dependent's file.
- If the A-file is available, check the file for the Form G-28, *Notice of Entry or Appearance as Attorney or Representative*. If a T-file was created, check the ATTORNEY field of the CSTA screen to see if the principal applicant is represented. If the ATTORNEY field indicates an ID code, write down the code.
- Go to the Attorney Maintenance System (PAMS) command
- Type in VWAT on the command line and the ID code from the ATTORNEY field. Press ENTER.
- Print the VWAT screen.
- Prepare a notice to the principal applicant, listing all dependent A-numbers.
- Date stamp the notice on the date it is mailed. If the applicant is represented, send a copy of the notice to the representative that is listed on the Form G-28, if the A-file is available, or that is indicated on the printout from the VWAT screen in PAMS, if a T-file was created.
- Place a copy of the notice in the file of the principal applicant and each dependent.
- Store the file(s) in the Asylum Office for follow-up action.

4. Follow-up after *Notice*

An applicant has 30 calendar days from the date stamp on the notice to notify the Asylum Office that he or she wishes to pursue an asylum application. To account for mailing delays, the Asylum Office does not take any action to dismiss an application until 45 days after the notice was mailed.

a. Applicant Returns the *Notice*

If an applicant returns the notice before the Asylum Office dismisses the asylum application, Asylum Office personnel order the A-file of the principal applicant and the dependents (if the files are not already located within the Asylum Office), and schedule the principal applicant for an interview using the Add Case to Calendar (ADDC) command in RAPS.

b. *Notice* is Undeliverable

If the post office returns the notice because it is undeliverable, Asylum Office personnel update the Case Closure (CLOS) screen, indicating that the reason for the closure is a bad address (C1). The Asylum Office will **not** refer the application to the Immigration Court (Place an "N" in the "Send to IJ?" section) because RAPS does not contain a valid address.

c. Applicant Fails to Return the *Notice*

If an applicant fails to return the notice within this timeframe, Asylum Office personnel update the Admin Close Case (CLOSE) screen, indicating that the reason for the closure is an LPR dismissal (DISMISS-WITHDR.LPR - "CR"), and place an "N" in the "Refer to IJ?" section. RAPS automatically generates an *Administrative Closure* mailer.

IV. "HOW TO …"

A. WRITE AN ASSESSMENT OR NOID

For all *Assessments* and a *NOID*, see the AOBTC Basic Training Materials:

See Appendices 44 to 46.

- *Decision Writing Part I: Overview and Components, Focusing on the First Three Components*
- *Decision Writing Part II: Legal Analysis*
- *Credibility*
- *Making an Asylum Decision*
- *Country Conditions Research and the Resource Information Center (RIC)*

B. PREPARE A DECISION LETTER

The types of decision letters are:

Asylum Office personnel may generate decision letters automatically by using the RAPS Forms Generation Module (RFGM).

- *Recommended Approval* (Appendices 47 – 48)
- *Asylum Approval* (Appendices 17, 49, and 50)
- *Referral Notice* (Appendices 51, 52, 53, 54, and 55)
- *Final Denial* (Appendices 56, 57, and 58)
- *Cancellation of Recommended Approval* (Appendices 22, 26, 27, and 28)
- *Notice of Termination of Asylum Status* (Appendix 40)
- *Notice of Rescission of Asylum Grant* (Appendix 36)

To prepare a decision letter, Asylum Office personnel generate one (1) decision letter per family that lists the A-number of the principal applicant and each dependent. The file of the principal applicant and each dependent contains a copy of the letter, and the Asylum Office issues a copy to the representative of record, if any.

C. PREPARE A NOTICE TO APPEAR (NTA)

Asylum Office personnel generate this form through RAPS using the following commands:

RAPS Command: "OSCG" and "OSCP"

- OSC Generation (OSCG) screen. Update the highlighted fields.
- OSC Print (OSCP) screen

Check with local Asylum Office management concerning who is responsible for placing information about the hearing on the NTA.

The information concerning the individual's date, place and manner of entry must be consistent with the same information gleaned during the asylum interview, or from the I-589, if the applicant failed to appear for an interview. *See* Section III.O, *Overview of Pre-Reform and Reform Application Processes* for guidance on evidence that may be used to support an NTA in pre-reform cases.

At the time of service, Asylum Office personnel complete the section on page 1 for the place, date and time of the individual's hearing before the Immigration Court. Asylum Office personnel obtain this information through ANSIR.

An SAO signs and dates the NTA on the front page. The DHS officer who serves the NTA to the applicant completes the certificate of service section on page 2. The applicant receives a copy of the NTA. The NTA with the original signature of the SAO must be served on the Immigration Court.

D. PREPARE A FORM I-213, RECORD OF DEPORTABLE/INADMISSABLE ALIEN

Asylum Office personnel generate this form through RAPS from the Print Notice to Appear (OSCP) screen. Each individual on a case receives his or her own Form I-213, if required. Information concerning the individual's date, place and manner of entry must be consistent with the same information gleaned during the asylum interview, or from the I-589, if the applicant failed to appear for an interview.

The individual who prepares the Form I-213 signs and the dates it at the "Signature and Title of INS Official" line. The SAO signs the form as the supervisory review official in the bottom right-hand corner box ("Examining Officer: [SAO signature]") For a description of the data to be entered in each field, *see* Melville, Rosemary Langley. Guidance for Completing Form I-213, Record of Deportable Alien. Memorandum to Asylum Office Directors, Supervisory Asylum Officers and Asylum Officers 12 May 1995, 5p.

E. PREPARE AN I-94 CARD

Each individual who is granted asylum, including dependents on the principal applicant's application, receives his or her own I-94 card. There cannot be any crossed-out corrections or any corrections using "white-out."

Mandatory information on the card includes:

- A-number
- Family name and first name
- Birth date (day/month/year format)
- Country of citizenship
- Address while in the United States

Asylum Office personnel endorse the I-94 card with the standard asylum approval stamp, which bears the date of asylum approval (corresponding to the FDEC date of "G1" in RAPS), and which states:

ASYLUM STATUS Granted Indefinitely Section 208 Immigration and Nationality Act.

See Langlois, Joseph. Use of New Asylum Approval Decision Stamps, Memorandum for All Asylum Office Personnel 19 December 2005, 2p.

The asylum approval stamp must be used exclusively with USCIS security ink.

The Asylum Officer performing the adjudication signs along the signature line, and indicates the three-letter Asylum Office code (e.g., ZAR) and his or her four-digit office ID number (e.g. 0041) in the appropriate spaces below the signature line.

V. APPENDICES

The attached "Table of Appendices" contains all appendices referred to in the manual. If an appendix is a form letter or notice, Asylum Office personnel must copy the standard language onto its own office letterhead and insert the following into the letter or notice:

- Date the letter is mailed or personally served on the applicant
- A-number of principal applicant
- A-number of any dependent on the case
- Name and address of principal applicant
- Subject of the Letter ("Re: ...") (where applicable)

- Salutation ("Dear Mr. or Ms. ...")
- Closing (e.g., "Sincerely" and the Name and Title of the Asylum Office Director
- Name of any representative of record after a carbon copy ("cc:") symbol.

The name of the letter is centered, bolded and underlined just above the beginning of the text.

If the appendix is a form for an applicant, interpreter or representative to complete, the Asylum Office may use the format provided or another format, as long as the standard components and language remain intact.

Any bold language in brackets indicates where text specific to the applicant must be inserted (the text should not be in bold when inserted). Asylum Office personnel must delete the brackets after inserting the information.

For any type of *Referral Notice*, Asylum Office personnel may delete from the template any boxes that do not pertain to the reason(s) why the Asylum Office is referring the asylum application. Check the box(es) that apply after deletion of the ones that are not particular to the applicant.

TABLE OF APPENDICES

1. Explanation of Use of Appendices 1
2. Interview Interpretation Record (IIR) 2
3. Record of Applicant and Interpreter Oaths During An Interview 2
4. EOIR Data Field Chart 4
5. Notice of Scheduling of Fingerprinting Appointment – Employment Authorization Clock Stopped 7
6. Notice of Scheduling of Fingerprinting Appointment 8
7. Rescheduling of Asylum Interview – Interpretation Problems 9
8. Waiver of Presence of Representative During an Asylum Interview 10
9. Case Reschedule History 11
10. Retention of Original Documents 12
11. Pick-Up Notice 13
12. Mail-Out Notice 14
13. Response to Request to Add Dependent to Asylum Application 15
14. Removal of Child From Asylum Application 16
15. Removal of Former Spouse from Asylum Application 17
16. Removal of Dependent from Asylum Application (P.A. is Deceased) 18
17. Asylum Approval – Nunc Pro Tunc 19
18. Denial of Asylum Status as a Principal Applicant 22
19. Denial of Derivative Asylum Status 23
20. Impact of RAPS Actions on the "KLOK" 25
21. Notice of File Consolidation 27
22. Cancellation of Recommended Approval (Lack of USCIS Jurisdiction) 28
23. Request for Final Court Disposition(s) 29
24. Appointment for Sworn Statement/Request for Evidence (Rejection of Fingerprints) 30
25. Appointment for Sworn Statement/Request for Evidence (Waiver of Fingerprints) 32
26. Cancellation of Recommended Approval and Referral (Failure to Comply with Identity and security Check Procedures) 34
27. Cancellation of Recommended Approval and Dismissal (Failure to comply with Identity and security Check Procedures) 36
28. Cancellation of Recommended Approval (Reinstatement of a Prior Order) 37
29. Dismissal of Asylum Application Based on Failure to Comply with Identity and Security Check Procedures 38
30. Dismissal Of Asylum Application – Reinstatement of Prior Order 39
31. Dismissal Of Asylum Application – Failure to Appear 40
32. Rescheduling of an Asylum Interview 41
33. Notice of Change in Decision Service from Pick-Up to Mail-Out 42
34. Service Motion to Reconsider (Before EOIR) 43
35. Service Motion to Reconsider (Outside U.S.) 44
36. Notice of Rescission of Asylum Grant 45
37. Affirmation of Asylum Grant After Motion to Reconsider 46
38. Request for Evidence to Establish Residence 47
39. Notice of Intent to Terminate Asylum Status by USCIS 48
40. Notice of Termination of Asylum Status 51
41. Notice of Continuation of Asylum Status 52
42. Notice of Intent to Terminate Asylum Status by EOIR 53
43. Declaration of Intent to Withdraw Asylum Application 54

44. Assessment to Grant 55
45. Notice of Intent to Deny 58
46. Assessment to Refer 64
47. Standard Recommended Approval Letter 69
48. Recommended Approval After NOID 71
49. Standard Asylum Approval 73
50. Asylum Approval After NOID 76
51. Standard Referral Notice 79
52. Referral After NOID – No Rebuttal 83
53. Referral After NOID – Rebuttal 84
54. Referral Notice – 1-Year Deadline 85
55. Referral – Prior Denial 86
56. Standard Final Denial – No Rebuttal 87
57. Standard Final Denial – Rebuttal 88
58. Final Denial – Parole 89
59. Notice of Lack of Jurisdiction 90
60. Instructions for Dating Appendices 91
61. Quick Reference Table – Split Decisions 93
62. Asylum/NACARA 203 Processing Sheet for T-Files 94
63. Sworn Statement (Blank) 95
64. Notice of Institution of Removal Proceedings Following Positive Credible Fear Screening 96
65. Notice of Dismissal — Abandonment of Asylum Application 97
66. Lawful Permanent Resident Notice 98

1. EXPLANATION OF USE OF APPENDICES

These Appendices are intended as tools for the Asylum Offices to facilitate production of the types of letters and notices that the offices routinely use and also to foster national consistency in communicating decisions and notices of action to asylum seekers. There may be some circumstances where it is appropriate to deviate from the standard letters to explain unique or unusual situations.

Several of the Appendices are the content of form letters, which need to be placed on Asylum Office letterhead in proper letter format. We did not include address, date, salutation or signature slots, in the expectation that offices will transfer the content of the form letters into the format used by the Asylum Office, with letterhead and the Asylum Office Director's signature. Bracketed text should be removed and when applicable, the bold font should be removed. (This can be accomplished by selecting the bolded text and pressing the **B** on the standard tool bar or simultaneously pressing the CNTRL and letter "B" keys). Each letter should contain the applicant's address, the principal applicant's A-number, and dependent A-numbers, where applicable. If there is a representative of record there should be a "cc" for the representative under the signature block. Each letter issued to an applicant is to be copied for the A-file.

2. INTERVIEW INTERPRETATION RECORD (IIR)

A-Number: _____ Asylum Officer Name/ID#: _____

Language: _____ Interpreter Name/ID#: _____ ☐ Primary Interpreter ☐ Monitor

☐ Telephonic

☐ On-Site — reason for on-site interpretation:_____

Date: _____

Start (Connect) Time: _____

End (Disconnect) Time: _____

☐ Contractor unable to provide interpreter within 10 minutes during first attempt

☐ Contractor unable to provide interpreter within 10 minutes during second attempt (interview rescheduled)

☐ Contract interpreter had to be replaced — reason:_____

New Interpreter ID#: _____

New Interpreter Start (Connect) Time: _____

New Interpreter End (Disconnect) Time: _____

☐ Contract interpreter noted problems with applicant's interpreter

explanation: _____

_____

_____

Remarks: _____

3. RECORD OF APPLICANT AND INTERPRETER OATHS DURING AN INTERVIEW

Location of Interview	
Name of Individual being Interviewed	
Alien-Number of Individual	A
Individual's Native Language(s)	
Interpreter Used	☐ Yes ☐ No
Name of Interpreter	
Address of Interpreter	

Relationship of Interpreter to Applicant: ☐ Friend ☐ Family ☐ Professional (Paid) ☐ Professional (Unpaid) ☐ Other (specify):	
Identity Document(s) Presented by Interpreter, if any	
Languages Used by Interpreter	English and

DECLARATION OF INTERPRETER

- I am appearing today at the request of the individual whose name and Alien-number appear above.
- I speak and understand both English and the non-English language indicated above fluently, and know from conversing with the individual that we understand each other.
- I do solemnly swear/affirm to truthfully, literally and fully interpret the questions asked by the asylum officer and the answers given by the individual.
- I understand that DHS may choose to collect, retain, and verify the identity information I have provided.

Signature of Interpreter: _____

DECLARATION OF APPLICANT

- I am appearing today for an interview with an asylum officer concerning the request for asylum (Form I-589) that I filed with U.S. Citizenship and Immigration Services (USCIS).
- I understand that, under the laws of the United States, if I sign or submit a statement or document I know is false or has no reasonable basis in fact that pertains to a material fact in any application, affidavit, or other document required by the immigration laws or regulations, I may be fined or imprisoned not more than five years.
- I also understand that if I filed my asylum application on or after April 1, 1997, I may be forever barred from receiving any benefits under the Immigration and Nationality Act if I knowingly made a frivolous application for asylum. A frivolous application for asylum is an application that contains deliberately fabricated statements.
- I do solemnly swear/affirm to tell the truth, the whole truth, and nothing but the truth during my interview.

Signature of Applicant: _____

If applicant is proceeding in English without an interpreter:

- I understand that I have the right to have an interpreter present at my interview, at no expense to the government.
- I understand that I can be rescheduled to return another day for my interview with an interpreter of my choosing.
- I hereby certify that I am competent in the English language.
- I knowingly waive my right to have an interpreter present, and want to proceed with the asylum interview by myself.

Signature of Applicant: _____

The above oaths were signed and sworn to/affirmed before me on this _____ day of _____, _____

Signature of Asylum Officer: _____ **Asylum Officer ID Number:** ____

I certify that I am qualified to act as an Interpreter and that I have read the Declaration of Applicant to the individual named above. S/he stated that s/he understood me.

Signature of Interpreter: _____ **Date:** _____

4. EOIR DATA FIELD CHART

FIELD NAME	*DESCRIPTION*
CASE TYPE	**DEP**=Deportation; **EXC**=Exclusion; **REC**=Rescission; **RMV**=Removal; **CFR**=Credible Fear Review; **CSR**=Claimed Status Review; **AOC**=Asylum Only
RELATIONSHIP TO LEAD	**S**=Spouse; **C**=Child
BASE CITY	Court where charging documents filed
HEARING LOC	Court where hearing was/will be held
A-NUMBER	Applicant's A-number
PRIN A-NUMBER	Principal Applicant's A-number
EOIR NAME	Applicant's Last Name, First Name
EOIR NATIONALITY	Nationality provided by EOIR
CHARGE DOC	Date charging document issued
ASYLUM TYPE	**AFF**=Affirmative (referred by USCIS), **DEF**=Defensive (filed at EOIR)
CUSTODY	**DET**=Detained, **REL**=Detained at the time EOIR received case but subsequently released, **[BLANK]**=Never detained while pending at EOIR
CLOCK ELAPSED	Days elapsed since initial I-589 receipt date, less the number of days the clock was stopped
PROCEED REC	Receipt date of most recent proceeding for this A#/Charging Document date combination
INIT HEARING	Date of initial IJ hearing
CLOCK UPDATED	Date on which clock was last updated by EOIR
LAST HEARING	Date of latest IJ hearing
TYPE	Type of IJ Hearing: **MSTR**=Master, **INDV**=Individual
CLK STATUS	**RUNNING**, **TMP STOP** (stopped temporarily), **PRM STOP** (permanently stopped)
INIT RECD (CIS EOIR only)	Date asylum application received *at DOJ*
ASYL RECD	Date asylum application received *at EOIR* if defensive, *by USCIS* if affirmative
EOIR RECD	Date asylum application received *at EOIR*
IJ DECISN	**GNT**=Grant, **DEN**=Denial, **OTH**=Other, **CND**=Conditional Grant, **W/D or WDL**=Withdrawn, **ABN**=Abandoned, **[BLANK]**=Not decided
IJ COMPLETE	Date on which IJ decision was rendered
W/H DECISION	**GNT**=Grant, **DEN**=Denial, **OTH**=Other, **CND or C/G**=Conditional Grant, **WDL or W/D**=Withdrawn, **ABN**=Abandoned, **[BLANK]**=Not decided
EOIR DECISN	**DEPORT**, **VOL**untary departure, **RLF GNT** (relief granted), **OTHER**, **TERMIN**ate, **EXCLUDE**, **ADMIT**, **REMOVAL/REMOVE, RESCIND, SUSTAIN** (REC case type)**, AFF-NCR** (Affirmed-No Credible Fear),

FIELD NAME	*DESCRIPTION*
	VAC-C/F (Vacate-Credible Fear), **AFF-INS** (CSR case type USCIS decision affirmed). **VAC-V/S** (CSR case type alien's claimed status valid), **CON**ditional **GRa**N**t**, **GRANT** (Asylum-only), **DENY** (Asylum-only), **WITHDRW** (Asylum-only), **ABANDON** (Asylum-only)
OTHER COMPL	**ADMIN**, **Ch**ange of **VENU**e, **TRANSFR**, **TPS/ABC**, **FTP**, **OTHER, HAITIAN** (mass closing of Haitian cases)
MTR RECD	Date Motion To Reopen (MTR) was received by EOIR
DECISN	Decision on MTR; **GNT**=Grant, **DEN**=Denial, **OTH**=Other, **[BLANK]**=Not decided
DATE	Date on which MTR decision was made
APPEAL	Date on which appeal was filed with EOIR
APPLICATIONS FILED/DEC **212C** (212(c) waiver) **245ADJ** (245 – Adjustment) **VOL DEP** (voluntary departure) **WTHDRWL** (withdrawal – exclusion) **SUSPENS** (suspension) **EOIR 42A** (Application for Cancellation of Removal for Certain Permanent Residents) **EOIR 42B** (Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents)	Other associated actions arising at EOIR and their disposition **X** under *FILED* indicates which actions/applications were initiated Code under *DEC* indicates disposition **G**=Grant, **D**=Denied, **C**=Conditional Grant, **W**=Withdrawn, **O**=Other, **A**=Abandonment, **R**=Reserved, **F**=Failure if Decided
DECISN	**BIA Decisions: ABC**=American Baptist Church settlement, **ADR**=Administrative return, **CGR**=Any conditional grant of relief except CPC, **CON**=Continued, **CPC** (Conditional grant/CPC Asylum) **D30**=Dismissed (Grant V/D 30 days), **DED**=Deferred enforced departure, **DEN**=Denied, **DIS**=Dismiss Appeal/Affirm IJ Decision, **DMO**=Dismissed as Moot,**DNS**=Denied Soriano, **DSO**=Dismissed Soriano, **DUT**=Dismissed as Untimely, **DVD**=Dismissed (voluntary departure granted), **GRN**-Granted, **MB**=Moot Bond, **NJU**=Lacks jurisdiction (BIA), **OTH**=Other, **OTS**=Other Soriano, **REJ**=Rejection, **REM**=Remand, **SAD**=Summary Dismissal (inadequate), **SAF**=Summary affirmance, **SAV**=Summary affirmance/VD **SED**=Summary Dismissal (no brief), **SNC**=Special NACARA continuation, **SOD**=Summary Dismissal (other), **SUD**=Summary Dismissal, **SUP**=Suspension completion, **SUS**=Sustain, **TPS**=Temporary Protected Status, **WDL**=Withdrawal of Appeal
DATE	Date of appeal decision
FINAL DISP	Final Disposition: **ADM**inistrative **F**inal **R**emoval **O**rder, **FIN**al **V**oluntary **D**eparture, **NOT R/O** (not ordered removed)

FIELD NAME	*DESCRIPTION*
DATE	Date on which final disposition was decided
CHARGES (1) – (6)	Deportation/exclusion/removal/inadmissibility charges, up to six, expressed as INA section
APPLICANT ADDRESS	Address of applicant
ADDRESS DATE	Date address, name, language and/or nationality changed
PHONE	Applicant phone number
CASE ATTORNEY	Name of attorney/representative with appearance entered before EOIR
ADDRESS	Address of attorney/representative
APPEAL ATTORNEY	Name of appeal attorney
ADDRESS	Address of appeal attorney

5. NOTICE OF SCHEDULING OF FINGERPRINTING APPOINTMENT – EMPLOYMENT AUTHORIZATION CLOCK STOPPED

[Use for asylum applicant who appears for his or her scheduled asylum interview, but has failed to appear at an ASC for a scheduled fingerprinting appointment, and the failure to appear the ASC was caused by the applicant, and the applicant did not show good cause.]

Notice of Scheduling of Fingerprinting Appointment
Employment Authorization Clock Stopped

This letter refers to your request for asylum in the United States (Form I-589).

USCIS previously issued **[**you/your spouse/child, name, A# of dependent**]** a notice to appear at an Application Support Center to have your [his/her] fingerprints and photograph taken. Because **[**you/your spouse/child**]** failed to appear, another appointment letter is being issued, and will follow under separate cover. An asylum applicant is eligible to apply for employment authorization only after his or her asylum application has been pending for 150 days or more and then is eligible to receive employment authorization after the asylum application has been pending for more than 180 days. Those time periods are to be stopped or tolled if the applicant requests or causes any delays, including failing, without good cause, to comply with fingerprint processing, which is necessary to complete background security checks before your interview. [Your/your spouse/child/dependent] failure to appear at the ASC, without good cause, and have fingerprints and photos taken has also caused your asylum interview to be rescheduled. Due to these delays caused by [you/your dependent], [you /your dependent] may not apply for employment authorization if your asylum application has been pending fewer than 150 days because, that time period will be stopped until you [or name of dependent] appear at the Application Support Center, have your [or their] fingerprints and photograph taken, and return to the Asylum Office for your rescheduled asylum interview. If your application has been pending for 150 days or more and you have already applied for employment authorization, the time period during which USCIS adjudicates your employment authorization application (30-days) will also be stopped until you comply with these requirements. If **[**you do/your spouse/child does**]** not appear, this may be the final opportunity for **[**you/your spouse/child**]** to comply with fingerprint processing requirements.

IMPORTANT NOTICE:

Failure to comply with fingerprint processing requirements may result in a waiver of the right to an adjudication by an asylum officer, and the dismissal of your asylum application or referral to an immigration judge. *See* 8 CFR 208.10. If [you/your spouse/child] is not maintaining a lawful immigrant, nonimmigrant or Temporary Protected Status, [you/your spouse/child] may be placed in removal proceedings.

6. NOTICE OF SCHEDULING OF FINGERPRINTING APPOINTMENT

[Use for asylum applicant who appears for his or her scheduled asylum interview, but has failed to appear at an ASC for a scheduled fingerprinting appointment, and the failure to appear at the ASC is caused by USCIS or caused by applicant, but the applicant showed good cause.]

Notice of Scheduling of Fingerprinting Appointment

This letter refers to your request for asylum in the United States (Form I-589).

USCIS previously issued **[**you/your spouse/child, name, A# of dependent**]** a notice to appear at an Application Support Center to have your [his/her] fingerprints and photograph taken. Because **[**you/your spouse/child**]** failed to appear, another appointment letter is being issued, and, if not provided to you today, will follow under separate cover. Your asylum interview is being rescheduled in order to provide you the opportunity to appear at the Application Support Center, have your fingerprints and photograph taken, and return to the Asylum Office for your asylum interview. If **[**you do/your spouse/child does**]** not appear, this may be the final opportunity for **[**you/your spouse/child**]** to comply with fingerprint processing requirements. Since you have demonstrated good cause for your failure to appear at your originally scheduled ASC appointment for fingerprinting, your eligibility to apply for employment authorization if your asylum application has been pending 150 days or more is not affected.

IMPORTANT NOTICE:

Failure to comply with fingerprint processing requirements may result in a waiver of the right to an adjudication by an asylum officer, and the dismissal of your asylum application or referral to an immigration judge. *See* 8 CFR 208.10. If [you/your spouse/child] is not maintaining a lawful immigrant, nonimmigrant or Temporary Protected Status, [you/your spouse/child] may be placed in removal proceedings.

7. RESCHEDULING OF ASYLUM INTERVIEW – INTERPRETATION PROBLEMS

Rescheduling of Asylum Interview – Interpretation Problems

You were scheduled to appear on **[date]** for an appointment at this office regarding your asylum application. The appointment notice advised you to bring an interpreter with you to the asylum interview. Your interpreter must be **fluent** in both English and your native language; must be at least 18 years old; and cannot be your attorney, your representative, or a witness testifying on your behalf.

You were not accompanied by an interpreter meeting the above criteria. The asylum interview must be cancelled for that reason and will be rescheduled. You will receive an appointment notice in the mail informing you of the date and time of your rescheduled interview. Your failure to appear at the rescheduled interview with an interpreter who meets all of the above criteria may result in the referral of your case to an immigration judge.

Note: If your asylum application was filed on or after January 4, 1995, the 150-day waiting period during which you may not apply for employment authorization will be suspended until the date of the rescheduled interview. Your failure without good cause to appear at the rescheduled asylum interview with an interpreter who meets all of the above criteria may be treated as a failure to appear for your asylum interview, and may result in the dismissal of the asylum application, waiver of the right to an adjudication by an asylum officer, and/or the referral of your case to an immigration judge. 8 CFR 208.9(g), 208.10. If your case is referred to an immigration judge because you failed to bring a competent interpreter, you will not be eligible to apply for employment authorization unless you establish exceptional circumstances for such failure or unless the immigration judge grants your asylum application.

Applicant's Signature: _____ Date: _____

_____
Issuing Employee's Signature

8. WAIVER OF PRESENCE OF REPRESENTATIVE DURING AN ASYLUM INTERVIEW

Location of Interview	
Date of Interview	
Name of Individual being Interviewed	
Alien-Number of Individual	A
Name of Representative as it Appears on Form G-28	

DECLARATION OF APPLICANT

- I understand that the representative named above has filed a G-28, *Notice of Entry of Appearance,* on my behalf with U.S. Citizenship and Immigration Services (USCIS), indicating that s/he is to represent me in connection with my asylum application.
- I understand that I may have this representative or another representative present during my asylum interview.
- I knowingly waive my right to have a representative present, and want to proceed with the asylum interview by myself and without a representative.

Signature of Applicant: _____

I certify that I am qualified to act as an Interpreter and that I have read the above statements to this applicant. S/he stated that s/he understood me.

Signature of Interpreter: _____

Signature of Asylum Officer: _____Asylum Officer ID _____

9. CASE RESCHEDULE HISTORY

Alien-Number: A _____

Name of Applicant: _____

☐ Representative failed to arrive for the interview and applicant does not wish to proceed.
☐ Applicant wants to seek representation.
☐ Interpretation problem (indicate one):

- ☐ No Interpreter
- ☐ Incompetent Interpreter
- ☐ Other (specify): _____

_____

☐ Applicant no longer lives within the jurisdiction of the asylum office.
☐ Applicant requested the reschedule (specify): _____

_____

☐ Representative requested the reschedule (specify): _____

_____

☐ USCIS rescheduled the interview (specify):_____

_____

☐ Other reason caused by: ☐ USCIS
☐ applicant

(specify):_____

_____

Reschedule Authorized by: _____ Date: _____
(Signature of USCIS Officer required for all reschedules)

If the rescheduling is caused by the applicant or the representative of record, the applicant and/or representative was made aware of the following:

> If the asylum application was filed on or after January 4, 1995, this rescheduling is a delay caused by the applicant and cannot be counted as part of the 150-day period before he or she can apply for employment authorization. Time counted toward the 150-day period will resume when the applicant appears for the rescheduled interview.

Applicant's or Representative's Signature: _____
(*Signature required only if the reschedule is at the request of the applicant or representative*)

Number of times the interview has been rescheduled: 1 2 3 4 5 ___
(Circle one or indicate #)

10. RETENTION OF ORIGINAL DOCUMENTS
(rev. January 2005)

Retention of Original Documents

This letter refers to your request for asylum in the United States (Form I-589).

At your asylum interview, you submitted the following original documents in support of your claim that were retained by the asylum officer for further review:

- **[list document name]**
- **[list document name]**
- **[list document name]**

[This/These**]** documents were subsequently submitted for forensic analysis by the Department of Homeland Security's Forensic Document Laboratory (FDL). Upon examination, the documents were not found to be genuine.

U.S. Citizenship and Immigration Service (USCIS) must, therefore, retain **[this/these]** original document**[s]**; however, we have enclosed copies of the documents for your records.

11. PICK-UP NOTICE
(Rev. 08/07)

Decision Regarding Your Application for Asylum
-Pick-Up Notice-

You have just completed your interview with an Asylum Officer. **You must appear in person at this office** on the date and time indicated below to receive the Asylum Officer's decision on your application. All family members listed on your Form I-589, Application for Asylum and for Withholding of Deportation, must appear with you when you return to receive the decision on your application.

You will not be informed of the decision before that time. When you come back to pick up your decision, please bring this Notice and a form of identification, if available.

If you used the services of an interpreter during today's asylum interview, we suggest that you return with an interpreter. This interpreter may be helpful if you have questions about your application at that time.

Your signature below establishes that you received this Notice and that this Notice was explained to you at the asylum interview.

Appear at this office on: _____ (date and time)

Applicant's signature: _____

Officer's signature: _____

Employment Authorization: If your asylum application was filed on or after January 4, 1995, failure to appear on the date above to pick up your decision will affect your eligibility to apply for employment authorization under 8 CFR 208.7(a)(1). An asylum applicant may request employment authorization by applying 150 days after a complete asylum application is filed. This 150-day period will be suspended if you fail to appear on the above date to pick up your decision. If your case is referred to an immigration judge, the 150-day period will not resume until you appear before the immigration judge.

If you are granted asylum and you fail to return to pick up your decision as instructed, you and your eligible family members will receive an Employment Authorization Document (I-766), with a validity period of two years, in the mail within seven to ten days of the date that your grant letter is mailed to you.

12. MAIL-OUT NOTICE

Decision Regarding Your Application For Asylum
-Mail-out Notice -

You have just completed your interview with an Asylum Officer. **You are *not* required to appear in person at this office** to receive the Asylum Officer's decision on your application. Rather, the decision will be mailed to the most recent address you provided this office.

In order to ensure delivery of your decision, you must report any change of address to this office within ten (10) days of such change. The mailing of your decision will not affect your eligibility to apply for employment authorization under 8 CFR 208.7(a)(1). You may request employment authorization by applying 150 days after filing a complete asylum application.

Your signature below establishes that you received this Notice and that this Notice was explained to you at the asylum interview.

Applicant's signature: _____

13. RESPONSE TO REQUEST TO ADD DEPENDENT TO ASYLUM APPLICATION

(rev. January 2005)
[Only use this letter if P.A. has already been interviewed]

Response to Request to Add Dependent to Asylum Application

This letter refers to your request for asylum in the United States (Form I-589).

You requested the addition of your **[**spouse/child(ren)**], [Name(s)],** on your asylum application, which is currently pending with this office. In order to add **[**this/these**]** individual(s) to your case, **[**s/he/they**]** must appear at the asylum office for an interview. This interview is not to discuss the details of the asylum application. U.S. Citizenship and Immigration Services (USCIS) must verify the identity and physical presence in the U.S. of your dependent(s), establish your **[**parent/child and/or spousal] relationship, and ensure **[**they/s/he**] [**is/are**]** not subject to any bars to asylum eligibility or ineligible to be added as a dependent.

You and your dependent(s) must appear on the following date at the appointed time and place:

Interview Date: _____

Time: _____a.m.

Place: **[Address of Interview Location]**

On the date indicated above you and your dependent(s) must bring a written form of identification, if available, showing: name, date and place of birth, and nationality; the original and 3 copies of evidence of your relationship to your dependent(s) (marriage or birth certificates, or affidavits). If you cannot speak English fluently, you must bring a competent interpreter at least 18 years old who is not your attorney, representative, or witness.

If you and your dependent(s) fail to appear, USCIS will not add your dependent to your asylum application.

14. REMOVAL OF CHILD FROM ASYLUM APPLICATION

Removal of Child from Asylum Application

This letter refers to your request for asylum in the United States (Form I-589).

Our records indicate that your child, **[Name], [A-number of child]** is no longer eligible to be included as a dependent on your asylum application. Regulations provide that a principal asylum applicant may include as a dependent on his/her application unmarried children under the age of 21 at the time the asylum application is filed, if they are in the United States. When you applied for asylum, your child was unmarried. Your child is now married and can no longer be included as a dependent on your asylum application.

Your child must file a separate Form I-589, *Application for Asylum and for Withholding of Removal*, in order to pursue asylum in the United States. Your child should follow the instructions attached to the Form I-589 in preparing the application. **Please submit the completed Form I-589 directly to this office and include a copy of this letter with the application**. Your child must submit the requested materials within one year from your child's date of last arrival in the United States or within a reasonable amount of time following this notice, taking into account all relevant circumstances, to remain eligible to apply for asylum. See 8 CFR 208.4(a) and 208.4(a)(4) and Part 1 of the I-589 instructions for more information.

Any recommended approval previously issued to your child based upon the recommended approval of your asylum application is canceled, effective the date of this letter. Any work authorization that s/he received based upon a recommended approval cannot be renewed beyond its scheduled expiration date and is subject to revocation after notice by a District Director.

Your child should include **[**his/her**]** alien registration number on the asylum application, and on any correspondence with U.S. Citizenship and Immigration Services (USCIS).

15. REMOVAL OF FORMER SPOUSE FROM ASYLUM APPLICATION
(rev. January 2005)

Removal of Former Spouse from Asylum Application

This letter refers to your request for asylum in the United States (Form I-589).

Our records indicate that your former spouse, **[Name], [A-number of spouse]** is no longer to be included as a dependent on your asylum application because you have divorced. Your former spouse must file a separate Form I-589, *Application for Asylum and for Withholding of Removal*, in order to pursue asylum in the United States. Your former spouse should follow the instructions attached to the Form I-589 regarding filing in preparing the application. **Please submit the completed Form I-589 directly to this office and include a copy of this letter with the application**. Your spouse must submit the requested materials within one year from his or her last arrival in the United States, or within a reasonable amount of time following this notice, taking into account all relevant circumstances, to remain eligible to apply for asylum. See 8 CFR 208.4(a) and 208.4(a)(4) and Part 1 of the I-589 instructions for more information.

Any recommended approval previously issued to your former spouse based upon the recommended approval of your asylum application is canceled, effective the date of this letter. Any work authorization that s/he has received based upon a recommended approval cannot be renewed beyond its scheduled expiration date and is subject to revocation after notice by a District Director.

Your former spouse should include **[**his/her**]** alien registration number on the asylum application, and on any correspondence with U.S. Citizenship and Immigration Services (USCIS).

16. REMOVAL OF DEPENDENT FROM ASYLUM APPLICATION (P.A. IS DECEASED)

(rev. January 2005)

Removal of Dependent from Asylum Application

This letter refers to the request for asylum in the United States (Form I-589) filed by your **[**spouse/parent**], [Name of deceased P.A], [A-number of deceased P.A]**.

We regret to inform you that, because of the death of your **[**spouse/parent**]**, you can no longer be included in your **[**spouse's/parent's**]** asylum application. To pursue asylum in the United States, you must file a separate Form I-589, *Application for Asylum and for Withholding of Removal*. You should follow the instructions attached to the Form I-589 in preparing the application. **Please submit the completed Form I-589 directly to this office and include a copy of this letter with the application**. You must submit the requested materials within one year from your last date of arrival or within a reasonable amount of time following this notice, taking into account all relevant circumstances, to remain eligible to apply for asylum. See 8 CFR 208.4(a) and 208.4(a)(4) and Part 1 of the I-589 instructions for more information.

Any recommended approval previously issued to you based upon the recommended approval of your **[**spouse's/parent's**]** asylum application is canceled, effective the date of this letter. Any work authorization that you have received based upon a recommended approval cannot be renewed beyond its scheduled expiration date and is subject to revocation after notice by a District Director.

You should include your alien registration number on the request for asylum, or on any correspondence with U.S. Citizenship and Immigration Services (USCIS).

17. ASYLUM APPROVAL – NUNC PRO TUNC
(Rev. October 2007)

Asylum Approval

This letter refers to your request for asylum in the United States (Form I-589).

It has been determined that you are eligible for asylum in the United States. Attached please find a completed Form I-94, Arrival Departure Record, indicating that you have been granted asylum status in the United States pursuant to § 208(a) of the Immigration and Nationality Act (INA) as of _____. **[This date corresponds to the date that the individual was granted derivative asylum by USCIS or EOIR, or the date of the individual's arrival in the U.S. pursuant to an approved Form I-730.]** The date reflects a grant of asylum *nunc pro tunc* back to the date of your **[**original grant of asylum as a derivative of a spouse/parent**] OR [**arrival in the United States pursuant to an approved Form I-730, *Refugee/Asylee Relative Petition*.**]** Because you are obtaining asylum status *nunc pro tunc* (back to an earlier date), you are not eligible to add or apply for dependent family members to receive derivative asylum status.

You have been granted asylum in the United States for an indefinite period; however, asylum status does not give you the right to remain permanently in the United States. Asylum status may be terminated if you no longer have a well-founded fear of persecution because of a fundamental change in circumstances, you have obtained protection from another country, or you have committed certain crimes or engaged in other activity that makes you ineligible to retain asylum status in the United States. See INA § 208(c)(2).

Now that you are an asylee, you may apply for certain benefits, which are listed below. You are also responsible for complying with certain laws and regulations, if such laws and regulations apply to you. These responsibilities are also explained in this letter. We recommend that you retain the original of this letter as proof of your status and that you submit copies of this letter when applying for any of the benefits or services listed below. You may obtain any of the forms mentioned in this letter by visiting a USCIS district office or calling the USCIS forms request line at 1-800-870-3676. You may also download forms from the public Internet by signing on to the USCIS web site at http://www.uscis.gov.

Benefits

1. Employment Authorization

You are authorized to work in the United States for as long as you remain in asylum status. In order to work in the United States, every employee must show to a prospective employer certain documentation as proof of employment authorization. That proof may consist of, among other things, an unrestricted social security card and a state-issued driver's license. It may also consist of an unexpired employment authorization document issued by USCIS. For a list of all documents that can be accepted by an employer as proof of employment authorization, consult the Form I-9, *Employment Eligibility Verification,* available on the USCIS web site at http://www.uscis.gov/files/form/i-9.pdf.

2. Social Security Cards

You may immediately apply for an unrestricted Social Security card at any Social Security office. To get an Application for a Social Security Card (Form SS-5) or to get more information about applying for a Social Security card use http://www.ssa.gov on the Internet, call the toll-free number 1-800-772-1213, or visit a local Social Security office. When you go to a Social Security office to apply for a Social Security card, you must take your I-94 card showing you have been granted asylum status. If available, you should also take some

kind of identity document, such as an EAD or your passport. For directions to the Social Security office nearest to you, call the SSA toll-free number or visit the web site listed above.

3. Employment Assistance

You are eligible to receive a variety of services under Title I of the Workforce Investment Act of 1998. Such services include job search assistance, career counseling, and occupational skills training. These and other services are available at local One-Stop Career Centers. To obtain information about the Center nearest you, please call 1-877-US2-JOBS. The information is also available on-line through America's Service Locator at http://www.servicelocator.org.

4. Adjustment of Status

You may apply for lawful permanent resident status under section 209(b) of the Immigration and Nationality Act after you have been physically present in the United States for a period of one year after the date you were granted asylum status. To apply for lawful permanent residence status, you must submit a separate Form I-485, *Application to Register Permanent Residence or Adjust Status*, for yourself and each qualifying family member to the address indicated in the instructions to that form.

5. Assistance and Services through the Office of Refugee Resettlement (ORR)

You may be eligible to receive assistance and services through the Office of Refugee Resettlement (ORR). ORR funds and administers various programs, which are run by state and private, non-profit agencies throughout the U.S. The programs include cash and medical assistance, employment preparation and job placement, and English language training. Many of these programs have time-limited eligibility periods that begin from the date of your grant of asylum. Therefore, if you wish to seek assistance, it is important that you do so as soon as possible after receipt of this letter. To find out what programs are available and where to go for assistance and services in your state, **please call (800) 354-0365.** You also may sign on to the ORR web site at http://www.acf.dhhs.gov/programs/orr.

Responsibilities

1. Departing from the United States

If you plan to depart the United States, you must obtain permission to return to the United States before you leave this country by obtaining a refugee travel document(s). A refugee travel document may be used for temporary travel abroad and is required for re-admission to the United States as an asylee. If you do not obtain a refugee travel document in advance of your departure, you may be unable to re-enter the United States, or you may be placed in removal proceedings before an immigration judge. You may apply for a Refugee Travel Document by each submitting a Form I-131, *Application for Travel Document*, with the required fee or request for fee waiver under 8 C.F.R. 103.7(c) to the Nebraska Service Center, P.O. Box 87131, Lincoln, NE 68501-7131.

2. Changes of Address

You must notify USCIS of any change of address within ten days of any such change. You may obtain a Form AR-11, Alien's Change of Address Card at your nearest post office or USCIS office to comply with this requirement.

3. Selective Service Registration

All male asylees between the ages of 18 and 26 must register for the Selective Service. To obtain information about the Selective Service and how to register, you may sign on to the Selective Service web site at

http://www.sss.gov or obtain a Selective Service "mail-back" registration form at your nearest post office.

Note: Please write your full name, date of birth, and A number on any correspondence you have with USCIS.

Enclosure: I-94 Card(s)

18. DENIAL OF ASYLUM STATUS AS A PRINCIPAL APPLICANT
(rev. January 2005)

Final Denial of Asylum Status as a Principal Applicant

This letter refers to your request for asylum in the United States (Form I-589).

You were previously issued a Notice of Intent to Deny (NOID) your asylum claim.

[IF APPLICANT DID NOT SUBMIT A REBUTTAL, INSERT THIS PARAGRAPH]
You were afforded sixteen (16) days in which to offer evidence or argument in rebuttal to the discussion in the NOID. You failed to submit information to rebut the proposed grounds for denial.

OR
[IF APPLICANT SUBMITTED A REBUTTAL, INSERT THIS PARAGRAPH AND EXPLAIN WHY THE INFORMATION DID NOT OVERCOME THE GROUND(S) OUTLINED IN THE NOID]
You were afforded sixteen (16) days in which to offer evidence or argument in rebuttal to the discussion in the NOID. The information you submitted, however, failed to overcome the grounds for denial as stated in the NOID for the following reasons: **[Explain Reasons]**

Your asylum request is therefore denied as of **[This date corresponds to the FDEC date in RAPS].** for the reasons contained in the NOID. There is no appeal from this decision. This denial includes the dependents included in your asylum application, who are listed on the first page of this letter.

Although you have been denied asylum as a principal applicant, you remain an asylee based upon the derivative grant of asylum you received as a dependent. Please be advised that any employment authorization you have been issued remains valid, and may be renewed upon its expiration. You are directed to report any changes of address to the office having jurisdiction over your place of residence. If you should depart the United States, please notify the USCIS office having jurisdiction over your place of residence prior to any such departure and furnish the expected date, place, and manner of departure and destination.

19. DENIAL OF DERIVATIVE ASYLUM STATUS
(rev. January 2005)

Denial of Derivative Asylum Status

This letter refers to your request for asylum in the United States (Form I-589).

Based on the results of a mandatory, confidential investigation of the identity and background of your **[**spouse/child**, [Name], [A-number]**, we have determined that s/he is ineligible to receive derivative asylum status because:

1. ☐ Your spouse/child is barred by statute from a grant of asylum for the following reason(s):
   - ☐ Your spouse/child was convicted of an aggravated felony or other particularly serious crime.
   - ☐ There are reasonable grounds for regarding your spouse/child as a danger to the security of the United States.
   - ☐ Your spouse/child is described within section 212(a)(3)(B)(i)(I), (II) or (III) of the Act.
   - ☐ Evidence indicates that your spouse/child ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion.
   - ☐ For applications filed on or after April 1, 1997, there are serious reasons for believing that your spouse/child has committed a serious nonpolitical crime outside of the U.S. prior to his or her arrival in the U.S.

2. ☐ Your spouse/child is currently under the jurisdiction of the immigration court and is therefore ineligible to derive asylum status through you. Please direct any questions concerning this matter to the Immigration Court having jurisdiction in your dependent's case. The address of the court is: - Office of the Immigration Court, **[insert address]**

3. ☐ A review of the records of the Department of Homeland Security (DHS) revealed that on **[date]**, DHS reinstated a prior order of exclusion, deportation or removal that had been issued against your spouse/child.

   Section 241(a)(5) of the Immigration and Nationality Act (INA) requires DHS to reinstate an exclusion, deportation or removal order if an individual subject to the order leaves the United States and re-enters the U.S. illegally. Once a prior order has been reinstated, the person is not eligible to apply for any relief under the INA, including asylum.

   Although your spouse/child is ineligible to apply for any relief under the INA, including asylum, he or she may be eligible to apply for withholding of removal under section 241(b)(3) of the INA and under the *Convention Against Torture*. If your spouse or child requests such an interview, an asylum officer will interview him or her to see if he or she has a reasonable fear of persecution or torture in his or her native country or place of last habitual residence, if stateless.

USCIS therefore denies derivative asylum status to your **[**spouse/child**, [Name]** effective **[date]**. Any recommended approval previously issued to him/her is hereby canceled. There is no appeal from this decision.

Your **[**spouse/child**]** is not eligible to apply for employment authorization based on any previous recommended approval of your asylum request. Any employment authorization s/he may have received will expire sixty (60) days from the date of this notice or on the expiration date of the Employment Authorization Document, whichever period is longer.

[Insert this paragraph only if the asylum office Director will issue an NTA to the dependent]

Your **[**spouse/child**]** will receive a Notice of Appear (Form I-862) under separate cover, which will place him/her under removal proceedings. If s/he wishes to pursue a request for asylum, s/he must file a Form I-589, *Application for Asylum and for Withholding of Removal*, with the Immigration Judge.

20. IMPACT OF RAPS ACTIONS ON THE "KLOK"

Event	RAPS Action	Impact on KLOK
Add Interview to the Schedule	ADDC	Restarts stopped KLOK as of new interview date.
Asylum Office Admin. Closes I-589	CLOS	Stops KLOK.
Asylum Office refers I-589 to immigration court	FDEC (I1-I7)	None.
Asylum Office denies asylum status (final denial)	FDEC (D1-D7)	KLOK stops.
Asylum Office issues NTA after final denial (e.g., after a dismissal of a Motion to Reopen/Reconsider) because the applicant is no longer in status – NOT A REFERRAL	OSCG/OSSE	None. (KLOK will start anew if the applicant files a new asylum application with EOIR.)
Applicant requests additional time to submit documents	HOLD – AD	KLOK stops. Restarts when taken from HOLD in RAPS
USCIS Receives I-589	I589	Starts KLOK as of Filing Date
Applicant Fails to Appear for Interview	NOSH	Stops KLOK. Restarts on date of next interview, if any
Applicant Fails to Appear at ASC for Biometrics Collection/ Fingerprinting During Required 14-Day Period	Automatic	Stops KLOK.
Asylum Office approves asylum status	PDEC (GR)/ FDEC (G1)	None. Applicant may apply for an EAD.
Applicant Fails to Appear for Pick-Up of Decision	PUNS	Stops KLOK.
Pick-up Appointment Canceled ***at fault of Applicant***	PUSH (Cancelled ***at fault of Applicant***)	Stops KLOK. Restarts on new pick-up date, if any.
Interview Canceled ***at fault of Applicant***	REMC (Cancelled ***at fault of Applicant***)	Stops KLOK. Restarts on date of next interview, if the applicant appears.

Event	RAPS Action	Impact on KLOK
Interview Canceled ***at fault of USCIS***	REMC (Cancelled ***at fault of USCIS***), CANS	None
Asylum Office Reopens I-589	REOP	Restarts KLOK on new interview day, if the applicant appears.

21. NOTICE OF FILE CONSOLIDATION

(rev. January 2005)

Notice of File Consolidation

Records of the Department of Homeland Security (DHS) indicate that **[indicate number]** Alien Registration Numbers have been assigned to you. They are **[list the A-numbers]**.

This letter is to inform you that we have consolidated all of your DHS records under one Alien Registration Number, **[indicate the A-number]**. Please use this number in any future correspondence with U.S. Citizenship and Immigration Services (USCIS).

If any other Alien Registration Numbers have been assigned to you and they are not listed above, please make a copy of this letter and write the Alien Registration Number(s) on it. Please return the copy of the letter with the additional Alien Registration Number(s) to our office at the address above.

22. CANCELLATION OF RECOMMENDED APPROVAL (LACK OF USCIS JURISDICTION)

(rev. January 2005)
[Use this letter if a recommended approval was previously issued, but the applicant is under the jurisdiction of EOIR]

Cancellation of Recommended Approval based upon
Lack of USCIS Jurisdiction over Asylum Application

This letter refers to your request for asylum in the United States (Form I-589).

You previously received a letter from this office recommending approval of your asylum application pending the results of the mandatory, confidential investigation of your identity and background. A review of the records of the Department of Homeland Security (DHS) revealed that you were previously before the Immigration Court **[**under a different name**, [NAME], [A#]**. **[If applicable:** An **[***absentia***]** Order of **[**Removal / Deportation / Exclusion**]** was entered in your case on **[DATE]]**.

Only an Immigration Judge may decide an asylum application filed by a person who has been placed in deportation, exclusion or removal proceedings. Since this office does not have jurisdiction over your asylum request, this office has cancelled your recommended approval and dismissed your asylum application as of **[This date corresponds to the date the asylum office administratively closes the application in RAPS (CLOS screen – C4)].** [This includes the dependents included in your asylum application, who are listed above]. Any work authorization that you have received based upon the Recommended Approval letter cannot be renewed beyond its scheduled expiration date and is subject to revocation after notice by a District Director.

You should direct any questions about your asylum request or removal proceedings to the immigration court having jurisdiction in your case. In addition, you must notify the immigration court of any change of your address. The address of the court is:

Office of the Immigration Court
[address]

23. REQUEST FOR FINAL COURT DISPOSITION(S)

Request for Final Court Disposition(s)

This letter refers to your request for asylum in the United States (Form I-589).

You were previously informed that your request for asylum was recommended for approval pending receipt by U.S. Citizenship and Immigration Services (USCIS) of the results of a mandatory, confidential investigation of your identity and background.

Upon completion of this investigation, USCIS learned that **[**you/your spouse/child, **Name, A-number]** **[**has/have**]** an arrest history. In particular, **[**You/Your spouse/child**],** must provide the following for **[insert the arrest information from the RAP sheet, including date, city, and state of arrest, and offense]**:

- Originals or certified copies of all final court dispositions, including those that have been dismissed, expunged, diverted, *nolle prosse* and "no papered."
- If a court disposition or police record is not available, you must provide official or certified evidence from the appropriate law enforcement agency or court confirming the unavailability of the record.

All documentation or evidence of its unavailability must be marked as official or certified copies.

[You/your spouse/child**]** must submit the requested documentation within **60 days** of the date of this letter to the address noted above to the attention of: _____. If the office from which you are requesting records is unable to provide them in time to meet this deadline, please obtain information about this inability in writing, if available, and notify the asylum office in writing before the expiration of the 60-day period to the attention of the person listed above.

IMPORTANT NOTICE:

Failure to comply with this requirement may result in the cancellation of the recommended approval that was previously issued to [you/your spouse/child], waiver of the right to an adjudication by an asylum officer, and the dismissal of the asylum application or referral to an immigration judge. *See* 8 CFR 208.10. If [you/your spouse/child is/are] not maintaining a lawful immigrant, nonimmigrant or Temporary Protected Status, [you/your spouse/child] may be placed in removal proceedings.

24. APPOINTMENT FOR SWORN STATEMENT/REQUEST FOR EVIDENCE (REJECTION OF FINGERPRINTS)

[Letter requests police clearance *and* sworn statement. If one or the other has already been completed, delete the corresponding paragraph(s) before sending to the applicant.]

Appointment for Sworn Statement / Request for Evidence
(Rejection of Fingerprints)

This letter refers to your request for asylum in the United States (Form I-589).

You were previously informed that your request for asylum was recommended for approval pending receipt by U.S. Citizenship and Immigration Services (USCIS) of the results of a mandatory, confidential investigation of your identity and background.

USCIS records show that, on two separate occasions, the fingerprints submitted by **[you/your son/daughter/spouse, name of dependent(s)]** could not be processed. **[You/your son/daughter/spouse]** must, therefore, submit the following:

- A statement from the police department in each U.S. locality (town or city) where **[you/your son/daughter/spouse]** lived for any period of time during the past five (5) years, indicating **[your/his/her]** police record, or lack of a record.

If **[**you/your spouse/child have/has**]** ever been arrested, cited, charged, indicted, convicted, fined or imprisoned, you must obtain the following:

- Originals or certified copies of all final court dispositions, including those that have been dismissed, expunged, diverted, *nolle prosse* and "no papered."
- If a court disposition or police record is not available, you must provide official or certified evidence from the appropriate law enforcement agency or court confirming the unavailability of the record.

All documentation or evidence of unavailability must be marked as official or certified copies.

[You/your spouse/child**]** must submit the requested documentation within **60 days** of the date of this letter to the address noted above to the attention of: _____. If the office from which you are requesting records is unable to provide them in time to meet this deadline, please obtain information about this inability in writing, if available, and notify the asylum office in writing before the expiration of the 60-day period to the attention of the person listed above.

In addition to obtaining the police clearance(s) and related documents, you must complete a Sworn Statement before a USCIS Officer. **[Each asylum office determines whether to schedule the applicant for a specific appointment with a USCIS Officer in order to complete the sworn statement, or whether to allow an applicant to come into the office anytime during office hours. This letter must inform the applicant of the policy chosen by the asylum office.]**

IMPORTANT NOTICE:

Failure to submit the requested documentation within the allotted time or failure to appear to complete the sworn statement may result in the cancellation of the recommended approval that was previously issued to [you/your spouse/child], waiver of the right to an adjudication by an asylum officer, and the dismissal of the asylum application or referral to an immigration judge. *See* 8 CFR 208.10. If [you/your spouse/child is/are] not maintaining a lawful immigrant, nonimmigrant or Temporary Protected Status, [you/your spouse/child] may be placed in removal proceedings.

25. APPOINTMENT FOR SWORN STATEMENT/REQUEST FOR EVIDENCE (WAIVER OF FINGERPRINTS)

[Letter requests police clearance *and* sworn statement. If one or the other has already been completed, delete the corresponding paragraph(s) before sending to the applicant.]

Appointment for Sworn Statement / Request for Evidence
(Waiver of Fingerprints)

This letter refers to your request for asylum in the United States (Form I-589).

You were previously informed that your request for asylum was recommended for approval pending receipt by U.S. Citizenship and Immigration Services (USCIS) of the results of a mandatory, confidential investigation of your identity and background.

USCIS may have already notified you that the fingerprint requirement for **[you/your son/daughter/spouse, name of dependent(s)]** was waived. Therefore, you must obtain a police clearance from the police department in each U.S. locality (town or city) where **[you/your son/daughter/spouse]** lived for any period of time during the past five (5) years, indicating **[your/his/her]** police record, or lack of such record. Additionally, if **[**you/your spouse/child have/has**]** ever been arrested, cited, charged, indicted, convicted, fined or imprisoned, you must obtain the following:

- Originals or certified copies of all final court dispositions, including those that have been dismissed, expunged, diverted, *nolle prosse* and "no papered."
- If a court disposition or police record is not available, you must provide official or certified evidence from the appropriate law enforcement agency or court confirming the unavailability of the record.

All documentation or evidence of unavailability must be marked as official or certified copies.

[You/your spouse/child] must submit the requested documentation within **60 days** of the date of this letter to the address noted above to the attention of: _____. If the office from which you are requesting records is unable to provide them in time to meet this deadline, please obtain information about this inability in writing, if available, and notify the asylum office in writing before the expiration of the 60-day period to the attention of the person listed above.

In addition to obtaining the police clearance(s) and related documents, you must complete a Sworn Statement before a USCIS Officer. **[Each asylum office determines whether to schedule the applicant for a specific appointment with a USCIS Officer in order to complete the sworn statement, or whether to allow an applicant to come into the office anytime during office hours. This letter must inform the applicant of the policy chosen by the asylum office.]**

IMPORTANT NOTICE:

Failure to submit the requested documentation within the allotted time or failure to appear to complete the sworn statement may result in the cancellation of the recommended approval that was previously issued to [you/your spouse/child], waiver of the right to an adjudication by an asylum

officer, and the dismissal of the asylum application or referral to an immigration judge. *See* 8 CFR 208.10. If [you/your spouse/child is/are] not maintaining a lawful immigrant, nonimmigrant or Temporary Protected Status, [you/your spouse/child] may be placed in removal proceedings.

26. CANCELLATION OF RECOMMENDED APPROVAL AND REFERRAL (FAILURE TO COMPLY WITH IDENTITY AND SECURITY CHECK PROCEDURES)

(Rev. October 2006)

[Use this letter if a recommended approval was previously issued, but applicant failed to follow identity check procedures, and applicant is out-of-status.]

Cancellation of Recommended Approval based upon
Failure to Follow Identity Check Procedures

This letter refers to your request for asylum in the United States (Form I-589).

You previously received a letter from this office recommending approval of your asylum application pending the results of the mandatory, confidential investigation of your identity and background.

Failure to comply with identity check procedures without good cause constitutes a waiver of the right to an adjudication by an asylum officer. *See* 8 CFR 208.10.

INSERT THE NEXT PARAGRAPH FOR FAILURE TO PROVIDE DOCUMENTATION:
You were afforded sixty (60) days to present evidence regarding **[**your/your spouse's/child's**]** arrest history. However, you failed to submit the requested documentation. **[GO TO *INSERT FOR DEPENDENT OR #INSERT FOR PRINCIPAL]**

***[INSERT NEXT 3 PARAGRAPHS FOR DEPENDENT:]**Your asylum request is therefore dismissed as of **[This date corresponds to the FDEC date in RAPS]**. The recommended approval previously issued to you is hereby canceled. There is no appeal from this decision. Because you are not maintaining lawful immigrant, nonimmigrant, or Temporary Protected Status, charging documents placing you into removal proceedings are attached.

You are not eligible to apply for or renew employment authorization based on the previous recommended approval of your asylum request.

If you wish to pursue a request for asylum, you must file a Form I-589 *Application for Asylum and for Withholding of Removal* with the immigration judge.
[GO TO CLOSING/DIRECTOR'S SIGNATURE - END OF LETTER]

#[INSERT NEXT 3 PARAGRAPHS FOR PRINCIPAL:]Based on the above reason, the recommended approval previously issued to you is hereby canceled as of **[This date corresponds to the FDEC date in RAPS]** and your case has been referred to an immigration judge. **This is not a denial of your asylum application.** You may request asylum again before an immigration judge and your request will be considered (without filing another application) when you appear before an immigration judge at the date and time listed on the attached charging document. The determinations that we have made in referring your application are not binding on the immigration judge, who will evaluate your claim anew. This cancellation of recommended approval and referral includes the dependents included in your asylum application who are listed on the first page of this notice.

You are not eligible to apply for employment authorization based on the previous recommended approval of your asylum request. If your asylum application was filed on or after January 4, 1995, the following information applies to you.

Any employment authorization you received based on the previous recommended approval is valid until the expiration date on your employment authorization card. In addition, you may apply for initial employment authorization or renewal of employment authorization if an immigration judge does not deny your asylum application within 150 days of the date your asylum application was first accepted by U.S. Citizenship and Immigration Services (USCIS) (not including any delays in processing you may have sought or caused). If an immigration judge grants your asylum application, then you are automatically eligible for employment authorization and may apply immediately for an Employment Authorization Document (EAD). If you fail without good cause to appear for the scheduled hearing before the immigration judge, you may not be granted employment authorization.

[GO TO CLOSING/DIRECTOR'S SIGNATURE – END OF LETTER]

27. CANCELLATION OF RECOMMENDED APPROVAL AND DISMISSAL (FAILURE TO COMPLY WITH IDENTITY AND SECURITY CHECK PROCEDURES)

(Rev. October 2006)

[Use this letter if a recommended approval was previously issued, but applicant failed to follow identity check procedures and applicant is in a valid status]

Cancellation of Recommended Approval based upon
Failure to Follow Identity Check Procedures

This letter refers to your request for asylum in the United States (Form I-589).

You previously received a letter from this office recommending approval of your asylum application pending receipt by U.S. Citizenship and Immigration Services (USCIS) of the results of the mandatory, confidential investigation of your identity and background.

Failure to comply with identity check procedures without good cause constitutes a waiver of the right to an adjudication by an asylum officer. *See* 8 CFR 208.10.

INSERT NEXT PARAGRAPH FOR FAILURE TO PROVIDE DOCUMENTATION:
You were afforded sixty (60) days to present evidence regarding **[your/your spouse's/child's]** arrest history. You have failed to submit the requested documentation. **[GO TO "Your asylum request is therefore dismissed…]**

Your asylum request is therefore dismissed as of **[FDEC date]**. The recommended approval previously issued to you is hereby canceled. There is no appeal from either decision. **[This dismissal and cancellation includes the dependents included in your asylum application who are listed on the first page of this letter.]**

You are not eligible to apply for employment authorization based on the previous recommended approval of your asylum request. Any employment authorization you may have received will expire sixty (60) days from the date of this notice or on the expiration date of your Employment Authorization Document, whichever period is longer.

Your file will be forwarded to the USCIS district office having jurisdiction over your place of residence.

You are directed to report any changes of address to the office having jurisdiction over your place of residence. If you should depart the United States, please notify USCIS office having jurisdiction over your place of residence prior to any such departure and furnish the expected date, place, and manner of departure and destination.

28. CANCELLATION OF RECOMMENDED APPROVAL (REINSTATEMENT OF A PRIOR ORDER)

(rev. January 2005)

[Use this letter if a recommended approval was previously issued, but a prior order of removal, deportation or exclusion has been reinstated]

Cancellation of Recommended Approval based upon
Reinstatement of a Prior Exclusion, Deportation or Removal Order

This letter refers to your request for asylum in the United States (Form I-589).

You previously received a letter from this office recommending approval of your asylum application pending the results of the mandatory, confidential investigation of your identity and background. A review of the records of the Department of Homeland Security (DHS) revealed that on **[date]**, DHS reinstated a prior order of exclusion, deportation or removal that had been issued against you.

Section 241(a)(5) of the Immigration and Nationality Act (INA) requires DHS to reinstate an exclusion, deportation or removal order if an individual subject to the order leaves the United States and re-enters the U.S. illegally. Once a prior order has been reinstated, the person is not eligible to apply for any relief under the INA, including asylum.

Therefore, because this office does not have jurisdiction over your asylum request, your recommended approval is hereby cancelled as of **[This date corresponds to the date the application is administratively closed in RAPS (CLOS screen – C4)]**. **[This includes the dependents included in your asylum application, who are listed above.]** Any work authorization that you have received based upon the Recommended Approval letter cannot be renewed beyond its scheduled expiration date and is subject to revocation after notice by a District Director.

Although you are ineligible to apply for any relief under the INA, including asylum, you may be eligible to apply for withholding of removal under section 241(b)(3) of the INA and under the *Convention Against Torture*. An asylum officer will interview you to see if you have a reasonable fear of persecution or torture in your native country or place of last habitual residence, if you are stateless.

In the near future, you will receive notification of a date, time and place for your reasonable fear interview.

29. DISMISSAL OF ASYLUM APPLICATION BASED ON FAILURE TO COMPLY WITH IDENTITY AND SECURITY CHECK PROCEDURES

DISMISSAL OF ASYLUM APPLICATION BASED ON FAILURE TO COMPLY WITH IDENTITY AND SECURITY CHECK PROCEDURES

This letter refers to your request for asylum in the United States (Form I-589).

You previously received notice from U.S. Citizenship and Immigration Services (USCIS) requiring your appearance at an Application Support Center (ASC) for biometrics collection and fingerprinting. You have failed without good cause to appear for the ASC appointment(s) scheduled for you.

Failure to comply with identity and security check procedures without good cause may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer. *See* 8 CFR 208.10.

Your asylum request is therefore dismissed as of **[This date corresponds to the CLOS date in RAPS]**. There is no appeal from this decision. This dismissal includes the dependents included in your asylum application who are listed on the first page of this notice.

Because you no longer have an asylum application pending with USCIS, you and any dependents included in your asylum application are not eligible to apply for or renew employment authorization based on a pending asylum application.

30. DISMISSAL OF ASYLUM APPLICATION – REINSTATEMENT OF PRIOR ORDER

DISMISSAL OF ASYLUM APPLICATION – REINSTATEMENT OF PRIOR ORDER

This letter refers to your asylum application (Form I-589), filed on **[date]**.

Sec. 241(a)(5) of the Immigration and Nationality Act (INA) requires the Department of Homeland Security to reinstate orders of removal, deportation, or exclusion when the subject of the order leaves or is removed from the United States and re-enters illegally. After reinstatement of the prior order, the subject is no longer eligible to apply for any relief under the INA, including asylum. Records indicate that you were ordered **[removed, excluded, deported]** on **[date]** by the Executive Office for Immigration Review on **[date]** at **[city, state]**. For more information, you may contact the Public Information Line for the Executive Office for Immigration Review, at 1-800-898-7180. You re-entered the United States unlawfully on or about **[date]** at or near **[POE]**. You were reinstated as described above and under the provisions of INA § 241(a)(5) on _____.

Since it appears you are statutorily ineligible to apply for asylum, your asylum application is hereby dismissed as of **[date corresponding to CLOS date]**. **[WHERE APPLICABLE:** This dismissal of your asylum application includes the dependents included in your asylum application, who are listed above.**]** All processing of your asylum application is terminated. Any employment authorization you have been granted based on your pending asylum application cannot be renewed beyond its expiration date and is subject to revocation after notice.

Sincerely,

for
Director,
Asylum Office

31. DISMISSAL OF ASYLUM APPLICATION – FAILURE TO APPEAR

DISMISSAL OF ASYLUM APPLICATION – FAILURE TO APPEAR

This letter refers to your request for asylum in the United States (Form I-589).

You previously received notice from U.S. Citizenship and Immigration Services (USCIS) requiring your appearance at an interview concerning your request for asylum. You have failed without good cause to appear for the interview scheduled for you.

Failure to appear at an interview before an Asylum Officer in the absence of exceptional circumstances may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer. *See* 8 CFR 208.10.

Your asylum request is therefore dismissed as of **[This date corresponds to the CLOS date in RAPS]**. There is no appeal from this decision. This dismissal includes the dependents included in your asylum application who are listed on the first page of this notice.

Because you no longer have an asylum application pending with USCIS, you and any dependents included in your asylum application are not eligible to apply for or renew employment authorization based on a pending asylum application.

32. RESCHEDULING OF AN ASYLUM INTERVIEW

Rescheduling of Asylum Interview

You recently requested a **[second, third, etc.]** reschedule in the above referenced case. This request is being accommodated, and you shall receive a new interview appointment in the near future. Because repeated reschedules place a significant burden on the support staff of this office, future reschedule requests will not be accommodated except for clearly emergent reasons or for exceptional circumstances. Any future reschedule requests must be accompanied by documentary evidence of the emergent need to reschedule the interview. Your failure to provide such evidence or to appear for a future interview may result in the referral of your asylum application to the immigration court and may affect any eligibility for employment authorization.

33. NOTICE OF CHANGE IN DECISION SERVICE FROM PICK-UP TO MAIL-OUT

Notice of Change in Decision Service from Pick-Up to Mail-Out

At the conclusion of your interview with an Asylum Officer, you were instructed to appear at this office to pick-up your asylum decision in person. Please be advised that **you are *not* required to appear in person at this office**. Rather, the decision on your asylum application will be mailed to the most recent address you provided to this office.

In order to ensure delivery of your decision, you must report any change of address to this office within ten (10) days of such change. If your asylum application was filed on or after January 4, 1995, the asylum office's decision to mail your decision will not affect your eligibility to apply for employment authorization under 8 CFR 208.7(a)(1). You may request employment authorization by applying 150 days after filing a complete asylum application.

We regret any inconvenience this change may have caused.

34. SERVICE MOTION TO RECONSIDER (BEFORE EOIR)

(rev. January 2005)

Service Motion to Reconsider Grant of Asylum

On **[date]** you were granted asylum by U.S. Citizenship and Immigration Services (USCIS). It has recently come to our attention, however, that you were in deportation, exclusion or removal proceedings at the time of the asylum decision.

Our records indicate that **[provide information that led to conclusion that applicant was in proceedings]**.

Only an Immigration Judge may decide an asylum application filed by a person who has been placed in deportation, exclusion or removal proceedings before the immigration court. 8 CFR 208.2(b). Because this office did not have jurisdiction over your asylum application, this office is reconsidering your grant of asylum and intends to rescind it, and the grant of asylum to any dependent included in your asylum application, in accordance with 8 CFR 103.5(a)(5)(ii).

You have 30 days from the date of this letter to provide in writing any rebuttal argument or information in response to intended decision of USCIS to rescind your grant of asylum. If you do not respond to this notice within 30 days from the date of the notice, the decision to grant you asylum will be rescinded, and your asylum case will be administratively closed for lack of jurisdiction. You may waive the 30-day period by providing written notice that you do not wish to submit a response, if you do not wish to contest the decision to rescind your grant of asylum.

Please direct any response to the address on this letterhead. Mark both the envelope and the contents as follows:

Attention: File Number A- _____ Rebuttal -- Z ____

35. SERVICE MOTION TO RECONSIDER (OUTSIDE U.S.)

(rev. January 2005)

Service Motion to Reconsider Grant of Asylum

On **[date]** you were granted asylum by U.S. Citizenship and Immigration Services (USCIS). It has recently come to our attention, however, that you were outside of the United States at the time we issued a final grant of asylum to you.

Our records indicate that **[provide information that led to conclusion that the applicant was outside the U.S. when asylum was granted]**.

USCIS may only grant asylum to an individual who is physically present in the United States or who arrives in the United States. *See* Section 208(a)(1) of the Immigration and Nationality Act and 8 CFR 208.2(a). Because you were outside of the United States on the date of the final grant of asylum, USCIS did not have jurisdiction over your asylum application. Therefore, this office is reconsidering your grant of asylum and intends to rescind it, as well as the grant of asylum to any dependent included in your asylum application, in accordance with 8 CFR 103.5(a)(5)(ii).

You have 30 days from the date of this letter to provide in writing any rebuttal argument or information in response to intended decision of USCIS to rescind your grant of asylum. If you do not respond to this notice within 30 days from the date of the notice, the decision to grant you asylum will be rescinded, and your asylum case will be administratively closed for lack of jurisdiction. You may waive the 30-day period by providing written notice that you do not wish to submit a response, if you do not wish to contest the decision to rescind your grant of asylum.

Please direct any response to the address on this letterhead. Mark both the envelope and the contents as follows:

Attention: File Number A- _____ Rebuttal -- Z ____

36. NOTICE OF RESCISSION OF ASYLUM GRANT
(rev. January 2005)

Rescission Notice

On **[date]**, this office sent you a *Motion to Reconsider* notifying you that U.S. Citizenship and Immigration Services (USCIS) intended to rescind your grant of asylum, because USCIS did not have jurisdiction over your asylum application at the time asylum was granted.

[IF APPLICANT DID NOT SUBMIT A RESPONSE, INSERT THIS PARAGRAPH.]
You were given 30 days from the date of the notice to provide argument or information in response to the intended decision to rescind your grant of asylum. No response has been received.

OR
[IF APPLICANT SUBMITTED A RESPONSE, INSERT THIS PARAGRAPH AND EXPLAIN WHY THE INFORMATION DID NOT OVERCOME THE GROUNDS OUTLINED IN THE MOTION TO RECONSIDER.]
You were given 30 days from the date of the notice to provide argument or information in response to the intended decision to rescind your grant of asylum. The information you submitted, however, failed to overcome the grounds for rescission stated in the motion to reconsider. [**Brief explanation of why information failed to overcome grounds to rescind**.]

[ALL LETTERS:]
Therefore, your grant of asylum has been rescinded effective **[insert date of rescission].** The grant of asylum to any dependent included in your asylum application is also rescinded. Any work authorization that you have received based upon a grant of asylum cannot be renewed beyond its scheduled expiration date and is subject to revocation after notice by a District Director.

You should direct any questions about your asylum request or removal proceedings to the Immigration Court having jurisdiction in your case. In addition, you must notify USCIS and the Immigration Court of any change of your address. To notify USCIS of your change of address, you may obtain a Form AR-11 at your nearest post office or USCIS office to comply with this requirement.

The Immigration Court having jurisdiction over your case is the following:

Office of the Immigration Court

[Insert applicable address]

37. AFFIRMATION OF ASYLUM GRANT AFTER MOTION TO RECONSIDER

(rev. January 2005)

Affirmation of Asylum Grant After Motion to Reconsider

On **[date]**, this office sent you a *Motion to Reconsider* notifying you that U.S. Citizenship and Immigration Services (USCIS) intended to rescind your grant of asylum, because evidence indicated that USCIS did not have jurisdiction over your asylum application at the time asylum was granted.

You were given 30 days from the date of the notice to provide argument or information in response to the intended decision to rescind your grant of asylum. You provided a timely response. After careful consideration of your response, it has been determined that USCIS did have jurisdiction to grant you asylum, and therefore USCIS no longer intends to rescind your grant of asylum. Your grant of asylum is affirmed. Please see the final grant letter that was issued to you on **[date grant letter was issued]** for information relating to your status as an asylee.

38. REQUEST FOR EVIDENCE TO ESTABLISH RESIDENCE

(rev. January 2005)

Request for Evidence to Establish Residence

You were previously scheduled for an asylum interview; however, in order to receive an interview with an asylum officer from this office, you must provide evidence that you reside within the jurisdiction of the **[Name]** Asylum Office. U.S. Citizenship and Immigration Services (USCIS) finds that evidence submitted in your application and provided at your asylum interview does not fully establish that you reside within our jurisdiction, which is comprised of **[state the jurisdiction of the asylum office.]**

Pursuant to 8 CFR 103.2(b), we hereby request additional evidence that verifies your residence within our jurisdiction. Such evidence may include but is not limited to utility bills, leases or rental agreements, or a vehicle operator's license. If that type of evidence is not available to you, you may submit an affidavit from an individual who lives in your household; however, s/he must present evidence that establishes his/her residency there, such as utility bills, leases or rental agreements, or a vehicle operator's license.

You have up to 12 weeks from the date of this letter to respond to this request. If your asylum application was filed on or after January 4, 1995, this request for evidence is a delay caused by you and cannot be counted as part of the 150-day period before you can apply for employment authorization. Time counted toward the 150-day period will resume when you submit sufficient evidence to establish your residence in this jurisdiction. If appropriate, your file may be transferred to another asylum office that has jurisdiction over your residence.

Failure to respond to the request for evidence or failure to establish you live within the jurisdiction of this office may result in the administrative closure of your asylum application and may affect any eligibility for employment authorization.

39. NOTICE OF INTENT TO TERMINATE ASYLUM STATUS BY USCIS

(rev. January 2005)

Notice of Intent to Terminate Asylum Status

The purpose of this letter is to notify you of the intent of U.S. Citizenship and Immigration Services (USCIS) to terminate the asylum status you were granted on **[date]**. This office has received the following information indicating that your asylum status could be terminated pursuant to 8 CFR 208.24(a)**[Select applicable subsection(s):** (1) **or** (2) **or** (3)**]:**

[Brief explanation of grounds for termination and summary of evidence. The explanation of grounds should track the language from the applicable statute or regulation. The summary must outline the evidence in the file that forms the grounds for termination, except classified information or other information that may not be released to the applicant as determined by a trained FOIA officer. For example:

- **You have been convicted by final judgment of a particularly serious crime, to wit: On [date], you were convicted in the [court, including locality] of [charge] and sentenced to [sentence].**

OR

- **USCIS has obtained evidence that indicates fraud in your application for asylum such that you were not eligible for asylum at the time it was granted: While you testified that you witnessed the police murder your son on account of your political opinion, you recently filed an I-730 *Refugee/Asylee Relative Petition* on his behalf.]**

In order to give you the opportunity to respond to this adverse information, we have scheduled a termination interview at least thirty (30) days after the date of this notice in order to give you sufficient time to prepare for the interview.

Interview Date: _____

Time: _____a.m.

Place: **[Address of Interview Location]**

You must bring the following to your interview: a written form of identification, if available, that shows your name, date and place of birth, and nationality; the original and two copies of evidence of your relationship to family members on your I-589 (marriage or birth certificates, or affidavits) if not already submitted with your application; and other evidence not submitted before. If you cannot speak English fluently, you must bring a competent interpreter who must be at least 18 years of age. Neither the representative of record, a witness testifying on your behalf, nor a representative or employee of your country of nationality, or if stateless, country of last habitual residence, may serve as your interpreter.

You will have the opportunity at the interview to present information and evidence to show that you are still eligible for asylum. Your asylum status will not be terminated unless a preponderance of the evidence supports termination. You may be represented at the termination interview. Attached to this letter is a list of legal providers that may provide you with legal assistance at no or low cost. Your dependents, who were included in your asylum application or who entered the U.S. pursuant to a Form I-730, Refugee/Asylee Relative Petition, must also accompany you to the interview at the asylum office.

If USCIS determines that you are no longer eligible for asylum, your asylum status and employment authorization will be terminated, and you will be placed in removal proceedings. You may renew your request for asylum before an Immigration Judge.

If you are unable to attend the interview on the date scheduled, you must contact this office in writing before the interview to request that the interview be re-scheduled. Failure without good cause to appear for this interview may result in the termination of your asylum status and any employment authorization, and referral of your case to an immigration judge.

If you wish to waive the thirty (30) day preparation period and request an earlier interview, or admit the adverse information contained in this notice and waive the opportunity to present a rebuttal provide, indicate your request on the attached form and return it to the address at the top of this letter before the date of the scheduled interview. The asylum office will accommodate your request for an earlier interview if resources permit.

Attach: Legal Provider List
Optional Waiver of Rebuttal Period and/or Waiver of Opportunity to Rebut Notice of Intent to Terminate Asylum Status

Optional Waiver of Rebuttal Period and/or Waiver of Opportunity to Rebut Notice of Intent to Terminate Asylum Status

Name:	**Alien number:**
Address:	**Telephone:**

Instructions: Complete this form **only if** you wish to waive the 30-day rebuttal preparation period and/or your opportunity to present a rebuttal. Return the form to the above address, attention: **[specify]**

If you wish to waive the 30-day preparation period and request an earlier appointment, complete Part I.

If you wish to waive the 30-day preparation period AND you wish to waive the interview and opportunity to present a rebuttal to the evidence of grounds for termination of your asylum status, complete Parts I and II.

PART I: Waiver of 30-Day Period to Prepare Rebuttal to *Notice of Intent to Terminate Asylum Status*	
	Write your initials below to agree with the statement at left.
I understand that USCIS intends to terminate my asylum status.	
I acknowledge that I was informed of the grounds for termination.	
I understand that termination of my asylum status will result in the termination of asylum status of any family member who obtained derivative asylum status through me.	
I understand that I have 30 days to prepare a rebuttal to the adverse information constituting the grounds for termination and have been offered an opportunity to present the rebuttal.	
I wish to waive the 30-day rebuttal period and request an earlier appointment.	

PART II: Waiver of Opportunity to Rebut Evidence of Grounds for Termination	
	Write your initials below to agree with the statement at left.
I admit the adverse information contained in the Notice of Intent to Terminate. Please note that you are not required to admit this information or to agree with this statement; if you do not agree, do not initial the box at right.	
I wish to waive the opportunity to present a rebuttal to the grounds for termination so that USCIS will proceed with termination of my asylum status immediately.	

_____ _____ _____
(Signature) (Printed Name) (Date)

40. NOTICE OF TERMINATION OF ASYLUM STATUS
(rev. January 2005)

Notice of Termination of Asylum Status

The purpose of this letter is to notify you that U.S. Citizenship and Immigration Services (USCIS) has terminated your asylum status, **effective [This date corresponds to the EFFECTIVE DATE section on the REVO screen]**.

[If the applicant appeared for the interview, briefly summarize facts, cite applicable regulations, and conclude that a preponderance of the evidence establishes that termination is appropriate]

OR
[If the applicant failed to appear, insert the following paragraph] You were scheduled for a termination interview on **[date]**. You failed to appear for the interview, and you did not submit an excuse for your failure to appear and a request for a rescheduling of your interview.

[Include this paragraph if there are dependents on the case] Termination of asylum status for a person who is the principal applicant results in the termination of the asylum status of a spouse and/or child whose status was derived from the principal's asylum approval. 8 CFR 208.24(d). This does not preclude your spouse or child from asserting an asylum or withholding of removal claim. Nor does your termination preclude you from reasserting an asylum or withholding of removal claim in subsequent removal proceedings before an immigration judge, subject to the laws and regulations in effect at the time of filing any new application.

Enclosed please find a Notice of Appear (Form I-862), which places you **[and your dependent(s)]** under removal proceedings. Pursuant to 8 C.F.R. 208.24(c), you are no longer eligible for employment authorization incident to asylum status. **[Include this sentence if the applicant has an Employment Authorization Document issued under code "a5" (asylee)]** Accordingly, the employment authorization last issued to you on _____ based on your grant of asylum is hereby terminated as of the date of this letter.

You should direct any questions about your asylum request or removal proceedings to the immigration court having jurisdiction in your case. In addition, you must notify the immigration court of any change of your address.

Attach: Legal Provider List

41. NOTICE OF CONTINUATION OF ASYLUM STATUS

(rev. January 2005)

Notice of Continuation of Asylum Status

The purpose of this letter is to notify you that you remain in asylum status. U.S. Citizenship and Immigration Services (USCIS) has decided not to terminate your asylum status because a preponderance of the evidence failed to meet the evidentiary standard required to terminate your asylum status. This decision also affects any spouse or child who derived asylum status based upon the approval of your asylum application.

Any Employment Authorization Document (EAD) you have received remains valid, and you may renew the document upon its expiration. You must notify USCIS of any change of address within ten (10) days of such change. You may obtain a Form AR-11 at your nearest post office or USCIS office to comply with this requirement.

42. NOTICE OF INTENT TO TERMINATE ASYLUM STATUS BY EOIR
(rev. January 2005)

Notice of Intent to Terminate Asylum Status and Hearing before an Immigration Judge

The purpose of this letter is to notify you of the intent of U.S. Citizenship and Immigration Services (USICS) to terminate the asylum status you were granted on **[date]**. This office has received the following information indicating that your asylum status could be terminated pursuant to 8 CFR 208.24(a)**[select applicable subsection(s):** (1) **or** (2) **or** (3)**]**:

[Brief explanation of grounds for termination and summary of evidence. The explanation of grounds should track the language from the applicable statute or regulation. The summary must outline the evidence in the file that forms the grounds for termination, except classified information or other information that may not be released to the applicant as determined by a trained FOIA officer. For example:

- **You have been convicted by final judgment of a particularly serious crime, to wit: On [date], you were convicted in the [court, including locality] of [charge] and sentenced to [sentence].**

OR

- **USCIS has obtained evidence that indicates fraud in your application for asylum such that you were not eligible for asylum at the time it was granted: While you testified that you witnessed the police murder your son on account of your political opinion, you recently filed an I-730 *Refugee/Asylee Relative Petition* on his behalf.]**

  In order to give you the opportunity to respond to this adverse information, you are scheduled for a hearing in front of an immigration judge on **[date]** at **[location]**.

You will have the opportunity at the hearing to present information and evidence to show that you are still eligible for asylum. Your asylum status will not be terminated unless a preponderance of the evidence supports termination. You may be represented at the hearing before the Immigration Court. Attached to this letter is a list of legal providers that may provide you with legal assistance at no or low cost. Your dependents, who either were included in your asylum application or who entered the U.S. pursuant to a Form I-730, Refugee/Asylee Relative Petition, must also accompany you to the hearing.

Attach: Legal Provider List

43. DECLARATION OF INTENT TO WITHDRAW ASYLUM APPLICATION

Name of Applicant	
Alien-Number of Applicant	A
Language Used by Applicant	
Interpreter Used	Yes ☐ No ☐
Name of Interpreter	
Languages Used by Interpreter	English and

DECLARATION OF APPLICANT

I wish to withdraw my application for asylum for the following reason (specify): _____
_____
_____

- I understand that by doing so I will close the application permanently, and will not be able to reopen it. If I wish to be considered for asylum at a later date I will have to file a new Form I-589, *Application for Asylum and for Withholding of Removal*, subject to the laws and regulations in place at the time of filing any new application, including any restrictions on filing.
- I understand that by withdrawing my application for asylum any dependent family members and I may be placed in proceedings before an immigration judge.
- I understand that because I will no longer have an application for asylum pending before U.S. Citizenship and Immigration Services (USCIS), I will not be entitled to asylum-based employment authorization. I understand that after withdrawal of my application, I cannot obtain or renew my Employment Authorization Document on the basis of my asylum claim.

_____
Applicant's Signature

I certify that I am qualified to act as an Interpreter and that I have read the above statements to the applicant named above. S/he stated that s/he understood me.

Interpreter's Signature: _____

USCIS Employee's Signature: _____

44. ASSESSMENT TO GRANT
(Rev. February 2002)

ASSESSMENT TO GRANT ASYLUM

ALIEN NUMBER: DATE:

NAME: ASYLUM OFFICER:

COUNTRY: REVIEWING SAO:

LOCATION:

[Decision-making /Decision-writing Training Shell; All bold or parenthetical language is for instructional purposes only and is to be deleted. Non-bold language in brackets may be chosen to replace text, where appropriate.]

I. BIOGRAPHIC/ENTRY INFORMATION

[Who is the applicant? Where and how did the applicant enter the United States?]

The applicant indicated that s/he is a [age]-year-old fe/male native and citizen of [countr(ies)] who entered the United States [without inspection] at [POE] on [date] [and was admitted as a [status] until [date.]]

II. BASIS OF CLAIM

[What does the applicant fear? Whom does s/he fear and Why?]

The applicant fears that s/he will be [harm feared] by [feared persecutor] on account of [ground].

III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM

A. ONE-YEAR FILING DEADLINE

[For applicants who filed for asylum prior to April 16, 1998, state that the 1-year filing deadline does not apply. For applicants who filed their I-589 within the 1-year filing deadline, state that the applicant is in compliance with the deadline.]

OR

[For applicants who did not timely file but have one or more exceptions and filed within a reasonable period, include an analysis of why the applicant's late filing should be excused, , including any changed and/or extraordinary circumstances established and a finding that the applicant filed within a reasonable time given the circumstances.]

B. PRIOR DENIAL BY IJ OR BIA

[For applicants who were previously denied asylum by an IJ or the BIA, include an analysis of the existence of

changed circumstances that materially affect the applicant's eligibility for asylum, including a brief statement that the applicant was previously denied asylum by EOIR, an explanation of the changed circumstances established, how the changed circumstances materially affect the applicant's asylum eligibility.]

IV. SUMMARY OF TESTIMONY AND CREDIBILITY

[What happened to the applicant and/or individuals similarly situated, what does s/he fear, and why?]

The applicant credibly testified that [summary of material facts of applicant's testimony].

V. FOCUSED ANALYSIS

[Is the applicant a refugee? Do any bars or discretionary grounds for denial apply?]

[To receive asylum, an asylum-seeker must show past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.]

A. PAST PERSECUTION [If past persecution found]

The acts described by the applicant amount to past persecution on account of _____. [In all cases, explain why the harm is serious enough to constitute persecution. If the persecutor is a non-government entity, also explain how the evidence shows that the government is unable or unwilling to control the persecutor.] Thus the applicant has established that s/he is a refugee.

[If WFF presumed due to no fundamental change in circumstances and applicant could not reasonably relocate to avoid future persecution]

A preponderance of the evidence fails to establish that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution if s/he were to return. Country conditions reports indicate that [summary of country conditions] [Cite source].

A preponderance of the evidence fails to establish that the applicant could avoid future persecution by relocating within his or her country and that, under all the circumstances, it would be reasonable for the applicant to do so. [Briefly explain reasons.]

OR [If severity of past persecution or reasonable possibility of other serious harm warrants grant of asylum in the absence of a well-founded fear]

Although it has been determined that the applicant's fear of future persecution is no longer well-founded because a preponderance of the evidence establishes a fundamental change in circumstances [or if applicable the applicant reasonably could relocate within his or her country to avoid future persecution], the applicant has demonstrated compelling reasons for being unwilling to return due to the severity of the past persecution s/he suffered [or, the applicant has established that there is a reasonable possibility he or she would suffer other serious harm] [Briefly explain why.]

[GO TO COMPONENT VI. CLOSING PARAGRAPH. APPLICANT HAS ESTABLISHED ELIGIBILITY.]

B. IF CLAIM IS BASED ON FEAR OF FUTURE PERSECUTION

Did the applicant claim past persecution?

[The applicant claims past persecution, past persecution not found, but WFF found]
The events the applicant described do not amount to past persecution. However, the applicant has established a well-founded fear of future persecution on account of [ground].

OR

[The applicant's claim based solely on WFF]
The applicant did not claim to have suffered persecution in the past. However, the applicant has established a well-founded fear of future persecution on account of [ground].

2. Explanation of well-foundedness

The applicant has established all four prongs of the modified *Mogharrabi* test for well-foundedness. [Briefly explain how the applicant has established possession (or imputation), awareness, capability, and inclination.]

OR [If the applicant not singled out]

The applicant has established a well-founded fear of persecution by showing that there is a pattern or practice of persecution of groups of persons similarly situated to the applicant on account of one of the five grounds. [Briefly explain the group of persons subject to the pattern and practice of persecution and how the applicant is similarly situated to that group.]

Internal relocation

The applicant has established that the threat of persecution exists countrywide OR [The applicant has established that, under all the circumstances it is unreasonable for the applicant to relocate within his or her country to avoid future persecution.] [Briefly explain.]

VI. CLOSING PARAGRAPH

Thus, the applicant has established that s/he is a refugee. There are no mandatory or discretionary factors that make the applicant ineligible for asylum.

VII. DECISION

Assessment is to grant.

45. NOTICE OF INTENT TO DENY
(rev. January 2005)

Notice Of Intent To Deny

[Decision-making /Decision-writing Training Shell; All bold or parenthetical language is for instructional purposes only and is to be deleted. Non-bold language in brackets may be chosen to replace text, where appropriate.]

The purpose of this letter is to notify you of the intent to deny your request for asylum. U.S. Citizenship and Immigration Services ("USCIS") has carefully considered your written application and accompanying documents, available country conditions materials, and your oral testimony to reach this determination for the reasons given below.

I. BIOGRAPHIC/ENTRY INFORMATION

[Who is the applicant? Where and how did the applicant enter the United States?]

In presenting your request for asylum, you indicated that you are a [age]-year-old fe/male native and citizen of [countr(ies)], and you stated that you entered the United States [without inspection] at [POE] on [date] [and were admitted as a (status) until (date)].

II. BASIS OF CLAIM

[What does the applicant fear? Whom does s/he fear and Why?]

You fear that you will be [harm feared] by [feared persecutor] on account of [ground].

ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM [THIS SECTION ONLY INCLUDED A PROHIBITION ON FILING MAY EXIST. IF NOT, SKIP TO PART IV.]

A. ONE-YEAR FILING DEADLINE

[Include analysis only if application filed on or after 4/16/98 and application not timely filed.]
An alien may apply for asylum only if he or she demonstrates by clear and convincing evidence that he or she filed the asylum application within one year after his or her arrival date in the United States, unless there are either changed circumstances which materially affect asylum eligibility or extraordinary circumstances related to the delay in filing the asylum application. 8 U.S.C. §§ 1158(a)(2)(B), (D). You filed your asylum application on **[date]**, more than one year after entering the United States.

If exception established, include:
- a statement of the changed or extraordinary circumstances established
- a finding that the applicant filed within a reasonable time given the circumstances

If an exception not established, include:
- a statement and supporting analysis of the finding that the applicant was found ineligible for an exception based on changed circumstances relating to country conditions because: 1) there was no change in country conditions,

2) the change occurred before April 1, 1997, 3) the change did not materially affect the applicant's asylum eligibility, or 4) the I-589 was not filed within a reasonable time after the change, considering delayed awareness if applicable.

- a statement demonstrating that other possible changed and extraordinary circumstances relating to the applicant's case were examined, but the applicant was found ineligible for an exception based on those circumstances and why (for example, the circumstances are not deemed extraordinary, or the changed circumstances did not materially affect the applicant's asylum eligibility), OR, if the applicant was found ineligible for an exception based on an unreasonable delay in filing after changed or extraordinary circumstances, a thorough analysis of why the asylum officer found the delay in filing to be unreasonable given those circumstances.
- Skip to part VIII, Decision.

B. PRIOR DENIAL BY IJ OR BIA [when applicable]

An alien who has previously applied for asylum and had the application denied by an immigration judge or the Board of Immigration Appeals is not eligible to apply for asylum in the United States, unless there are changed circumstances materially affecting asylum eligibility. 8 U.S.C. §§ 1158(a)(2)(C), (D); 8 C.F.R. § 208.4(a)(3).

If exception established, include:

- a brief statement that applicant was previously denied asylum by EOIR
- an explanation of changed circumstances established
- how changed circumstances materially affect the applicant's asylum eligibility

If exception not established, include:

- a statement of any circumstances that were considered in the determination of whether the prohibition against filing for asylum applies
- a statement and an explanation of the finding that there were no changed circumstances, OR, if the applicant established the existence of changed circumstances, why the circumstances were not found to materially affect his/her asylum eligibility
- Where country conditions are relevant to the determination of changed circumstances pursuant to the guidance in this memorandum, a minimum of two country conditions citations supporting a finding that the applicant failed to establish a change in country conditions or that any change in country conditions materially affects the applicant's asylum eligibility.
- If country conditions information is not relevant to the determination of changed circumstances because it would not materially affect the applicant's asylum eligibility, the asylum officer includes in the assessment the statement, "Any change in country conditions would not materially affect your eligibility for asylum because (the applicant has not established a protected characteristic, is subject to a mandatory bar, etc.)" and an explanation of the reasons for the finding of no protected characteristic, the bar, or other reason country conditions would not materially affect the applicant's asylum eligibility.
- Skip to *Part VIII – Decision.*

IV. SUMMARY OF TESTIMONY

[What happened to the applicant and/or individuals similarly situated, what does s/he fear, and why?]

You testified that **[summary of material facts of applicant's claim.]**.

V. CREDIBILITY

[Was the testimony internally consistent, consistent with extrinsic evidence, detailed? Note that credibility determination can be "split" -- some parts found credible, some parts found not credible.]

A. IF TESTIMONY CREDIBLE

You have presented testimony that was believable, consistent, and sufficiently detailed. Therefore, you are found to be credible.

In order to receive asylum, an asylum-seeker must establish past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1158, 1101(a) (42); 8 C.F.R. § 208.13(b).

[GO TO COMPONENT VI (B) AND (C) - ANALYSIS OF PP AND WFF]

B. IF TESTIMONY NOT CREDIBLE

In order to receive asylum, an asylum-seeker must establish past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1158, 1101(a) (42); 8 C.F.R. § 208.13(b).

Your testimony was found not credible for the following reasons: **[Explain basis for finding applicant not credible: e.g., list inconsistencies, kind of detail applicant was unable to provide, etc.]** You were unable to provide a reasonable explanation for this **[**material inconsistency, lack of detail, etc.**]** in that **[address why explanation given found not reasonable]**.

[GO TO COMPONENT VI (A) - ANALYSIS OF MATERIALITY]

VI. FOCUSED ANALYSIS COMPONENT

[Is the applicant a refugee? Do any bars or discretionary grounds for denial apply?]

A. MATERIALITY OF FACTS PRESENTED

[Applies only where testimony found not credible. Can the non-credible testimony be linked to elements for asylum eligibility? If yes, provide a brief explanation of how non-credible assertions have a direct and objective bearing on the basis for asylum eligibility.]

As your testimony was not credible in material respects, you have failed to meet your burden of establishing that you are a refugee as required by 8 C.F.R. § 208.13(a). Consequently, you are ineligible for asylum.

[NO FURTHER ANALYSIS IS NECESSARY. GO TO VIII. DECISION.]

B. PAST PERSECUTION

1. No past persecution claimed

You do not claim, and the evidence does not indicate, that you have experienced persecution in the past.

[GO TO VI(C) -- ANALYSIS OF WELL-FOUNDED FEAR]

2. Past persecution not found

The events you described do not constitute past persecution. **[Brief explanation as to why pp not found -- either the harm the applicant suffered was not serious enough to constitute persecution or, in cases where the harm was carried out by a non-government entity, the applicant did not establish that the government was unable or unwilling to control the entity that harmed the applicant.]**

AND/OR

The events you described are not found to have been on account of one of the five protected characteristics in the refugee definition (race, religion, nationality, membership in a particular social group or political opinion). **[Briefly explain why not "on account of."]**

[GO TO COMPONENT VI (C) - ANALYSIS OF WELL-FOUNDED FEAR]

3. Finding of past persecution on account of a protected ground

The events you described amount to past persecution on account of [ground].

a. Preponderance of the evidence establishes fundamental change in circumstances

Though you have established past persecution, a preponderance of the evidence establishes that there has been a fundamental change in circumstances in [name of country] to such an extent that you no longer have a well-founded fear of persecution if you were to return there. Country conditions reports establish that [brief summary]. **[Cite sources.] -[OR,** Though you have established past persecution, a preponderance of the evidence establishes that there has been a fundamental change in your personal circumstances to such an extent that you no longer have a well-founded fear of persecution in [country]. **[Explain.]**

Because you have established that you suffered persecution in the past, USCIS has carefully reviewed the facts of your case to determine whether to exercise discretion to grant asylum. However, your case does not reflect such severe past persecution as to present compelling reasons for being unwilling or unable to return to [country], nor have you established that there is a reasonable possibility you would suffer other serious harm if returned there. See 8 C.F.R. § 208.13(b)(1)(iii).

OR

b. Past persecution found, but preponderance of the evidence establishes it would be reasonable for the applicant to relocate within his or her country to avoid future persecution.

Though you have shown past persecution, a preponderance of the evidence establishes that you could avoid future persecution by relocating to another part of your country and under all the circumstances, it is reasonable to expect you to do so.

Because you have established that you suffered persecution in the past, USCIS has carefully reviewed the facts of your case to determine whether to exercise discretion to grant asylum. However, your case does not reflect such

severe past persecution as to present compelling reasons for being unwilling or unable to return to [country] nor have you established that there is a reasonable possibility you would suffer other serious harm if returned there. See 8 C.F.R. § 208.13(b)(1)(iii).

[GO TO VIII. DECISION]

C. CLAIM BASED ON WELL-FOUNDED FEAR OF FUTURE PERSECUTION

You (also) claim to have a fear of future persecution. To establish a well-founded fear of future persecution, an asylum applicant must show that his or her fear is both subjectively genuine and objectively reasonable. An asylum applicant may establish an objectively reasonable fear by demonstrating that there is a reasonable possibility of suffering persecution.

Accordingly, it is the applicant's burden to establish that:

(1) she or he possess (or is believed to possess) beliefs or characteristics the persecutor seeks to overcome in others;

(2) the persecutor is already aware, or could become aware, that she or he possesses these beliefs or characteristics;

(3) the persecutor has the capability of persecuting the applicant; and

(4) the persecutor has the inclination to persecute the applicant.

See *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

[Briefly explain how the applicant has failed to meet the modified *Mogharrabi* test for well-foundedness or failed to establish that internal relocation to avoid future persecution is not a reasonable option. Discussion of failure to meet any one prong of the test is sufficient.]

[If appropriate, use the following language with analysis.] An applicant can establish a well-founded fear of persecution by showing that he or she will be singled out for persecution or that there is a pattern or practice of persecution of groups of persons similarly situated to the applicant on account of one of the five characteristics in the refugee definition. 8 C.F.R. § 208.13(b)(2)(iii). You have failed to establish that you are similarly situated to any group of persons subject to a pattern or practice of persecution.

For these reasons, you have not shown there is a reasonable possibility of suffering the persecution you fear.

AND/OR [if the claim is not on account of a protected ground]

You have failed to show that the harm you fear is due to any of the five protected characteristics in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion). **[Briefly explain why it is not "on account of."]**

OR [if WFF found in a particular area or locality, but the threat of persecution does not exist countrywide and it is reasonable for the applicant to relocate]

An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating

to another part of the applicant's country, if under all the circumstances it would be reasonable to expect the applicant to do so. See 8 C.F.R. § 208.13(b)(2)(ii). You have failed to demonstrate that the persecution you fear exists throughout [country] or that, under all the circumstances, it would be unreasonable to expect you to relocate to another place in your country to avoid persecution in the future. **[Briefly explain reasons for finding that it is reasonable for applicant to safely relocate within his/her country.]**

VII. MANDATORY BARS

[If applicable, discuss mandatory bar(s).]

VIII. DECISION

For the reasons explained above, USCIS has found that you are not eligible **[for/to apply for]** asylum status in the United States.

You can provide rebuttal to this notice in support of your request. You have sixteen (16) days [6 days total for mail included] from the date of this notice to submit such rebuttal or new evidence. Failure to respond to this notice within this allotted time may result in the denial of your request for asylum.

Please direct any response to the address on this letterhead. Mark both the envelope and the contents as follows:

Attention: File Number A- _____ Rebuttal -- Z ____

46. ASSESSMENT TO REFER
(Rev. February 2002)

ASSESSMENT TO REFER

ALIEN NUMBER: DATE:

NAME: ASYLUM OFFICER:

COUNTRY: REVIEWING SAO:

LOCATION:

[Decision-making /Decision-writing Training Shell; All bold or parenthetical language is for instructional purposes only and is to be deleted. Non-bold language in brackets may be chosen to replace text, where appropriate.]

I. BIOGRAPHIC/ENTRY INFORMATION AND BARS RELATED TO FILING

[Who is the applicant? Where and how did the applicant enter the United States?]

The applicant indicated that s/he is a [age]-year-old fe/male native and citizen of [countr(ies)] who entered the United States [without inspection] at [POE] on [date] [and was admitted as a (status) until (date).]

II. BASIS OF CLAIM

[What does the applicant fear? Whom does s/he fear and Why?]

The applicant fears that s/he will be [harm feared] by [feared persecutor] on account of [ground].

III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM

A. ONE-YEAR FILING DEADLINE

[For applicants who filed for asylum prior to April 16, 1998, state that the 1-year filing deadline does not apply.]

The applicant filed his/her asylum application on [date]. The applicant [failed to establish/established] by clear and convincing evidence that the application was filed within one year after the last date of arrival to the United States.

[Insert analysis if clear & convincing evidence not established:]

If exception established, include:
- a statement of the changed or extraordinary circumstances established
- a finding that the applicant filed within a reasonable time given the circumstances

If an exception not established, include:
- a statement and supporting analysis of the finding that the applicant was found ineligible for an exception based

on changed circumstances relating to country conditions because: 1) there was no change in country conditions, 2) the change occurred before April 1, 1997, 3) the change did not materially affect the applicant's asylum eligibility, or 4) the I-589 was not filed within a reasonable time after the change, considering delayed awareness if applicable.

- a statement demonstrating that other possible changed and extraordinary circumstances relating to the applicant's case were examined, but the applicant was found ineligible for an exception based on those circumstances and why (for example, the circumstances are not deemed extraordinary, or the changed circumstances did not materially affect the applicant's asylum eligibility), OR, if the applicant was found ineligible for an exception based on an unreasonable delay in filing after changed or extraordinary circumstances, a thorough analysis of why the asylum officer found the delay in filing to be unreasonable given those circumstances.
- skip to *part VIII, Decision*.

B. PRIOR DENIAL BY IJ OR BIA [when applicable]

If exception established, include:

- a brief statement that applicant was previously denied asylum by EOIR
- an explanation of changed circumstances established
- how changed circumstances materially affect the applicant's asylum eligibility

If exception not established, include:

- a statement of any circumstances that were considered in the determination of whether the prohibition against filing for asylum applies
- a statement and an explanation of the finding that there were no changed circumstances, OR, if the applicant established the existence of changed circumstances, why the circumstances were not found to materially affect his/her asylum eligibility
- Where country conditions are relevant to the determination of changed circumstances pursuant to the guidance in this memorandum, a minimum of two country conditions citations supporting a finding that the applicant failed to establish a change in country conditions or that any change in country conditions materially affects the applicant's asylum eligibility.
- If country conditions information is not relevant to the determination of changed circumstances because it would not materially affect the applicant's asylum eligibility, the asylum officer includes in the assessment the statement, "Any change in country conditions would not materially affect the applicant's eligibility for asylum because (the applicant has not established a protected characteristic, is subject to a mandatory bar, etc.)" and an explanation of the reasons for the finding of no protected characteristic, the bar, or other reason country conditions would not materially affect the applicant's asylum eligibility.
- Skip to *Part VIII – Decision.*

III. SUMMARY OF TESTIMONY

[What happened to the applicant and/or individuals similarly situated, what does s/he fear, and why?]

The applicant testified that [summary of material facts of the applicant's testimony]

IV. CREDIBILITY

[Was the testimony internally consistent, consistent with extrinsic evidence, detailed?]

A. IF TESTIMONY CREDIBLE

The applicant presented testimony that was believable, consistent, and sufficiently detailed. Therefore, s/he was found to be credible. [Or, assessment can state at the beginning of the Summary of Testimony, "The applicant credibly testified that _____." Also note that credibility determination can be "split" -- some parts found credible, some parts found not credible.]

[GO TO COMPONENT V. B AND, IF APPROPRIATE, C -- ANALYSIS OF PP AND WFF]

B. IF TESTIMONY NOT CREDIBLE

The applicant's testimony was found not credible for the following reasons: [List specific discrepancies, inconsistencies, kind of detail applicant was unable to provide, etc.] When given an opportunity to explain, the applicant was unable to provide a reasonable explanation for [these inconsistencies, this inability to provide detail, etc.]

[GO TO COMPONENT V. A -- ANALYSIS OF MATERIALITY]

V. FOCUSED ANALYSIS COMPONENT

A. MATERIALITY OF NON-CREDIBLE ASSERTIONS

[Can the non-credible testimony be linked to elements for asylum eligibility? If yes, provide an explanation how the non-credible assertions have a direct and objective bearing on the basis for asylum eligibility.]

As the applicant's testimony was not credible in material respects, s/he has failed to meet his/her burden of establishing that s/he is a refugee as required by 8 CFR § 208.13. Consequently, s/he is ineligible for asylum.

[STOP! NO FURTHER ANALYSIS IS NECESSARY. GO TO VII. DECISION]

B. PAST PERSECUTION

1. No claim of past persecution

The applicant has not claimed and the evidence does not indicate that [s]he experienced past persecution.

[GO TO V. C -- ANALYSIS OF WFF]

2. No finding of past persecution on account of protected ground

The events the applicant described do not constitute past persecution. [Brief explanation as to why pp not found -- either the harm the applicant suffered was not serious enough to constitute persecution or, in cases where the harm was carried out by a non-government entity, the applicant did not establish that the government was unable or unwilling to control the entity that harmed the applicant.]

OR

The events the applicant described [and the harm applicant fears] are not found to have been on account of one of

the five protected grounds. [Briefly explain why. If neither past persecution nor future persecution on account of protected ground, can explain this in one paragraph and skip section on well-founded fear, since it is covered here.]

[GO TO V. C -- ANALYSIS OF WFF]

3. Finding of past persecution on account of protected ground

The events the applicant described amount to past persecution on account of [ground].

a. Preponderance of the evidence establishes fundamental change in circumstances

Although the applicant has established past persecution, there has been a fundamental change in circumstances in [country] to such an extent that the applicant no longer has a well-founded fear of persecution there. Country conditions reports establish that [brief summary] [cite sources]. [OR, Though the applicant has established past persecution, a preponderance of the evidence establishes that there has been a fundamental change in the applicant's personal circumstances to such an extent that the applicant no longer has a well-founded fear of persecution in [country]. [Explain.]] The persecution the applicant suffered in the past was not so severe as to provide compelling reasons to grant asylum in the absence of a well-founded fear of persecution, nor has the applicant established a reasonable possibility of suffering other serious harm.

OR

b. Past persecution found, but a preponderance of the evidence establishes that it would be reasonable for the applicant to relocate within his or her country to avoid future persecution.

Although the applicant has shown past persecution on account of a protected ground, a preponderance of the evidence establishes that the applicant could avoid future persecution by relocating to another part of the country in question and, under all the circumstances, it is reasonable for him or her to do so. [Explain why, keeping in mind that once past persecution is found there is a presumption that it is unreasonable to relocate and the government has the burden of proof to establish that it is reasonable under the circumstances.] The persecution the applicant suffered in the past was not so severe as to provide compelling reasons to grant asylum in the absence of a well-founded fear of persecution, nor has the applicant established a reasonable possibility of suffering other serious harm.

[STOP AND GO TO VII. DECISION]

C. CLAIM BASED ON WELL-FOUNDED FEAR OF FUTURE PERSECUTION

The applicant claims to have a fear of future persecution. The applicant has failed to establish all four prongs of the modified *Mogharrabi* test for well-foundedness in that s/he has not shown that [brief analysis of: possession (or imputation), awareness, capability, or inclination - use cc cites if reliance on country conditions determines outcome of decision.]

ALSO [IF APPLICABLE]

The applicant has failed to establish s/he is similarly situated to a group of persons subject to a pattern or practice of persecution such that his/her fear of persecution upon return is reasonable.

The applicant has not shown there is a reasonable possibility of suffering the persecution s/he fears.

AND/OR

The applicant has failed to show that the harm s/he fears is on account of one of the five protected grounds. [Explain why no nexus was established.]

AND/OR [if WWF is found in a particular area or locality, but the threat of harm does not exist countrywide and it is reasonable for the applicant to relocate]

The applicant failed to demonstrate that the persecution s/he fears exists throughout [country] or that it is unreasonable for him/her to relocate within his/her country. [Briefly explain why.] An asylum applicant must show that the threat of persecution exists countrywide or that it is unreasonable for the applicant to relocate within his or her country to avoid future persecution.

VI. BARS

[Are there any bars? If so, address.]

VII. DECISION

For the foregoing reasons, the applicant is not eligible for asylum status in the United States. Assessment is to refer to the Immigration Judge.

47. STANDARD RECOMMENDED APPROVAL LETTER

(Rev. June 2004)

Recommended Approval

This letter refers to your request for asylum in the United States filed on Form I-589. Your request has been recommended for approval.

However, final approval cannot be given until U.S. Citizenship and Immigration Services (USCIS) receives the results from the mandatory, confidential investigation of your identity and background. If the results reveal derogatory information that affects your eligibility for asylum, USCIS may deny your request for asylum or refer it to an immigration judge for further consideration.

This recommended approval is valid for the period of time necessary to obtain the required clearances. The recommended approval includes your dependents listed above who are present in the United States, were included in your asylum application, and for whom you have established a qualifying relationship by a preponderance of evidence.

You and your dependents listed above are eligible to apply for work authorization during the background check process pursuant to 8 CFR 274a.12(c)(8)(ii). To work in the U.S., you and each qualifying family member must apply for and obtain an Employment Authorization Document (EAD). If authorized, you may accept employment subject to any restrictions in the regulations or on the card. You and your qualifying family members are not required to pay a fee with your initial request(s) for employment authorization. However, when you submit an application to renew your employment authorization, you must each pay a fee or request a fee waiver under 8 C.F.R. 103.7(c). To obtain an EAD, you must each submit a Form I-765, *Application for Employment Authorization*, to the appropriate USCIS Service Center as provided in the instructions to the Form I-765.

This recommended approval does not entitle your spouse or children outside the United States, if any, to receive derivative asylum status or to be admitted to the United States. If you receive final approval of asylum, you will be entitled to request derivative asylum for your spouse or unmarried child(ren) under 21 years of age by filing a Form I-730, *Refugee and Asylee Relative Petition*.

If you and/or your qualifying family members plan to depart the United States and intend to return, you must each obtain permission to return to the United States before you leave this country. If you leave the United States without first obtaining advance parole, it may be presumed that you abandoned your request for asylum. You may apply for advance parole by filing a Form I-131, *Application for Travel Document*. If you leave the United States with advance parole and return to the country of claimed persecution, you will be presumed to have abandoned your asylum request, unless you can show compelling reasons for the return.

You must notify the Department of Homeland Security (DHS) of any change of address within ten days of any such change. You may obtain a Form AR-11, *Alien's Change of Address Card*, at your nearest post office or USCIS office, or online at www.uscis.gov, to comply with this requirement. Please also submit a copy of this form or other written notification of any change of address to the Asylum Office having jurisdiction over your pending request for asylum.

You may obtain any of the USCIS forms mentioned in this letter by visiting a local USCIS office or by calling the National Customer Service Center at 1-800-375-5283. You may also download any USCIS form from the public Internet by signing on to our website at www.uscis.gov.

Note: Please write your full name, date of birth, and A number on any correspondence you have with the DHS.

48. RECOMMENDED APPROVAL AFTER NOID

(Rev. June 2004)
[Use this letter if a NOID was previously issued, applicant is eligible for asylum after rebuttal period, and identity and security checks are not complete]

Recommended Approval

This letter refers to your request for asylum in the United States filed on Form I-589.

U.S. Citizenship and Immigration Services (USCIS) previously issued to you a Notice of Intent to Deny your request for asylum. You were given an opportunity to submit an argument in rebuttal to the proposed grounds for denial. After careful consideration of your rebuttal materials, your request has been recommended for approval.

However, final approval cannot be given until USCIS receives the results from the mandatory, confidential investigation of your identity and background. If the results reveal derogatory information that affects your eligibility for asylum, USCIS may deny your request for asylum or refer it to an immigration judge for further consideration.

This recommended approval is valid for the period of time necessary to obtain the required clearances. The recommended approval includes your dependents listed above who are present in the United States, were included in your asylum application, and for whom you have established a qualifying relationship by a preponderance of evidence.

You and your dependents listed above are eligible to apply for work authorization during the background check process pursuant to 8 CFR 274a.12(c)(8)(ii). To work in the U.S., you and each qualifying family member must apply for and obtain an Employment Authorization Document (EAD). If authorized, you may accept employment subject to any restrictions in the regulations or on the card. You and your qualifying family members are not required to pay a fee with your initial request(s) for employment authorization. However, when you submit an application to renew your employment authorization, you must each pay a fee or request a fee waiver under 8 C.F.R. 103.7(c). To obtain an EAD, you must each submit a Form I-765, *Application for Employment Authorization* to the appropriate USCIS Service Center, as provided in the instructions to the I-765.

This recommended approval does not entitle your spouse or children outside the United States, if any, to receive derivative asylum status or to be admitted to the United States. If you receive final approval of asylum, you will be entitled to request derivative asylum for your spouse or unmarried child(ren) under 21 years of age by filing a Form I-730, *Refugee and Asylee Relative Petition*.

If you and/or your qualifying family members plan to depart the United States and intend to return, you must each obtain permission to return to the United States before you leave this country. If you leave the United States without first obtaining advance parole, it may be presumed that you abandoned your request for asylum. You may apply for advance parole by filing a Form I-131, *Application for Travel Document*. If you leave the United States with advance parole and return to the country of claimed persecution, you will be presumed to have abandoned your asylum request, unless you can show compelling reasons for the return.

You must notify the Department of Homeland Security (DHS) of any change of address within ten days of any such change. You may obtain a Form AR-11, *Alien's Change of Address Card*, at your nearest post office or USCIS office, or online at www.uscis.gov, to comply with this requirement. Please also submit a copy of the form or other

written notification of any change of address to the Asylum Office having jurisdiction over your pending request for asylum.

You may obtain any of the USCIS forms mentioned in this letter by visiting a local USCIS office or calling the National Customer Service Center at 1-800-375-5283. You may also download any USCIS form from the public Internet by signing on to our website at www.uscis.gov.

Note: Please write your full name, date of birth, and A number on any correspondence you have with DHS.

49. STANDARD ASYLUM APPROVAL
(Rev. October 2007)

Asylum Approval

This letter refers to your request for asylum in the United States filed on Form I-589.

It has been determined that you are eligible for asylum in the United States. Attached please find a completed Form I-94, Arrival-Departure Record, indicating that you have been granted asylum status in the United States pursuant to § 208(a) of the Immigration and Nationality Act (INA) as of **[This date corresponds to the FDEC date in RAPS]**. This grant of asylum includes your dependents listed above who are present in the United States, who were included in your asylum application, and for whom you have established a qualifying relationship by a preponderance of evidence.

You have been granted asylum in the United States for an indefinite period; however, asylum status does not give you the right to remain permanently in the United States. Asylum status may be terminated if you no longer have a well-founded fear of persecution because of a fundamental change in circumstances, you have obtained protection from another country, or you have committed certain crimes or engaged in other activity that makes you ineligible to retain asylum status in the United States. See INA § 208(c)(2).

Now that you are an asylee, you may apply for certain benefits, which are listed below. You are also responsible for complying with certain laws and regulations, if such laws and regulations apply to you. These responsibilities are also explained in this letter. We recommend that you retain the original of this letter as proof of your status and that you submit copies of this letter when applying for any of the benefits or services listed below. You may obtain any of the U.S. Citizenship and Immigration Services (USCIS) forms mentioned in this letter by visiting a local USCIS office or by calling the National Customer Service Center at 1-800-375-5283. You may also download any USCIS form from the Internet on the USCIS website at www.uscis.gov.

Benefits

1. Employment Authorization

You are authorized to work in the United States for as long as you remain in asylum status. Your dependents listed above are also authorized to work in the United States, so long as they retain derivative asylum status. In order to work in the United States, every employee must show to a prospective employer certain documentation as proof of employment authorization. That proof may consist of, among other things, an unrestricted social security card and a state-issued driver's license. It may also consist of an unexpired employment authorization document issued by USCIS. For a list of all documents that can be accepted by an employer as proof of employment authorization, consult the USCIS Form I-9, Employment Eligibility Verification, available on the USCIS web site at www.uscis.gov.

You and any qualifying dependents are each entitled to immediately receive an employment authorization document issued by USCIS. Please see the attached sheet entitled "Notice Regarding Employment Authorization Documentation" to find out how you can receive your employment authorization document.

2. Derivative Asylum Status

You may request derivative asylum status for any spouse or child (unmarried and under 21 years of age) who is not included in this decision and with whom you have a qualifying relationship, whether or not that spouse or child is in the United States. To request derivative asylum status, you must submit a Form I-730, *Refugee and Asylee Relative Petition*, to the Nebraska Service Center, P.O. Box 87730, Lincoln, NE 68501-7730. The Form I-730 must be filed for each qualifying family member within 2 years of the date you were granted asylum status, unless USCIS determines that this time period should be extended for humanitarian reasons.

3. Social Security Cards

You may immediately apply for an unrestricted Social Security card at any Social Security office. To get an Application for a Social Security Card (Form SS-5) or to get more information about applying for a Social Security card use http://www.ssa.gov/ on the Internet, call the toll-free number 1-800-772-1213, or visit a local Social Security office. When you go to a Social Security office to apply for a Social Security card, you must take your I-94 card showing you have been granted asylum status. If available, you should also take some kind of photo-identity document, such as an EAD or your passport. For directions to the Social Security office nearest to you, call the Social Security Administration toll-free number or visit the website listed above.

4. Assistance and Services through the Office of Refugee Resettlement (ORR)

You may be eligible to receive assistance and services through the Office of Refugee Resettlement (ORR). ORR funds and administers various programs, which are run by state and private, non-profit agencies throughout the U.S. The programs include cash and medical assistance, employment preparation and job placement, and English language training. Many of these programs have time-limited eligibility periods that begin from the date of your grant of asylum. Therefore, if you wish to seek assistance, it is important that you do so as soon as possible after receipt of this letter. To find out what programs are available and where to go for assistance and services in your state, **please call (800) 354-0365.** You also may sign on to the ORR website at www.acf.dhhs.gov/programs/orr.

5. Employment Assistance

You are eligible to receive a variety of services under Title I of the Workforce Investment Act of 1998. Such services include job search assistance, career counseling, and occupational skills training. These and other services are available at local One-Stop Career Centers. To obtain information about the Center nearest you, please call 1-877-US2-JOBS. The information is also available on-line through America's Service Locator at http://www.servicelocator.org/.

6. Adjustment of Status

You may apply for lawful permanent resident status under section 209(b) of the Immigration and Nationality Act after you have been physically present in the United States for a period of one year after the date you were granted asylum status. To apply for lawful permanent residence status, you must submit a separate Form I-485, Application to Register Permanent Residence or Adjust Status, for yourself and each qualifying family member to the address indicated in the instructions to that form.

Responsibilities

1. Departing from the United States

If you, and/or your qualifying family members with derivative asylum status, plan to depart the United States, you must each obtain permission to return to the United States before you leave this country by obtaining a refugee travel document(s). A refugee travel document may be used for temporary travel abroad and is required for re-admission to the United States as an asylee. If you and/or your qualifying family members do not obtain a refugee travel document in advance of your departure, you may be unable to re-enter the United States, or you may be placed in removal proceedings before an immigration judge. You and each qualifying family member may apply for a Refugee Travel Document by each submitting a Form I-131, *Application for Travel Document*, with the required fee or request for fee waiver under 8 C.F.R. 103.7(c) to the Nebraska Service Center, P.O. Box 87131, Lincoln, NE 68501-7131.

2. Changes of Address

You must notify the Department of Homeland Security (DHS) of any change of address within ten days of such change. You may obtain a Form AR-11, *Alien's Change of Address Card* at your nearest post office or USCIS office, or online at www.uscis.gov, to comply with this requirement.

3. Selective Service Registration

All male asylees between the ages of 18 and 26 must register for the Selective Service. To obtain information about the Selective Service and how to register, you may sign on to the Selective Service website at www.sss.gov or obtain a Selective Service "mail-back" registration form at your nearest post office.

Note: Please write your full name, date of birth, and A number on any correspondence you have with the DHS.

Enclosures: ____ I-94 Card(s)
____ Form I-688B, Employment Authorization Card

50. ASYLUM APPROVAL AFTER NOID

(Rev. June 2004)
[Use this letter if a NOID was previously issued, applicant is eligible for asylum after rebuttal period and identity and security checks complete]

Asylum Approval

This letter refers to your request for asylum in the United States filed on Form I-589.

U.S. Citizenship and Immigration Services (USCIS) previously issued to you a Notice of Intent to Deny your request for asylum. You were given the opportunity to submit an argument in rebuttal to the proposed grounds for denial. After careful consideration of your rebuttal materials, it has been determined that you are eligible for asylum in the United States.

Attached please find a completed Form I-94, Arrival Departure Record, indicating that you have been granted asylum status in the United States pursuant to §208(a) of the Immigration and Nationality Act (INA) as of **[**This date corresponds to the FDEC date in RAPS]. This grant of asylum includes your dependents listed above who are present in the United States, were included in your asylum application, and for whom you have established a qualifying relationship by a preponderance of evidence.

You have been granted asylum in the United States for an indefinite period; however, asylum status does not give you the right to remain permanently in the United States. Asylum status may be terminated if you no longer have a well-founded fear of persecution because of a fundamental change in circumstances, you have obtained protection from another country, or you have committed certain crimes or engaged in other activity that makes you ineligible to retain asylum status in the United States. See INA § 208(c)(2).

Now that you are an asylee, you may apply for certain benefits, which are listed below. You are also responsible for complying with certain laws and regulations, if such laws and regulations apply to you. These responsibilities are also explained in this letter. We recommend that you retain the original of this letter as proof of your status and that you submit copies of this letter when applying for any of the benefits or services listed below. You may obtain any of the USCIS forms mentioned in this letter by visiting a local USCIS office or calling the National Customer Service Center at 1-800-375-5283. You may also download any USCIS form from the public Internet by signing on to our website at www.uscis.gov.

Benefits

1. Employment Authorization

You are authorized to work in the United States for as long as you remain in asylum status. Your dependents listed above are also authorized to work in the United States, so long as they retain derivative asylum status. In order to work in the United States, every employee must show to a prospective employer certain documentation as proof of employment authorization. That proof may consist of, among other things, an unrestricted social security card and a state-issued driver's license. It may also consist of an unexpired employment authorization document issued by USCIS. For a list of all documents that can be accepted by an employer as proof of employment authorization, consult the USCIS Form I-9, Employment Eligibility Verification, available on our web site at www.uscis.gov.

You and any qualifying dependents are each entitled to immediately receive an employment authorization document issued by USCIS. Please see the attached sheet entitled "Notice Regarding Employment Authorization Documentation" to find out how you can receive your employment authorization document.

2. Derivative Asylum Status

You may request derivative asylum status for any spouse or child (unmarried and under 21 years of age) who is not included in this decision and with whom you have a qualifying relationship, whether or not that spouse or child is in the United States. To request derivative asylum status, you must submit a Form I-730, *Refugee and Asylee Relative Petition*, to the Nebraska Service Center, P.O. Box 87730, Lincoln, NE 68501-7730. The Form I-730 must be filed for each qualifying family member within 2 years of the date you were granted asylum status, unless USCIS determines that this time period should be extended for humanitarian reasons.

3. Social Security Cards

You may immediately apply for an unrestricted Social Security card at any Social Security office. To get an Application for a Social Security Card (Form SS-5) or to get more information about applying for a Social Security card use http://www.ssa.gov/ on the Internet, call the toll-free number 1-800-772-1213, or visit a local Social Security office. When you go to a Social Security office to apply for a Social Security card, you must take your I-94 card showing you have been granted asylum status. If available, you should also take some kind of photo-identity document, such as an EAD or your passport. For directions to the Social Security office nearest to you, call the Social Security Administration toll-free number or visit the website listed above.

4. Assistance and Services through the Office of Refugee Resettlement (ORR)

You may be eligible to receive assistance and services through the Office of Refugee Resettlement (ORR). ORR funds and administers various programs, which are run by state and private, non-profit agencies throughout the U.S. The programs include cash and medical assistance, employment preparation and job placement, and English language training. Many of these programs have time-limited eligibility periods that begin from the date of your grant of asylum. Therefore, if you wish to seek assistance, it is important that you do so as soon as possible after receipt of this letter. To find out what programs are available and where to go for assistance and services in your state, **please call (800) 354-0365.** You also may sign on to the ORR website at www.acf.dhhs.gov/programs/orr.

5. Employment Assistance

You are eligible to receive a variety of services under Title I of the Workforce Investment Act of 1998. Such services include job search assistance, career counseling, and occupational skills training. These and other services are available at local One-Stop Career Centers. To obtain information about the Center nearest you, please call 1-877-US2-JOBS. The information is also available on-line through America's Service Locator at www.servicelocator.org.

6. Adjustment of Status

You may apply for lawful permanent resident status under section 209(b) of the Immigration and Nationality Act after you have been physically present in the United States for a period of one year after the date you were granted asylum status. To apply for lawful permanent residence status, you must submit a separate Form I-485, *Application to Register Permanent Residence or Adjust Status*, for yourself and each qualifying family member to the address indicated in the instructions to that form.

Responsibilities

1. Departing from the United States

If you, and/or your qualifying family members with derivative asylum status, plan to depart the United States, you must each obtain permission to return to the United States before you leave this country by obtaining a refugee travel document(s). A refugee travel document may be used for temporary travel abroad and is required for re-admission to the United States as an asylee. If you and/or your qualifying family members do not obtain a refugee

travel document in advance of your departure, you may be unable to re-enter the United States, or you may be placed in removal proceedings before an immigration judge. You and each qualifying family member may apply for a Refugee Travel Document by each submitting a Form I-131, *Application for Travel Document*, with the required fee or request for fee waiver under 8 C.F.R. 103.7(c) to the Nebraska Service Center, P.O. Box 87131, Lincoln, NE 68501-7131.

2. Changes of Address

You must notify the Department of Homeland Security of any change of address within ten days of such change. You may obtain a Form AR-11, *Alien's Change of Address Card* at your nearest post office or USCIS office, or online at www.uscis.gov, to comply with this requirement.

3. Selective Service Registration

All male asylees between the ages of 18 and 26 must register for the Selective Service. To obtain information about the Selective Service and how to register, you may sign on to the Selective Service website at www.sss.gov or obtain a Selective Service "mail-back" registration form at your nearest post office.

Note: Please write your full name, date of birth, and A number on any correspondence you have with the DHS.

51. STANDARD REFERRAL NOTICE
(Rev. June 2004)

Referral Notice

This letter refers to your request for asylum in the United States (Form I-589).

Applicants for asylum must credibly establish that they have suffered past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, and that they merit a grant of asylum in the exercise of discretion.

For the reason(s) indicated below, U.S. Citizenship and Immigration Services (USCIS) has not granted your claim for asylum:

1. ☐ You failed to appear for your scheduled asylum interview, or failed to provide a competent interpreter, and did not establish exceptional circumstances.
2. ☐ You have not established that you are a refugee because:

   A. Past Persecution

   ☐ You did not describe any instances of suffering harm in the past.
   ☐ You have not established that any harm you experienced in the past, considering incidents both individually and cumulatively, amounts to persecution.
   ☐ The person or persons who harmed you were not government agents and you failed to establish that the government was unable or unwilling to protect you.
   ☐ You have not established that any harm you experienced in the past is on account of one of the protected characteristics in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion).

AND

   B. Future Persecution

   ☐ You have not expressed a fear of future persecution.
   ☐ You have not established that there is a reasonable possibility you would suffer persecution in the future.
   ☐ You have not established that any future harm you fear is on account of one of the protected characteristics in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion).
   ☐ You have not established that the threat of persecution you fear exists throughout your country (or, if stateless, country of last habitual residence) or that it would be unreasonable for you to relocate within that country to avoid future persecution.
   ☐ You have not established that your fear of future persecution is well-founded, because you have not shown that your government is unable or unwilling to protect you from the harm you fear.

3. ☐ Although the evidence indicates that you are a refugee because you were persecuted in the past on account of a protected characteristic in the refugee definition, USCIS has referred your request as a matter of discretion because:

- ☐ A preponderance of the evidence establishes that country conditions have changed to such an extent that there is not a reasonable possibility you would suffer persecution if you were to return to your country (or, if stateless, country of last habitual residence),
- ☐ A preponderance of the evidence establishes that there has been a fundamental change in circumstances such that there is not a reasonable possibility you would suffer persecution if you were to return to your country (or, if stateless, country of last habitual residence),
- ☐ A preponderance of the evidence establishes that the threat of persecution you fear does not exist throughout your country and it would be reasonable for you to relocate within your country (or, if stateless, country of last habitual residence) to avoid future persecution,

AND

you have not shown compelling reasons for being unwilling or unable to return to your country (or, if stateless, country of last habitual residence) arising from the severity of the past persecution you experienced, nor have you established that there is a reasonable possibility you would suffer other serious harm in your country (or, if stateless, country of last habitual residence).

4. (FOR APPLICATIONS FILED PRIOR TO APRIL 1, 1997)

☐ Evidence indicates that you are barred by statute from a grant of asylum for the following reason(s), and you failed to establish by a preponderance of the evidence that such reason(s) does not apply to you:

- ☐ You were convicted of a particularly serious crime, which occurred in the U.S.
- ☐ You were convicted of an aggravated felony.
- ☐ There are reasonable grounds for regarding you as a danger to the security of the United States.
- ☐ You are described within section 212(a)(3)(B)(i)(I),(II), and (III) of the Act as it existed prior to April 1, 1997 and as amended by the Anti-terrorist and Effective Death Penalty Act of 1996 (AEDPA), unless it is determined that there are not reasonable grounds to believe that you are a danger to the security of the United States.
- ☐ You were firmly resettled in a third country.
- ☐ Evidence indicates that you ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion.

5. (FOR APPLICATIONS FILED ON OR AFTER APRIL 1, 1997.)

☐ Evidence indicates that you are barred by statute from a grant of asylum for the following reason(s) and you failed to establish by a preponderance of the evidence that such reason(s) does not apply to you:

- ☐ Evidence indicates that you ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion.
- ☐ You were convicted of a particularly serious crime or aggravated felony, which occurred inside or

outside the U.S.

- ☐ There are serious reasons for believing that you committed a serious nonpolitical crime outside the United States before you came to the United States.
- ☐ There are reasonable grounds for regarding you as a danger to the security of the United States.
- ☐ You have engaged in terrorist activity.
- ☐ You are engaged in or are likely to engage in terrorist activity.
- ☐ You are a representative of an organization that has been designated by the Secretary of State as a foreign terrorist organization.
- ☐ You have incited terrorist activity.
- ☐ You were firmly resettled in a third country.

6. ☐ You are a citizen or national of another country in addition to the country of persecution, and you have not established that you were persecuted or have a well-founded fear of persecution on account of a protected ground in that other country.
7. ☐ After careful consideration of all available information and explanations at your asylum interview, your claim was deemed not credible on the basis of:
   - ☐ Material inconsistency(ies) between your testimony and application and/or other evidence.
   - ☐ Material inconsistency(ies) within your testimony.
   - ☐ Material inconsistency(ies) with country conditions information.
   - ☐ Lack of detail(s) on material points.

Brief Explanation: _____

_____

_____

_____

8. ☐ You failed to follow requirements for fingerprint processing.

9. ☐ Other Reason for Referral: _____

_____

_____

_____

Based on the above reasons(s), your case has been referred to an immigration judge for adjudication in removal proceedings before the U.S. Department of Justice, Executive Office for Immigration Review. **This is not a denial of your asylum application.** You may request asylum again before an immigration judge and your request will be considered (without filing another application) when you appear before an immigration judge at the date and time listed on the attached charging document. The determinations that we have made in referring your application are not binding on the immigration judge, who will evaluate your claim anew. This referral includes the dependents included in your asylum application, who are listed on the first page of this notice.

If your asylum application was filed on or after January 4, 1995, the following information applies to you. If you appeared in person on your scheduled appointment date to receive and acknowledge receipt of the decision, or you were informed not to appear in person, this referral has no effect on when you may apply for employment authorization. If an immigration judge does not deny your asylum application within 150 days of the date your asylum application was first accepted by U.S. Citizenship and Immigration Services (USCIS) (not including any

delays in processing you may have sought or caused), then you will be eligible to submit a Form I-765 request for employment authorization with USCIS. The earliest possible date you are eligible to apply for employment authorization is **[Insert date in PROJECTED 150-DAY DATE field on KLOK screen]**. Your failure to appear at a scheduled appointment will extend the period of time you must wait before you may apply for employment authorization by the number of days between the missed appointment and your appearance at a hearing before an immigration judge. If you fail without good cause to appear for the scheduled hearing before the immigration judge, you may not be granted employment authorization.

52. REFERRAL AFTER NOID – NO REBUTTAL
(Rev. June 2004)

Referral Notice

This letter refers to your request for asylum in the United States (Form I-589).

You were interviewed for your asylum claim and were subsequently issued a Notice of Intent to Deny (NOID) your asylum claim. You were afforded sixteen (16) days in which to offer evidence or argument in rebuttal to the discussion in the NOID. You failed to submit information to rebut the proposed grounds for denial.

Asylum Officers do not have the authority to deny asylum to an individual who is not maintaining valid immigrant, nonimmigrant, parole or temporary protected (TPS) status. Because you are no longer in a valid status described above, your asylum application has been referred to an immigration judge for adjudication in removal proceedings before the U.S. Department of Justice, Executive Office for Immigration Review. **This is not a denial of your asylum application.** You may request asylum again before the immigration judge and your request will be considered (without additional refiling) when you appear before the immigration judge at the date and time listed on the attached charging document. The determinations that we have made in referring your application are not binding on the immigration judge, who will evaluate your claim anew. This referral includes the dependents included in your asylum application, who are listed on the first page of this notice.

If your asylum application was filed on or after January 4, 1995, the following information applies to you. If you appeared in person on your scheduled appointment date to receive and acknowledge receipt of the decision, or you were informed not to appear in person, this referral has no effect on when you may apply for employment authorization. If an immigration judge does not deny your asylum application within 150 days of the date your asylum application was first accepted by U.S. Citizenship and Immigration Services (USCIS) (not including any delays in processing you may have sought or caused), then you will be eligible to submit a Form I-765 request for employment authorization with USCIS. The earliest possible date you are eligible to apply for employment authorization is **[Insert date in PROJECTED 150-DAY DATE field on KLOK screen]**. Your failure to appear at a scheduled appointment will extend the period of time you must wait before you may apply for employment authorization by the number of days between the missed appointment and your appearance at a hearing before an immigration judge. If you fail without good cause to appear for the scheduled hearing before the immigration judge, you may not be granted employment authorization.

53. REFERRAL AFTER NOID – REBUTTAL
(Rev. June 2004)

Referral Notice

This letter refers to your request for asylum in the United States (Form I-589).

You were interviewed for your asylum claim and were subsequently issued a Notice of Intent to Deny (NOID) your asylum claim. You were afforded sixteen (16) days in which to offer evidence or argument in rebuttal to the discussion in the NOID. The information you submitted, however, failed to overcome the grounds for denial as stated in the NOID for the following reasons:

Asylum Officers do not have the authority to deny asylum to an individual who is not maintaining valid immigrant, nonimmigrant, parole or temporary protected (TPS) status. Because you are no longer in a valid status described above, your asylum application has been referred to an immigration judge for adjudication in removal proceedings before the U.S. Department of Justice, Executive Office for Immigration Review. **This is not a denial of your asylum application.** You may request asylum again before the immigration judge and your request will be considered (without additional refiling) when you appear before the immigration judge at the date and time listed on the attached charging document. The determinations that we have made in referring your application are not binding on the immigration judge, who will evaluate your claim anew. This referral includes the dependents included in your asylum application, who are listed on the first page of this notice.

If your asylum application was filed on or after January 4, 1995, the following information applies to you. If you appeared in person on your scheduled appointment date to receive and acknowledge receipt of the decision, or you were informed not to appear in person, this referral has no effect on when you may apply for employment authorization. If an immigration judge does not deny your asylum application within 150 days of the date your asylum application was first accepted by U.S. Citizenship and Immigration Services (USCIS) (not including any delays in processing you may have sought or caused), then you will be eligible to submit a Form I-765 request for employment authorization with USCIS. The earliest possible date you are eligible to apply for employment authorization is **[Insert date in PROJECTED 150-DAY DATE field on KLOK screen]**. Your failure to appear at a scheduled appointment will extend the period of time you must wait before you may apply for employment authorization by the number of days between the missed appointment and your appearance at a hearing before an immigration judge. If you fail without good cause to appear for the scheduled hearing before the immigration judge, you may not be granted employment authorization.

54. REFERRAL NOTICE – 1-YEAR DEADLINE

(Rev. June 2004)

Referral Notice

This letter refers to your application for asylum in the United States (Form I-589). An applicant for asylum who files his or her application after April 1, 1998, must file within one year of the date of last arrival, unless there are changed circumstances that materially affect the applicant's eligibility for asylum or extraordinary circumstances directly related to the delay in filing. You filed your application for asylum on **«FileDate»**, but have not demonstrated with clear and convincing evidence that your application was filed within one year of your last arrival.

1. ☐ You have not demonstrated that an exception to the 1-year filing requirement applies in your case. In the period of time since April 1, 1997, no changes were found in applicable United States law, country conditions, or your circumstances that would materially affect your asylum eligibility. You also have not shown extraordinary circumstances directly related to your failure to file your asylum application within one year of your last arrival.

2. ☐ Although you have established changed circumstances materially affecting your eligibility for asylum, or extraordinary circumstances directly related to your delay in filing, you failed to file your application within a reasonable period of time given those circumstances.

Based on the above determinations that were made following your asylum interview, your application for asylum is being referred to an immigration judge for adjudication in removal proceedings before the U.S. Department of Justice, Executive Office for Immigration Review. **This is not a denial of your asylum application.** You may request asylum again before the immigration judge and your request will be considered (without additional refiling) when you appear before the immigration judge at the date and time listed on the attached charging document. Once you appear before the immigration judge, the judge will consider whether your application was timely filed or whether an exception to the filing deadline applies in your case. The determinations that we have made in referring your application are not binding on the immigration judge, who will evaluate your claim anew. This referral includes the dependents included in your asylum application, who are listed on the first page of this notice.

If your asylum application was filed on or after January 4, 1995, the following information applies to you. If you appeared in person on your scheduled appointment date to receive and acknowledge receipt of the decision, or you were informed not to appear in person, this referral has no effect on when you may apply for employment authorization. If an immigration judge does not deny your asylum application within 150 days of the date your asylum application was first accepted by U.S. Citizenship and Immigration Services (USCIS) (not including any delays in processing you may have sought or caused), then you will be eligible to submit a Form I-765 request for employment authorization with USCIS. The earliest possible date you are eligible to apply for employment authorization is **[Insert date in PROJECTED 150-DAY DATE field on KLOK screen]**. Your failure to appear at a scheduled appointment will extend the period of time you must wait before you may apply for employment authorization by the number of days between the missed appointment and your appearance at a hearing before an immigration judge. If you fail without good cause to appear for the scheduled hearing before the immigration judge, you may not be granted employment authorization.

55. REFERRAL – PRIOR DENIAL
(Rev. June 2004)

Referral Notice

This letter refers to your application for asylum in the United States (Form I-589). An applicant is ineligible to apply for asylum if he or she previously was denied asylum by an immigration judge or the Board of Immigration Appeals, unless the applicant can establish the existence of changed circumstances that materially affect his or her eligibility for asylum.

Our records indicate that you previously were denied asylum by **[Insert "an Immigration Judge" or "the Board of Immigration Appeals"]** on **[Insert date of prior denial]**. You failed to demonstrate the existence of changed circumstances that materially affect your eligibility for asylum.

Based on the above determination that was made following your asylum interview, your application for asylum is being referred to an immigration judge for adjudication in removal proceedings before the U.S. Department of Justice, Executive Office for Immigration Review. **This is not a denial of your asylum application.** You may request asylum again before the immigration judge and your request will be considered (without additional refiling) when you appear before the immigration judge at the date and time listed on the attached charging document. Once you appear before the immigration judge, the judge will consider whether there have been changed circumstances that materially affect your eligibility to apply for asylum. The determinations that we have made in referring your application are not binding on the immigration judge, who will evaluate your claim anew. This referral includes the dependents included in your asylum application, who are listed on the first page of this notice.

56. STANDARD FINAL DENIAL – NO REBUTTAL

(Rev. June 2004)

Final Denial of Request for Asylum

This letter refers to your Request for Asylum in the United States (Form I-589).

You were previously issued a Notice of Intent to Deny (NOID) your asylum claim. You were afforded sixteen (16) days in which to offer evidence or argument in rebuttal to the discussion in the NOID. You failed to submit information to rebut the proposed grounds for denial.

Your asylum request is therefore denied as of [**Insert date in Final Decision Date field**] for the reasons contained in the NOID. There is no appeal from this decision. This denial includes the dependents included in your asylum application, who are listed on the first page of this letter.

Please be advised that any employment authorization which you have been issued as a result of having a pending application for asylum will terminate at the expiration of the Employment Authorization Document or sixty (60) days from the date of this notice, whichever period is longer.

You must notify the Department of Homeland Security of any change of address within ten days of such change. You may obtain a Form AR-11, *Alien's Change of Address Card* at your nearest post office or USCIS office, or online at www.uscis.gov, to comply with this requirement. If you should depart the United States, please notify the local U.S. Citizenship and Immigration Services (USCIS) office having jurisdiction over your place of residence prior to any such departure and furnish the expected date, place, and manner of departure and destination.

57. STANDARD FINAL DENIAL – REBUTTAL
(Rev. June 2004)

Final Denial of Request for Asylum

This letter refers to your request for asylum in the United States (Form I-589).

You were previously issued a Notice of Intent to Deny (NOID) your asylum claim. You were afforded sixteen (16) days in which to offer evidence or argument in rebuttal to the discussion in the NOID. The information you submitted, however, failed to overcome the grounds for denial as stated in the NOID for the following reasons:

Your asylum request is therefore denied as of **[Insert date in Final Decision Date field]** for these reasons and the reasons contained in the NOID. There is no appeal from this decision. This denial includes the dependents included in your asylum application, who are listed on the first page of this letter.

Please be advised that any employment authorization which you have been issued as a result of having a pending application for asylum will terminate at the expiration of the Employment Authorization Document or sixty (60) days from the date of this notice, whichever period is longer.

You must notify the Department of Homeland Security of any change of address within ten days of such change. You may obtain a Form AR-11, *Alien's Change of Address Card* at your nearest post office or USCIS office, or online at www.uscis.gov, to comply with this requirement. If you should depart the United States, please notify the local U.S. Citizenship and Immigration Services (USCIS) office having jurisdiction over your place of residence prior to any such departure and furnish the expected date, place, and manner of departure and destination.

58. FINAL DENIAL – PAROLE

(rev. January 2005)

[Use this letter if the Asylum Office is Terminating Parole Status and Issuing an NTA]

Final Denial of Request for Asylum and Notice of Termination of Parole Status

This letter refers to your request for asylum in the United States (Form I-589).

You were previously issued a Notice of Intent to Deny (NOID) your asylum claim.

[IF APPLICANT DID NOT SUBMIT A REBUTTAL, INSERT THIS PARAGRAPH]
You were afforded sixteen (16) days in which to offer evidence or argument in rebuttal to the discussion in the NOID. You failed to submit information to rebut the proposed grounds for denial.

OR

[IF APPLICANT SUBMITTED A REBUTTAL, INSERT THIS PARAGRAPH AND EXPLAIN WHY THE INFORMATION DID NOT OVERCOME THE GROUND(S) OUTLINED IN THE NOID]
You were afforded sixteen (16) days in which to offer evidence or argument in rebuttal to the discussion set forth in the Notice of Intent to Deny (NOID). The information you submitted, however, failed to overcome the grounds for denial as stated in the NOID for the following reasons: **[Explain Reasons]**

Your asylum request is therefore denied as of **[This date corresponds to the FDEC date in RAPS]** for the reasons contained in the Notice of Intent to Deny. There is no appeal from this decision. This denial includes the dependents included in your asylum application, who are listed on the first page of this letter.

Enclosed please find a Notice of Appear (Form I-862), which constitutes written notice of termination of your parole status [8 CFR 212.5(d)(2)(i)], and which places you under removal proceedings. You may renew your request for asylum before an Immigration Judge in the removal proceedings.

Please be advised that any employment authorization which you have been issued as a result of having a pending application for asylum will expire sixty (60) days from the date of this notice or on the expiration date of your Employment Authorization Document, whichever period is longer.

You are directed to report any changes of address to the immigration court having jurisdiction over your place of residence. If you should depart the United States, please notify the U.S. Citizenship and Immigration Services (USCIS) office having jurisdiction over your place of residence prior to any such departure and furnish the expected date, place, and manner of departure and destination.

59. NOTICE OF LACK OF JURISDICTION
(rev. January 2005)

Notice of Lack of Jurisdiction

This letter refers to your request for asylum in the United States (Form I-589).

Department of Homeland Security (DHS) records indicate that you were previously placed in deportation, exclusion, or removal proceedings. Asylum regulations provide that only an immigration judge may adjudicate the asylum application of an individual in proceedings before an immigration court. See 8 CFR 208.2(b). Therefore, the asylum office does not have jurisdiction to consider your asylum application

Your asylum application cannot be processed by the asylum office at this time and is being returned to you.

For further information please contact:

[Insert address of local immigration court having jurisdiction over applicant's case]

Please include your full name, alien number listed above, and your current address on any correspondence with U.S. Citizenship and Immigration Services (USCIS) or the Immigration Court.

You are required to notify USCIS within 10 days of any change of address, on Form AR-11, *Alien Change of Address*. (Attached). You are also required to notify the Immigration Court within 5 days of any change of address, on Form EOIR-33 (Attached).

Attached is a list of low-cost legal service providers that may be able to assist you further.

Attach: Legal Service Provider List

60. INSTRUCTIONS FOR DATING APPENDICES

Date of Service can refer to mail or in-person service.

Appendix Number:	Name:	Date:	Corresponds to:
17	Asylum Approval - *Nunc Pro Tunc*	Letter	Date of Service/GLET
		Grant as of	Date of original grant, or date of arrival in U.S. if entered pursuant to I-730
18	Denial of Asylum Status as a Principal Applicant	Letter	Date of Service/DENY
		Denial as of	FDEC
22	Cancellation of Recommended Approval - Lack of USCIS Jurisdiction	Letter	Date of Service
		Cancel as of	CLOS-C4 date
26	Cancellation of Recommended Approval and Referral (Failure to Comply with Identity and Security Check Procedures)	Letter	Date of Service/DENY
		Dismissed as of	CLOS date
27	Cancellation of Recommended Approval and Dismissal (Failure to Comply with Identity and Security Check Procedures)	Letter	Date of Service/DENY
		Dismissed as of	CLOS date
28	Cancellation of Recommended Approval (Reinstatement of Prior Order)	Letter	Date of Service
		Cancel as of	CLOS-C4 date
36	Notice of Rescission of Asylum Grant	Letter	Date of Service
		Rescind as of	CLOS-C4 date
39	Notice of Intent to Terminate Asylum Status by USCIS	Letter	Date of Service
40	Notice of Termination of Asylum Status	Letter	Date of Service
		Effective date	REVO
41	Notice of Continuation of Asylum Status	Letter	Date of Service
42	Notice of Intent to Terminate Asylum Status by EOIR	Letter	Date of Service
44	Assessment to Grant	Assessment	PDEC/FDEC
45	Notice of Intent to Deny	Letter	Date of Service
46	Assessment to Refer	Assessment	FDEC
47	Standard Recommended Approval	Letter	Date of Service
48	Recommended Approval After NOID	Letter	Date of Service
49	Standard Asylum Approval	Letter	Date of Service/GLET
		Grant as of	FDEC
50	Asylum Approval after NOID	Letter	Date of Service/GLET
		Grant as of	FDEC
51	Standard Referral Notice	Letter	Date of Service
		EAD application	KLOK
52	Referral After NOID - No Rebuttal	Letter	Date of Service

		EAD application	KLOK
53	Referral After NOID - Rebuttal	Letter	Date of Service
		EAD application	KLOK
54	Referral - 1-Year Deadline	Letter	Date of Service
		EAD application	KLOK
Appendix Number:	Name:	Date:	Corresponds to:
55	Referral - Prior Denial	Letter	Date of Service/DENY
		Denial as of	FDEC
56	Standard Final Denial - No Rebuttal	Letter	Date of Service/DENY
		Denial as of	FDEC
57	Standard Final Denial - Rebuttal	Letter	Date of Service/DENY
		Denial as of	FDEC
58	Final Denial – Parole	Letter	Date of Service/DENY
		Denial as of	FDEC
59	Notice of Lack of Jurisdiction	Letter	Date of Service
64	Notice of Institution of Removal Proceedings following Positive Credible Fear Screening	Letter	Date of Service
65	Notice of Dismissal – Abandonment of Asylum Application	Letter	CLOS
66	Lawful Permanent Resident Notice	Letter	Date of Service

61. QUICK REFERENCE TABLE – SPLIT DECISIONS

Type of Decision Issued to P.A.	Status of Dependent	Name of Template Issued to P.A	RAPS Updates		
			CODE	P.A.	Depen.
Referral	In valid status OR asylum office does not terminate parole status	Standard *Referral* Notice. Dependent not included on the heading of the *Notice*. Insert directly before closing: "Because your [spouse/child], [Name], [A#], who was listed on your asylum application as a dependent, does not appear removable, we are not placing him/her in removal proceedings with you."	FDEC	I1-I7	D1-7
			DEPORT CODE	A1	A6
Referral	Parole needs termination in accordance with guidance at section III(Q)(3).	Standard *Referral* Notice. Insert directly before closing: "The attached Notice to Appear (Form I-862) for [Name of dependent, A#] constitutes written notice of termination of his/her parole pursuant to 8 CFR 212.5(d)(2)(i).	FDEC	I1-I7	D1-D7
			DEPORT CODE	A1	SAME AS PA
Referral	Dependent is under jurisdiction of IJ	Standard *Referral* Notice. Dependent not included on the heading of the *Notice*. *Denial of Derivative Status* (Appendix A 19).	FDEC	I1-I4	Remove from RAPS
			DEPORT CODE	A1	N/A
Final Denial	Not in valid status or parole needs termination	Standard *Final Denial* Letter. Dependent may be referred to the immigration court, at the discretion of the asylum office Director.	FDEC	D1-D7	SAME AS PA
			DEPORT CODE	A6	Discretion of Director
Final Denial but the asylum office is terminating P.A.'s parole status	In valid status OR no parole termination	*Final Denial – Parole* letter to P.A., not including the dependent's name. Insert directly above closing: "Because your [spouse/child], [Name], [A#], who was listed on your asylum application as a dependent, does not appear removable, we are not placing him/her in removal proceedings with you."	FDEC	I1-I7	D1-7
			DEPORT CODE	A6	A6
Recommended Approval or Asylum Approval	Ineligible to apply for or be granted asylum	Applicable *Recommended Approval* or *Asylum Approval* letter, not including the dependent's name. *Denial of Derivative Status* (Appendix A 19)	PDEC	GR	D2-D7
			FDEC	G1	D2-D7
			DEPORT CODE	N/A	A6

62. ASYLUM/NACARA 203 PROCESSING SHEET FOR T-FILES

Complete Upon Receipt or Creation of T-File

Alien number: _____

Additional A-numbers for applicant, if any: _____

Creator of A-file: ☐ Service Center ☐ Asylum Office ☐ Other: _____

Printouts Attached (mandatory all T-files): ☐ CIS 9504 ☐ CIS 9101
EOIR screen reviewed: ☐ No EOIR Record ☐ EOIR Record Found, print-out attached

Call to FCO for A-File made by: _____ Date: _____

Spoke to: _____ Response: _____

SECURITY CHECKS FOR T-FILES AND REQUIRED CONCURRENCES DOCUMENTED ON *ASYLUM AND NACARA 203 BACKGROUND IDENTITY AND SECURITY CHECKLIST*

Additional information (attach additional pages as necessary): **[See Section III.K.3 for procedures regarding processing T-files]**

63. SWORN STATEMENT (BLANK)

(rev. January 2005)

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
RECORD OF SWORN STATEMENT

APPLICANT NAME: _____FILE NO. A_____ DATE: _____

EXECUTED AT:_____

Before the following officer of U.S. Citizenship and Immigration Services:

_____, Asylum Officer,

in the _____language. Interpreter _____ used/not used.
(Name) (circle if applicable)

I, _____, acknowledge that the above named officer has identified himself/herself as a person authorized to administer oaths and take testimony in connection with the enforcement of the immigration and nationality laws of the United States. S/he has informed me that s/he desires to take my sworn statement regarding factors which may affect my eligibility for a grant of asylum, should USCIS decide to grant my request for asylum. S/he has told me that my statement must be made freely and voluntarily. I am willing to make such a statement. I swear/affirm that I will tell the truth, the whole truth, and nothing but the truth.

Being duly sworn/affirmed, I respond to the following questions asked by the above-named officer:

Q:
A:

Finish questioning

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. I understand that information contained in or pertaining to my asylum application shall not be disclosed without my written consent, except as permitted by 8 CFR section 208.6 or at the discretion of the Secretary of Homeland Security.

Signature of Applicant _____

on this _____day of _____, _____. Sworn/Affirmed and subscribed before me:

Signature of USCIS Officer _____ Signature of Witness _____

64. NOTICE OF INSTITUTION OF REMOVAL PROCEEDINGS FOLLOWING POSITIVE CREDIBLE FEAR SCREENING

(rev. January 2005)

Notice of Institution of Removal Proceedings following Positive Credible Fear Screening

This letter refers to your request for asylum in the United States (Form I-589).

U.S. Citizenship and Immigration Service (USCIS) records indicate that **[**you were/your dependent was**]** found to have a credible fear of persecution pursuant to 8 CFR 208.30 as part of the expedited removal process under section 235 of the Immigration and Nationality Act, instituted **[brief explanation, e.g.:** upon your entry at **POE** on **date]**. Your asylum application will therefore be considered in the context of removal proceedings under Section 240 of the Immigration and Nationality Act. A Notice to Appear placing you into proceedings **[**is attached/will be forwarded under separate cover**]**.

Your asylum application has been forwarded to the Immigration Court listed below.

For further information please contact:

[Insert address of local immigration court having jurisdiction over applicant's case]

Please include your full name, alien number listed above, and your current address on any correspondence with USCIS or the immigration court.

You are required to notify USCIS within 10 days of any change of address, on Form AR-11, *Alien Change of Address*. (Attached). You are also required to notify the Immigration Court within 5 days of any change of address, on Form EOIR-33 (Attached).

Attached is a list of low-cost legal service providers that may be able to assist you further.

Attachment: Legal Service Provider List

65. NOTICE OF DISMISSAL — ABANDONMENT OF ASYLUM APPLICATION
(rev. January 2005)

Notice of Dismissal – Abandonment of Asylum Application

This letter refers to your request for asylum in the United States (Form I-589).

It has come to the attention of U.S. Citizenship and Immigration Services (USCIS) that:

☐ You departed the United States without advance parole while your asylum application was pending.

☐ You departed the United States and returned to the country of claimed persecution while your asylum application was pending.

Pursuant to 8 CFR 208.8, your asylum application is presumed abandoned. You have not overcome this presumption. Therefore, your asylum application is dismissed as of the date of this letter. There is no appeal from this decision.

You are not eligible to apply for employment authorization based on the filing of the above-referenced asylum application. Any employment authorization you may have received on that basis will expire sixty (60) days from the date of this notice or on the expiration date of your Employment Authorization Document, whichever period is longer.

[INSERT IF APPLICABLE: Because you are not maintaining lawful immigrant, nonimmigrant, or Temporary Protected Status, charging documents placing you into removal proceedings are attached.**]**

[IF THE APPLICANT IS NOT IN THE UNITED STATES, OMIT THE FOLLOWING:]You are directed to report any changes of address to the USCIS office having jurisdiction over your place of residence. If you should depart the United States, please notify the USCIS office having jurisdiction over your place of residence prior to any such departure and furnish the expected date, place, and manner of departure and destination.

66. LAWFUL PERMANENT RESIDENT NOTICE

(rev. January 2005)

This letter refers to your request for asylum in the United States filed on Form I-589.

Our records indicate that your status has been adjusted to that of a lawful permanent resident alien (LPR). Although you are currently an LPR, you are still eligible under the law to seek asylum in the United States. Section 208 of the INA permits an alien present in the United States to apply for asylum regardless of the alien's status. An LPR may want to pursue an asylum application because a grant of asylum permits a dependent spouse or unmarried child under the age of 21 who is included in the asylum application to be granted asylum. If the dependent spouse or unmarried child is outside the United States, the asylum grant permits the applicant to petition for the dependent(s) to join him or her from outside the United States. There may also be certain public assistance benefits that are available based on an approved asylum application.

Now that you are an LPR, we are inquiring whether you want to continue to seek asylum in the United States or withdraw your asylum application. If you want the processing of your asylum application to continue, you must sign, date and return this letter to the address noted above within 30 days of the date noted above. If, however, you do not intend to pursue your asylum application, do not take any action to notify U.S. Citizenship and Immigration Services (USCIS) of your intent. If this letter is not received within the 30-day period, USCIS will presume that you have withdrawn your request and will dismiss your asylum application. This dismissal will be without prejudice. If you wish to be considered for asylum later, you may submit a new request for asylum (Form I-589) and be subject to the rules and procedures in effect at the time of filing.

You may wish to consult with an attorney or representative before making a decision about your asylum claim if you have any concerns about withdrawing an asylum application.

COMPLETE THIS SECTION IF YOU WISH TO PURSUE YOUR ASYLUM APPLICATION.
RETURN THIS LETTER TO THE ADDRESS LISTED ABOVE.

- I wish to pursue my request for asylum in the United States filed on Form I-589 -

_____ _A_____ _____ _____

Signature Alien-Number Printed Name Date