

# CREDIBLE FEAR PROCEDURES MANUAL

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## I. BACKGROUND INFORMATION

### I.A. MANUAL CONTENTS

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

This Manual provides information on how to proceed with credible fear of persecution or torture determinations for aliens subject to expedited removal from the United States pursuant to section 235 of the Immigration and Nationality Act (INA), and alien stowaways who are processed pursuant to 8 CFR 235.1(d)(4). Unless specifically indicated, an asylum office Director determines which personnel (i.e., Asylum Officer, Asylum Clerk) perform certain procedures outlined in this Manual.

The Manual is divided into four (4) sections. The first section, "Background Information," lists references that all asylum personnel should be familiar with in order to process a credible fear claim. The second section, "The Expedited Removal Process," illustrates how an Immigration and Naturalization Service (INS) Inspector places an alien into the credible fear part of the expedited removal process. The third section, "The Credible Fear Process," follows the processing of a credible fear claim from the time an INS district officer refers the alien to the asylum office until the asylum office files the appropriate documents, if any, with the Immigration Court, or returns the case to Deportation for execution of an expedited removal order.

The fourth and most lengthy section, "Expanded Topics," provides more detail on some topics referred to in previous sections, and includes new subjects that bear upon the processing of a credible fear claim. While it is not possible to anticipate all possible issues that may arise in the credible fear program, this section addresses the most common.

Unless otherwise noted, "aliens" in this Manual refers to both aliens in expedited removal and stowaways.

### I.B. REFERENCES

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
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#### 1. Written Materials

This Manual is the main procedural guide to the credible fear process. Other reference materials are available to asylum office personnel and may be consulted for procedural guidance on other issues that may affect an alien in the credible fear process:

- Affirmative Asylum Procedures Manual
- ABC/NACARA Procedures Manual
- APSS User's Manual
- User's Guide to Entering Information in the Asylum Pre-Screening System (APSS)

- Inspector's Field Manual
- AOBTC Basic Training Materials (specific lesson plans are referred to in this Manual)
- Immigration and Naturalization Service Easy Research & Transmittal System (hereinafter referred to as INSERTS). INSERTS is a CD-ROM that contains INS field manuals, administrative manuals, legal opinions and laws and regulations. It may also be accessed through the INS Intranet.

## 2. Legal Authorities

The credible fear process is governed by:

- Immigration and Nationality Act (INA)
- Title 8, Code of Federal Regulations (8 CFR)
- Precedent Board of Immigration Appeals (BIA) decisions
- Precedent Federal Court decisions (including U.S. District Courts, U.S. Courts of Appeal, and the U.S. Supreme Court)
- INS General Counsel (GENCOU) Opinions.

## 3. Computer Databases

The Asylum Pre-Screening System (APSS) tracks the processing of a credible fear case. Many of its commands and screens are based upon those found in the Refugee, Asylum and Parole System (RAPS). Asylum office personnel have access to update and change information in APSS.

Asylum office personnel may wish to consult other databases to see if they contain any information about an alien in the credible fear process. These databases include:

- Refugee Asylum and Parole System (RAPS)
- Central Index System (CIS)
- Deportable Alien Control System (DACs)
- Computer Linked Information Management System (CLAIMS 3)
- National Automated Immigration Lookout System II (NAILS II)
- Nonimmigrant Information System (NIIS).

See the [Affirmative Asylum Procedures Manual section on computer databases](#) for a description of these systems.

## 4. Acronyms

The credible fear process is commonly referred to as the APSO program. "APSO" stands for Asylum Pre-Screening Officer, a term coined by the Headquarters Asylum Division when Asylum Officers first began screening Haitian migrants for credible fear of persecution claims in Guantanamo Bay during 1991 – 1992.

A Supervisory Asylum Officer in charge of executing the day-to-day functions of an asylum office's APSO program is referred to in this manual as a Supervisory Asylum Pre-Screening Officer (SAPSO). An Asylum Officer who makes credible fear determinations is referred to in this Manual as an Asylum Pre-Screening Officer (APSO).

## II. THE EXPEDITED REMOVAL PROCESS

### II.A. SECONDARY INSPECTION

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

During secondary inspection, an Inspector records an alien’s testimony on Form I-867, Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act, Parts A&B. If the Inspector determines that the alien is subject to expedited removal pursuant to section 235 of the INA, he or she completes the top portion of Form I-860, Notice and Order of Expedited Removal. [Appendix A: Form I-867 A&B, Record of Sworn Statement in Proceedings Under Section 235\(b\)\(1\) of the Act.](#)

[Appendix B: Form I-860, Notice and Order of Expedite Removal.](#)

#### 1. Determining whether to Refer an Alien to the Credible Fear Process

During the secondary interview process, an Inspector should refer to an asylum office any alien who indicates either an intention to apply for asylum or a fear of persecution or torture. An Inspector should not assess the merits of an expressed fear, but simply refer to an asylum office all cases where a fear is expressed.

An Inspector should also refer an alien for a credible fear determination if there is any uncertainty about whether the alien expressed a fear of return, even if the Inspector is unable to communicate with the alien, or the alien refuses to talk to the Inspector. Although an Inspector will not be able to complete Form I-867, Parts A&B for an alien with whom he or she is unable to communicate, the Inspector should place a note in the alien-file (A-file), in memorandum format, which describes the particular communication problem, and then refer the alien to an asylum office.

An alien stowaway is not subject to expedited removal. An Inspector must, however, refer to an asylum office for a credible fear determination any alien stowaway who expresses a fear of harm or persecution or who is unable to communicate with an Inspector. The referral procedures are the same for both stowaways and aliens in expedited removal, except that an alien stowaway does not receive a Form I-860.

[Appendix C:](#)

[Virtue, Paul. INS Office of Programs. Supplemental Training Materials on Credible Fear Referrals. Memorandum to Regional and Expedited Removal “Experts” \(Washington, DC: 6 February 1998\), 6 p.](#)

See the Inspector’s Field Manual on INSERTS for more information about an Inspector’s responsibilities.

See this Manual’s section IV.K on stowaways for more information on alien stowaways.

*a. Alien Does Not Indicate an Intention to Apply for Asylum or a Fear of Persecution or Torture*

If the alien does not indicate either an intention to apply for asylum or a fear of persecution or torture, INS may order the alien removed if the alien is otherwise subject to expedited removal. An Inspector completes the bottom portion (the top portion should already be complete) of Form I-860 and serves it on the alien along with a Form I-296, Notice to Alien Ordered Removed. [Appendix D: Form I-296, Notice to Alien Ordered Removed.](#)

*b. Alien Does Indicate an Intention to Apply for Asylum or a Fear of Persecution or Torture*

If an alien does indicate an intention to apply for asylum or a fear of persecution or torture, the Inspector places the alien into the credible fear process according to procedures in the following section.

**2. Placing an Alien into the Credible Fear Process**

Once an Inspector has determined that an alien requires a credible fear determination, she or he takes the following action:

- Ensures only the top portion of Form I-860 is complete, which includes the ground(s) of inadmissibility under which the INS is charging the alien and a narrative description of each charge.
- Gives the alien a Form M-444, Information About Credible Fear Interview. The form must be explained to the alien in a language she or he understands.
- The alien must sign and date two (2) copies of the M-444. If the alien refuses to sign, the officer serving the form must date and initial the form, and write “[name of alien] refused to sign” on the line where the alien’s signature should appear.
- Gives one (1) of the signed (or refused to sign) copies to the alien.
- Places one (1) of the signed (or refused to sign) copies in the individual’s A-file.
- Provides the alien with a list of free legal services providers. Form I-860 does not pertain to stowaways, however, stowaways receive Form M-444.

[Appendix E: Form M-444, Information About Credible Fear Interview](#)

**II.B. CREATING AN ALIEN FILE (A-File)**

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

Unless an A-number already exists for an alien, an Inspector must assign an A-number to the alien by creating an A-file. Entry of an A-number and preliminary information obtained from the A-file into CIS is accomplished according to local INS district office policy.

If an alien is ordered removed and is removed without ever being detained, Inspections staff enters the case into DACS. If an alien requires detention at any time during the expedited removal process, Detention staff enters the case into DACS.



### III. THE CREDIBLE FEAR PROCESS

#### III.A. INS DISTRICT OFFICE DETAINS ALIEN FOR A CREDIBLE FEAR DETERMINATION

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

8 CFR 235.3(b)(2)(iii) requires the detention of an alien whose inadmissibility is being considered or who has been ordered removed. Therefore, the alien’s detention is mandatory, unless parole of the individual is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. Once an Inspector places an alien into the credible fear process, the responsibility for the alien’s detention lies with Detention staff. See this Manual’s section IV.C, Expanded Topics, Detention and Parole of Aliens, for more information on detention and parole.

#### III.B. INS DISTRICT OFFICE REFERS ALIEN TO THE ASYLUM OFFICE

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

In the majority of cases, Detention staff is responsible for informing an asylum office that an alien requires a credible fear interview. There may be some instances, however, when an Inspector contacts an asylum office about an alien who requires a credible fear interview. Contact by an Inspector usually occurs when the alien is at a port of entry on the U.S./Canadian or U.S./Mexican border, or when an interview takes place at an airport. The individual responsible for referring the case to the asylum office (e.g., Inspector or Detention Officer) is called a “Referring Officer.”

A Referring Officer should refer an alien to an asylum office according to the set of procedures that has been developed between the asylum office and the INS district office having jurisdiction over the alien’s location (e.g., detention site or port of entry).

### III.C. ASYLUM OFFICE RECEIVES REFERRAL FROM ICE OR CBP

<u>Reviewed, No Substantive Changes since 3/31/2023</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: III.C.

Noncitizens subject to expedited removal and arriving stowaways are referred to asylum offices to determine whether they have a credible fear of persecution or torture when they indicate an intention to apply for asylum, a fear of persecution or torture, or a fear of return to their home country.

The asylum office has jurisdiction to conduct a credible fear interview after receiving copies of the following documents from either U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE):

- Form I-860, Notice and Order of Expedited Removal – only for a noncitizen in expedited removal;
- Form I-867, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, Parts A&B; and
- Form M-444, Information About Credible Fear Interview – signed and dated by the noncitizen, or with a notation that the noncitizen refused to sign.

To ensure that a referral to USCIS is complete, the asylum office must review all referral documents upon receipt and prior to arranging for a credible fear interview. This review will verify that the asylum office has jurisdiction to conduct a credible fear interview and make a credible fear determination. The Asylum Division cannot proceed with a credible fear interview of a noncitizen unless the credible fear referral packet includes all the documents listed above. Asylum office personnel will reject any credible fear referral that does not contain the required referral documents. Note, this guidance does not apply to Safe Third Country Agreement Threshold Screenings. The M-444 will not be provided by CBP or ICE in those referrals. USCIS must provide the M-444 to the noncitizen if they are eligible for a credible fear screening.

- Form I-860 lists the charges of inadmissibility for a noncitizen in expedited removal. To be accepted as complete, the I-860 must include (1) A-number, (2) date, (3) noncitizen’s name, (4) inadmissibility charge(s), (5) factual allegations supporting the charge(s), and (6) the CBP or ICE officer’s name and signature. The “Order of Removal” may be completed but is not required for USCIS to accept the referral.
- Form I-867, Parts A&B, is the sworn statement taken by a CBP or ICE officer that may contain some indication of a noncitizen’s fear of return.
- Asylum offices may also receive a copy of Form I-213, Record of Deportable/Inadmissible Alien. Receipt of the Form I-213 is not necessary to take jurisdiction over a credible fear case, as the Form I-213 may be accessed via ENFORCE or EARM by the asylum officer. The credible fear process should not be delayed because an asylum office does not receive the Form I-213.
- At the time a CBP or ICE referring officer places a noncitizen into the credible fear process, the noncitizen is provided with a Form M-444. Form M-444, which has been translated into many languages, describes the credible fear interview process, and informs the noncitizen of their rights, including the right to a consultant. To be accepted as complete, Form M-444 must be (1) dated and signed by the noncitizen or include a notation that the noncitizen refused to sign, and

(2) either be translated into a language the noncitizen understands or have a completed interpreter certification. The Asylum Division cannot proceed with a credible fear interview of a noncitizen unless the credible fear referral packet includes a completed Form M-444.

Once the asylum office receives the above forms and verifies that the asylum office has jurisdiction to conduct a credible fear interview and make a credible fear determination, asylum office staff accept the credible fear referral and enter the case into Global. The "Clock-in Date" field on the Entry tab is the date the asylum office receives a complete referral from CBP or ICE. Asylum office staff must enter the credible fear case into Global within one (1) business day of receiving a complete referral packet.

### III.D. ASYLUM OFFICE SCHEDULES INTERVIEW

<b><u>Reviewed, No Substantive Changes since 03/31/2023</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: III.D.1.b.; 1.a. (2023-05-10);

#### 1. Consultation Period

USCIS policy is that the credible fear interview will occur no earlier than 24 hours after the noncitizen's acknowledgement of receipt of the Form M-444. This consultation period provides the noncitizen an opportunity to contact a relative, representative, attorney, or friend whom the noncitizen may want to act as a consultant during the credible fear interview.

All noncitizens who request to reschedule their credible fear interview will need to demonstrate extraordinary circumstances so as not to unreasonably delay the process. Extraordinary circumstances may include, but are not limited to:

- serious illness or mental or physical disability of the noncitizen, a member of the noncitizen's immediate family, or the noncitizen's consultant; or
- serious facility issues that prevent the noncitizen from contacting a consultant.

By regulation and upon supervisory concurrence, the AO may also exercise discretion to reschedule a credible fear interview when circumstances warrant the reschedule but the noncitizen did not expressly make a reschedule request. Circumstances may include, but are not limited to, instances where the officer determines that the noncitizen is unable to participate effectively in the interview because of illness or serious medical condition, fatigue or other impediments.

#### *a. Waiver of Consultation Period*

Although USCIS policy is that the credible fear interview will occur no earlier than 24-hours after the noncitizen's acknowledgement of receipt of the Form M-444, a noncitizen may, at their request, voluntarily waive the consultation period. The asylum office should make every effort to interview the noncitizen as soon as possible after receiving such a request.

If the interview takes place within the consultation period, the AO asks the noncitizen to sign a Waiver of the Consultation Period. [Appendix F: Waiver of the Consultation Period May 10 2023.](#)

### *b. Orientation*

Before beginning the substantive part of the credible fear interview, the asylum officer must verify that the noncitizen received Form M-444 and understands the credible fear determination process (see 8 CFR 208.30(d)(2)). The asylum officer should remind the noncitizen of the date that they received Form M-444 based on the date the noncitizen signed the form and ask the noncitizen if they have any questions relating to the credible fear process. If the noncitizen indicates that they do not understand the credible fear process, the asylum officer should read verbatim the below explanation to the noncitizen, include the below explanation verbatim in the interview notes, and document in the interview notes that the explanation was read to the noncitizen. The asylum officer does not need to re-read the full M-444 where there is an M-444 in the referral packet signed by the noncitizen or where there is a notation that the noncitizen refused to sign. Note, the asylum officer must provide and read the full M-444 in cases where the noncitizen is eligible for a credible fear interview following a Safe Third Country Agreement Threshold Screening.

You have been placed in expedited removal proceedings because the U.S. Department of Homeland Security (DHS) believes that you may not have the right to stay in the United States. However, you indicated that you fear return to your country, so I will interview you for credible fear. At the credible fear interview, I will ask you questions about the reasons you fear return to your country. It is important that you tell me about any harm you may have suffered in the past or any harm you fear in the future. To demonstrate a credible fear of persecution or torture, you must show that you have a credible fear of being persecuted because of your race, religion, nationality, membership in a particular social group or political opinion, or a credible fear of being tortured in your country.

You may request an officer of a specific gender. You may also ask to speak to me separately from your family. You may have a consultant of your choice with you at your interview, or present telephonically. If you need additional time before your credible fear interview to contact someone, let me know and explain the reason you need more time. I will determine whether your circumstances merit providing you with additional time. DHS will provide an interpreter for the interview if you require one. The interpreter will be sworn to keep the information you discuss confidential. You may request another interpreter if you are not comfortable or if you do not understand them.

If I determine that you have a credible fear of persecution or torture, you will either receive a charging document for a hearing in immigration court or you will be scheduled for an Asylum Merits Interview with a USCIS asylum officer. At the immigration court hearing or USCIS Asylum Merits Interview, the immigration judge or asylum officer will determine whether to grant you asylum or whether you are eligible for other protection from removal. You will receive information about the date, time, and location of this hearing or interview. If I determine that you do not have a credible fear of persecution or torture, you may ask to have an immigration judge review the negative determination. If you decline this review, or after immigration judge review, you are still found to not have a credible fear of persecution or torture, you may be removed from the United States.

Do you have any questions about what I just explained?

Do you understand the credible fear determination process?

The asylum officer should answer questions posed by the noncitizen to ensure understanding of the credible fear process.

If ICE transfers a detained noncitizen who has already been referred to the Asylum Division to a detention facility located in another asylum office's jurisdiction, asylum office personnel at the new asylum office should ensure the noncitizen receives a list of legal service providers for the new location.

## 2. Interview Scheduling and Notification Procedures

### *a. Scheduling an Interview*

Each asylum office has developed a system for scheduling credible fear interviews in coordination with the INS district office having jurisdiction over the alien's place of detention. A SAPSO should create an interview calendar that can be used by the APSOs assigned to credible fear interviews and those INS district office staff members who work in conjunction with the SAPSO.

If a SAPSO knows before scheduling an interview that an alien wishes to have a particular consultant at the interview, the SAPSO contacts the consultant to arrange a date and time for the interview that suits all interested parties (e.g., APSO, INS district office staff members, and consultant). Although an alien is permitted by regulation to have a consultant present at a credible fear interview, the availability of a consultant cannot unreasonably delay the process. A consultant may participate by telephone, if necessary, and if the location of the interview allows for such a system.

A SAPSO should document in the alien's work folder all contact with a consultant, including any conversations about scheduling or rescheduling a credible fear interview.

See this Manual, section [III.E, APSO Conducts a Credible Fear Interview](#), for more information on the role of a consultant.

### *b. Notifying the Alien of an Interview Date*

An asylum office shall provide a written notice of interview to an alien, unless it is impractical to do so due to complex INS district office scheduling and transportation situations. This will allow an alien the opportunity to prepare for the interview and to notify any consultant the alien wishes to be present. An asylum office shall use Form G-56, *Interview Notice*, which includes the SAPSO's name and telephone number. Although not required, the SAPSO should provide a copy of the interview notice to the alien's consultant (if known).

If a written notice of an interview is not given to the applicant, the SAPSO coordinates with the INS district office staff members responsible for the alien's detention, to verbally inform the alien of the interview date and time.

[Appendix H: Form G-56, Interview Notice.](#)

### 3. Interview Space

INS district office staff members must provide appropriate interview space for a credible fear interview, either on a permanent or ad hoc basis. The interview space is appropriate when it includes, at a minimum, the following:

- Provisions for APSO and alien safety
- Provisions for privacy so that the alien can discuss personal or confidential issues
- Installed telephone jack that supports a speaker phone
- Table
- Chairs.

If an APSO has concerns about the safety or privacy of a particular interview space, he or she should notify the SAPSO, who will speak with the INS district office staff members responsible for the space. If they cannot resolve conflicts over appropriate interview space, the asylum office Director may refer the problem to the credible fear program manager at Asylum Headquarters (HQASM). [Appendix I: Perryman, Brian R. INS Office of Field Operations. Security and Privacy Provisions for Credible Fear Interviews Under Expedited Removal, Memorandum to Regional Directors, District Directors, Assistant District Directors for Detention and Deportation and Asylum Office Directors \(Washington, DC: 1 July 1997\), 2 p.](#)

### 4. Pre-Interview Preparation by Asylum Officer

Even though credible fear and affirmative asylum interviews differ in many ways, they are both nonadversarial cornerstones of the adjudication/determination processes. In a credible fear interview, as in an affirmative asylum interview, the APSO has an affirmative duty to elicit from the alien all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture. APSOs who conduct credible fear interviews must be thoroughly familiar with affirmative asylum interviews. See the 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, and Credible Fear. 8 CFR 208.30(d)

## III.E. APSO CONDUCTS A CREDIBLE FEAR INTERVIEW

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: <del>4.b. (2019-07-08)</del> (Section 4.b. reverted back to pre-July 8, 2019 guidance); 3.

		(2020-08-24); 3.a. (2020-08-24); 3.b. (2020-08-24); 3.d. (2020-08-24); 3.e. (2020-08-24); 3.f. (2020-08-24); 3.g. (2020-08-24); 3.h. (2020-08-24); 2 (2022-05-31); 3.b. (2022-05-31); 12 (2022-05-31); 4.b. (2023-05-10);
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### 1. Mode of Interview: "Live" and Telephonic

An asylum office Director maintains the discretion to have an APSO conduct a credible fear interview in-person with the alien or by telephone. Decisions to conduct telephonic interviews should be made on a case-by-case basis. An asylum office Director should consider, but is not limited to considering, the following issues when deciding whether an APSO should conduct a telephonic interview or an in-person interview:

- The office’s resources or finances would be taxed by having an APSO travel to an interview at a remote location.
- An alien would be detained for a period of time that is unreasonable.
- An INS officer (e.g., Detention Officer), not contract personnel, can assist the APSO in conducting the interview telephonically. This requires the INS officer to provide all service documents to the alien, obtain all necessary signatures, and assist with operation of the telephone.
- The INS district office staff members are able to secure a room for the interview, which ensures the confidentiality of the credible fear interview.
- The alien is of an age and maturity level that would not inhibit him or her from being able to communicate a credible fear claim over the telephone.

Although not prohibited, interviewing an unaccompanied minor via telephone is generally not encouraged, particularly if the alien is of a young age (generally less than 14 years old).

The APSO must terminate the telephonic interview and conduct the interview in-person with the alien if there is any indication that the alien does not understand the process, or if the APSO finds that the alien does not have a credible fear of persecution or torture. If an APSO determines that the alien may not have a credible fear, then the SAPSO must schedule a live follow-up interview. APSS Update Required: "INTC," Mode of Interview

### 2. Family Members Arriving Concurrently with the Noncitizen

The regulations at 208.30(c) provide that a spouse or child of a principal alien who arrived in the United States concurrently with the principal alien shall be included in that alien's positive credible fear evaluation and determination, unless the principal applicant or the spouse or child declines such inclusion. Any individual may have his or her evaluation and determination made separately if that alien expresses such a desire. The option for members of a family unit to have their evaluations and determinations made

separately shall be communicated to all family members at the beginning of the interview process. The asylum officer in their discretion may also include other accompanying family members who arrived in the United States concurrently with a principal alien in that alien's positive fear evaluation and determination for purposes of family unity. For purposes of family units in credible fear determinations, the definition of "child" means an unmarried person under 21 years of age.

The procedures that follow have been designed to preserve the right to individual choice and protect all potential asylees.

For credible fear cases involving family units, the APSO must inform the noncitizens at the beginning of the credible fear interview that they may be processed individually if they prefer, and document it in the interview notes. The APSO must not attempt to influence the decision.

***a. Family unit member or members decline to be included in the principal's credible fear determination***

When a family unit member or members decline to be included in the principal's credible fear determination and opt to proceed individually, then the APSO must interview, make a credible fear determination, and prepare a service packet for each family unit member who wants to proceed individually.

***b. Family unit members do not decline to be included in the positive credible fear determination***

When family unit members do not decline to be included in the principal's positive credible fear determination, then the APSO begins by interviewing the principal applicant.

If the principal is found to have a credible fear of persecution or torture, then no separate credible fear determination is made for the other family unit members. Each family member is included in the principal's positive credible fear determination.

- The APSO must complete background and security checks for each family unit member.
- Each family unit member must be screened for mandatory bars to asylum eligibility.
- All family members must be listed on the principal's I-870.
- The principal receives the positive credible fear service packet.
- If the family unit will be placed into original INA section 240 removal proceedings, an NTA will be served on each family member and an NTA for each family member will be filed with EOIR.
- If USCIS will retain jurisdiction over the application for asylum for further consideration in the asylum merits interview process, the family will receive a G-56, Asylum Merits Interview Notice and each family member will receive a copy of the Information About Your Asylum Merits Interview document.

If the principal is not found to have a credible fear of persecution or torture, then the APSO must interview the other family unit members to determine if any other family unit member can establish a credible fear. If the APSO finds any family unit member positive for credible fear, then the APSO does not interview the remaining family unit members except to screen for mandatory bars. The other family members do not need separate credible fear determinations and may be included in the positive family member's determination in the officer's discretion for purposes of family unity on a case-by-case basis, unless they indicate they wish to receive a separate determination. Special attention should be paid to the privacy of each family member and the possibility that victims of domestic abuse, rape, and other forms of persecution might not be comfortable speaking in front of other family members.



- The family unit member who established credible fear becomes the principal alien for purposes of the credible fear determination.
- For purposes of family unity, the positive finding may be used as the basis for finding positive credible fear for every other member of the accompanying family unit that arrived concurrently.
- The APSO must complete background and security checks for each family unit member.
- Each family unit member must be screened for mandatory bars to asylum eligibility.
- All family members must be listed on the principal's I-870.
- The principal applicant receives the positive credible fear service packet.
- If the family unit will be placed into INA section 240 removal proceedings, an NTA will be served on each family member and an NTA for each family member will be filed with EOIR.
- If USCIS will retain jurisdiction over the application for asylum for further consideration, the family will receive a G-56 for the asylum merits interview and each family member will receive a copy of the Information About Your Asylum Merits Interview document.

If no member of the family unit is found to have a credible fear, then the APSO processes each credible fear case separately and issues a negative credible fear determination to each person in the family unit.

The APSO follows procedures for preparing, serving, and processing each family member's decision for a negative credible fear determination as set forth in this Manual.

If an APSO questions the bona fides of any relationship, he or she should notify the SAPSO and the SAPSO should notify the credible fear program manager at HQASM.

See sections III.H – K, [Preparing a Determination](#), [SAPSO Review of the Determination](#), [Serving the Determination on the Alien](#), and [Post-Service Processing](#).

### 3. Interpreters

8 CFR 208.30(d)(5) requires USCIS to arrange for the assistance of an interpreter in conducting a credible fear interview if the noncitizen is unable to proceed effectively in English. Whether the noncitizen is detained or not, APSOs must use the contract interpreter services to interpret. Because APSOs routinely need to secure interpreter services on short notice, at remote locations, and in a variety of languages, USCIS uses telephonic interpreter services.

#### *a. Asylum Office Determines Which Language to Use in Credible Fear Interview*

When an Asylum Office receives a credible fear referral, the office must schedule the noncitizen for a credible fear interview. During the interview, the Asylum Pre-Screening Officer (APSO) must determine which language(s) the noncitizen speaks and understands and confirm with the noncitizen the preferred language to use in the credible fear interview. The APSO must ask the following questions when determining which language to use during the credible fear interview:

- Do you speak any other languages besides [language of interview]?
- [If the applicant speaks more than one language] In which language do you prefer to proceed for this interview?
- Do you understand the interpreter in [preferred language]?
- Interpreter – do you understand the applicant in [preferred language]?

If appropriate, the APSO may want to ask one or more of the following questions when determining all the languages the applicant speaks:

- What is your native language/mother tongue?
- What language did you speak at home (as a child with your family)?
- What language were you instructed in at the school(s) you attended?

If the noncitizen's preferred language is not serviced by an interpreter contract, but there is evidence that the noncitizen communicated in a different language during the initial processing by CBP or ICE that is serviced by an interpreter contract, then the APSO must ask whether the noncitizen is able and willing to proceed with the credible fear interview in the language used when being processed by CBP and ICE. This confirmation must be reflected in the interview notes. When confirming whether the noncitizen is able and willing to proceed with the credible fear interview, APSOs must keep in mind that noncitizens who successfully provided basic biographic and travel information to CBP or ICE in a language may not be able to discuss or feel comfortable discussing their credible fear claim in depth in that same language. APSOs are reminded that the purpose of a credible fear interview is different than an encounter with CBP or ICE.

If the APSO determines that the noncitizen can fully participate in a credible fear interview in another language, for which there is an interpreter available, and the noncitizen agrees to proceed with the interview in that language, the APSO should confirm throughout the interview (as needed) and at the conclusion of the interview that the noncitizen understood the contents of the interview and was able to testify accurately and completely.<sup>1</sup> This confirmation that the noncitizen understood the contents of the interview and was able to testify accurately and completely must be reflected in the interview notes.

#### ***b. Contracting Telephonic Interpreter Services***

USCIS has a "Primary Interpretation Contract" with Lionbridge, Language Line and TransPerfect for 47 languages. Additionally, USCIS has a "Rare Language Contract" with Language Line to provide interpreter services for languages not available under the Primary Interpretation Contract. For languages that fall under the Primary Interpretation Contract, Asylum Offices must contact the three vendors using their assigned priority. If an interpreter service does not have an interpreter available, Asylum Offices must attempt to secure/schedule an interpreter through the other interpreter services.

When attempting to secure and schedule an interpreter for cases involving languages on the Rare Language Contract, Asylum Offices must only contact Language Line. For information on the interpreter contracts, including languages covered by each contract, please visit the Asylum Interpreter Services ECN.

For further instructions on language access, Asylum Offices must follow the Asylum Division memorandum, "Language Access in Credible Fear Screenings" ([Appendix U: Caudill-Mirillo, Ashley, USCIS Asylum Division Language Access in Credible Fear Screenings, Memorandum to Asylum Staff \(Camp Springs, MD: July 8, 2022\)](#)). In addition, offices must follow the Asylum Division memorandum, 2020 Awards of Rare Language and Interpreter Services for Translations, Monitoring, and Interpretation for the Asylum Offices, July 29, 2020, located on the Asylum Interpreter Services ECN, and the "Update on Rare Language Contract Effective 2/1/2022" email from the Asylum Chief, February 3, 2022.

Asylum Division personnel are responsible for entering all calls into the Interpreter Log for every call that is attempted, regardless of whether the call is connected to an interpreter/monitor. This information

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<sup>1</sup> See the RAIO Lesson Plan "Interviewing – Working with an Interpreter."

is important for contract enforcement and helps to ensure proper billing and the identification of performance issues. See the Asylum Interpreter Services ECN for specific guidance.

#### **i. Obtaining an interpreter for an interview**

To improve the likelihood of rare language interpreter availability, the APSO should provide Language Line with as much notice as possible to locate a qualified interpreter for a future interview, including pre-scheduling if possible. If an interpreter has been pre-scheduled and the interview is postponed, the asylum office should notify the interpreter service as soon as possible to avoid charges for this call.

#### **ii. Documenting an interpreter's identification**

The APSO updates the interpreter log with the interpreter's identification.

An APSO may not allow a noncitizen to request the interpreter's name or ask the interpreter questions about the interpreter's ethnicity or political affiliations. If such questions arise, the APSO reminds the noncitizen that he or she can switch interpreters if the interpreter does not appear neutral or competent, and that the APSO will also be alert to such issues.

### ***c. Providing an Interpreter with Forms***

The interpreter should have a copy of an APSO Packet, which consists of the following:

- Form M-444, Information about Credible Fear Interview
- Form I-870, Record of Determination/ Credible Fear Work Sheet
- Form I-862, Notice to Appear (NTA)
- Form I-863, Notice of Referral to Immigration Judge
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.
- Information About Your Asylum Merits Interview document

If the interpreter does not have a copy of any document necessary for the interview, the APSO should note the issue in the Interpreter Log and ask their SAPSO to coordinate with the interpreter liaison in the local office to inform the Management Branch POC, who will ensure the interpreter services vendor has the updated forms. If the interpreter has the forms, the interview is likely to move more quickly and the interpretation to be more accurate; however, having the forms is not a prerequisite for the interpreter to conduct an interview.

### ***d. Interpreter's Role***

Interpreters are required to provide competent, neutral translation. In addition, interpreters are required to maintain the confidentiality of matters disclosed during the credible fear interview, including a noncitizen's identity and the nature of the claim. All issues and concerns regarding the interpreter should be included in the Interpreter Log. See the Interviewing - Working with an Interpreter Lesson

Plan. Additional guidance about the role of an interpreter specifically within the credible fear process can be found in the Asylum Division memorandum, Interpreters in the Credible Fear Process (Appendix

J). Appendix J: Langlois, Joseph E. INS Asylum Division. Interpreters in the Credible Fear Process, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 10 February 1998), 4 p.

#### *e. Problems with Interpretation and Changing Interpreters*

If the noncitizen, the noncitizen's representative or consultant, or the APSO believes that the interpreter is either not competent or not neutral, the APSO can request and use another interpreter. If another interpreter is not immediately available, the APSO reschedules the interview. If, either before or during the interview, the noncitizen requests a male or female interpreter, the APSO should accommodate such a request, when possible.

If an APSO experiences problems with an interpreter, all issues should be documented in the interview notes and in the Interpreter Log so that Management Branch can address with the vendor as appropriate. For more information on abuse of an interpreter's role, see the Affirmative Asylum Procedures Manual section on interpreters.

#### *f. Monitoring of Interpreters' Performance*

The interpreter services may have supervisors monitoring some of their calls as a quality assurance measure. If the APSO, noncitizen, or noncitizen's representative or consultant expresses any reason for not wanting the interview monitored, the APSO informs the interpreter service that the call may not be monitored. If the interpreter service does not appear to be complying, the APSO notifies the SAPSO, who contacts the asylum office's liaison at the interpreter service who will notify Management Branch's Interpreter POC.

#### *g. Conducting the Interview without an Interpreter in a Language other than English*

APSOs may conduct interviews in the noncitizen's preferred language, provided that the officer has been certified by the State Department.

The APSO 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 APSO. In addition, the APSO updates Form I-870, indicating the language used by the noncitizen and that the interview was conducted in that language.

If there is any concern that the noncitizen is having difficulty understanding the APSO, or might later claim that the APSO did not interpret correctly, the APSO should use the interpreter service.

#### *h. Administering an Oath to the Interpreter*

The interpreter must be sworn in at the beginning of the interview. The following, which will be interpreted for the noncitizen, shall constitute the interpreter's oath:

"Do you affirm that you will truthfully, literally and fully interpret the questions asked by the asylum officer and the answers given by the applicant; that you will not add to, delete from, comment on, or otherwise change the matter to be interpreted; and that you will immediately notify the officer in this case if you

become aware of your inability to interpret 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?"

The oath must be documented in the officer's notes.

## 4. Consultants

8 CFR 208.30(d)(4) permits an alien to consult with any person or persons of his or her choosing prior to the interview, and for a consultant to be present at the credible fear interview. A consultant may be a relative, friend, clergy person, attorney, or representative. If the consultant is an attorney or representative, he or she is not required to submit a Form G-28, Notice of Entry or Appearance as Attorney or Representative, but may submit one if he or she desires.

Because a consultant does not "represent" an alien, even if an attorney has been disbarred by a state, possession, territory, or Commonwealth of the District of Columbia, he or she may act as a consultant. The individual may act as a consultant even if the Attorney General has taken disciplinary action against, suspended, or barred the attorney from practice before the EOIR or INS.

The APSO puts a "4" in box 1.10 on Form I-860, indicating whether the alien has a consultant. If the alien has a consultant, the APSO completes box 1.11 on Form I-870. If the alien's consultant is an attorney or an accredited representative, asylum office personnel update APSS using the Add Attorney/Representative to Interview (REPR) command to retrieve or create an attorney ID number. For all cases in which the alien has a consultant, asylum office personnel update the "INTC" screen, Consultant field by typing in a "Y." A consultant may also be a fellow detainee in the same facility as the alien being interviewed by an APSO. As long as the logistics of having a fellow detainee present at the credible fear interview do not unduly delay the process, INS must permit a fellow detainee to act as a consultant during an interview.

Form I-870 Updates Required:

Boxes 1.10 and 1.11, if applicable.

APSS Updates Required:

"INTC," CONSULTANT (Y/N) field;

"REPR"

### *a. Consultant's Role*

The role of a consultant is similar to the role of an attorney or representative in an affirmative asylum interview. An APSO must explain the consultant's role to the consultant and the alien at the beginning of the interview. A consultant may make a statement, comment on the evidence, or ask the alien additional relevant questions that the APSO did not ask, at the end of the interview. To avoid misunderstandings, it sometimes will be appropriate for a consultant to make comments during, instead of at the end, of the interview. Only in unusual circumstances, such as mental disability, will a consultant be permitted to answer for the alien.

A consultant who repeatedly interrupts or otherwise disrupts an interview must be asked to refrain from doing so and reminded that he or she has an opportunity at the end of the interview to make comments. An APSO may ask a consultant who continuously fails to abide by the rules of the interview to leave the interview. Should this occur, the APSO continues with the interview. The APSO must clearly outline in the interview notes what occurred during the interview that prompted the consultant's dismissal from the interview.

If the consultant appears for the interview, the APSO puts a "4" in box 1.13 on Form I-870, indicating that a consultant was present.

[Appendix K: Langlois, Joseph E. INS Asylum Division. Role of Consultants in the Credible Fear Interview, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers \(Washington, DC: 14 November 1997\), 2 p.](#)

Form I-870 Updates Required:

Box 1.13

#### *b. Failure of Consultant to Attend Interview*

If the noncitizen made previous arrangements with a consultant to appear at the interview, and the consultant does not appear, the AO may continue with the credible fear interview, with the noncitizen's consent. The AO records the noncitizen's consent to proceed with the interview in the interview notes.

All requests by a noncitizen to reschedule the interview because the consultant is unable to appear must be handled on a case-by-case basis. The noncitizen must demonstrate extraordinary circumstances relating to the consultant's inability to appear, so as not to unreasonably delay the process. Extraordinary circumstances may include, but are not limited to:

- serious illness or mental or physical disability of the consultant; or
- serious facility issues that prevent the noncitizen from contacting a consultant.

An SAO may deny a request to reschedule an interview if the asylum office has documented chronic problems with a particular consultant who consistently submits rescheduling requests or fails to attend credible fear interviews.

## 5. Witnesses

8 CFR 208.30 does not specifically allow an alien to present "witnesses," as stated in §208.9(b), which governs affirmative asylum interviews. Section 208.30(d)(4) does state, however, that any person or persons with whom the alien wishes to consult may be present at the interview and may be permitted, at the discretion of the APSO, to present a statement. A consultant, therefore, may also act as a witness on the alien's behalf.

An APSO should not refuse a witness the opportunity to testify; however, an APSO 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, as long as the submission of the statement does not delay the determination.

The APSO puts a "4" in box 1.14 on Form I-860, by placing the witness's name on the "Other(s)" line and indicating that he or she is acting as a witness. See Memos, [Interpreters in the Credible Fear Process \(Appendix J\)](#) and [Role of Consultants in the Credible Fear Interview \(Appendix K\)](#) for further information on witnesses.

Form I-870 Update Required:

Box 1.14

## 6. Administering an Oath

Before beginning an interview, the APSO places the alien, interpreter, if any, and any witness under oath. An alien does not need to sign a written applicant's oath, and an interpreter does not need to sign a written interpreter's oath. The following, which will be interpreted for the alien, shall constitute the interpreter's oath:

Do you affirm that you will truthfully, literally and fully interpret the questions asked by the asylum officer and the answers given by the applicant; that you will not you add to, delete from, comment on, or otherwise change the matter to be interpreted; and that you will immediately notify the officer in this case if you become aware of your inability to interpret 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?

## 7. Form I-870, Record of Determination/Credible Fear Worksheet

The Form I-870 is a guide for conducting an interview, and it contains five (5) sections:

Section I: Interview Preparation

Section II: Biographic Information

Section III: Credible Fear Interview

Section IV: Credible Fear Findings and

Section V: Asylum Officer/Supervisor Names and Signatures.

In addition, an Additional Information/Continuation Sheet is attached to the form.

Each check-off box, or line, is numbered throughout the form. An APSO must update any numbered item on the form that applies to the alien's case. The following describes how an APSO updates each numbered item:

***a. Section I: Interview Preparation***

- Boxes 1.1 through 1.8 – Self-explanatory
- Box 1.9 – Before beginning an interview, an APSO ensures that the alien has received and signed a Form M-444. In addition, an APSO must determine that the alien has an understanding of the credible fear process. See this Manual's section III.D on orientation if the alien's file does not contain a Form M-444.
- Boxes 1.10 through 1.12 – See this Manual's sections on consultants and witnesses (III.E.4 – III.E.5).
- Boxes 1.16 through 1.27 – See this Manual's section III.E on interpreters.
- Box 1.28 – The APSO must read the paragraph to the alien at the beginning of the interview and place a "4" in the box to document that the paragraph was read.

***b. Section II: Biographic Information***

- Boxes 2.1 through 2.16 – Self-explanatory
- Boxes 2.17 through 2.18 – These questions concern the applicant's children, if any. If the applicant has any U.S. citizen children, the APSO must write each child's address in the space marked "Present location."
- See the Family Members Arriving Concurrently with the Applicant section of this Manual (III.E.2) for information on processing the credible fear claims of such family members.
- For any dates of birth – If the alien does not know the exact month or day of his or her own, or a spouse's or child's date of birth or a date of marriage, but knows the year of birth or marriage, the APSO writes, "1/1/[year]."
- Boxes 2.19 through 2.21 – The APSO reviews these questions with the alien, indicating whether any medical conditions exist. An APSO should follow local procedures on notifying INS or Public Health Service (PHS) if an alien claims to have a particular medical condition, or if the APSO observes that a medical condition, either physical or mental, may exist.
- Boxes 2.22 and 2.23 – The APSO must ask the alien whether he or she has any ties to the community or a sponsor. A district Director may use the answers to these questions when determining whether to parole the alien.

***c. Section III: Credible Fear Interview***

- Box 3.1, a, b, and c – See this Manual's section III.H.1, Completing the Form I-870 for details about completing this item.
- Box 3.2 – The APSO reads the paragraph to the alien at the conclusion of the interview.
- If the alien does not ask any questions, indicate this on the lines provided.
- If the alien does ask questions, record them in the interview notes.
- Interview Notes – See Section III.E.8, Note-Taking by the APSO During a Credible Fear Interview, in this Manual.
- Negative Credible Fear Finding – The APSO is only required to provide a typed summary and analysis of a claim (assessment) if he or she makes a negative credible fear determination.



#### *d. Section IV: Credible Fear Findings*

This part of the form is divided into three (3) sections: (A) Credible Fear Determination, which includes credibility, nexus, and the credible fear finding; (B) Possible Bars, and (C) Identity. See this Manual's section III.H, Preparing a Determination, for more information on how to update this part of the form.

#### *e. Section V: Asylum Officer/Supervisor Names and Signatures*

- Boxes 5.1 through 5.3 – The APSO completes these boxes upon completion of the Form I-870. The date in box 5.3 is the date the APSO completes the case and submits it to the SAPSO for review.
- Boxes 5.4 through 5.6 – The SAPSO completes these boxes upon review and concurrence with the credible fear determination.

#### *f. Additional Information/Continuation Sheet*

An APSO may use this sheet if additional space is needed to record information provided by an alien.

## 8. Note-Taking by the APSO During a Credible Fear Interview

Most interviews will require standard note-taking as outlined in the AOBTC Basic Training Materials, Interviewing Part II: Note-Taking. An APSO may either handwrite notes or type them on a computer. Notes may be taken on the I-870 itself, on the Additional Information/Continuation Sheet. There is no standard format for note taking during a credible fear interview, unless it appears to the APSO during the interview that the alien does not have a credible fear of persecution or torture. Regardless of whether the APSO is writing the notes by hand or typing them on a computer, the APSO begins taking notes in the Q&A format when it appears to the APSO that the alien may not have a credible fear of persecution or torture.

See this Manual, section III.H, Preparing a Determination, on preparing notes after an interview.

Because the Q&A notes may form the basis of a negative credible fear determination, the APSO must ensure that they contain all information relevant to the claim. For example, if an APSO previously asked questions that were not captured on the Q&A statement and these questions are relevant to whether the alien may not have a credible fear, the APSO must ask the alien these questions again to record them on the Q&A statement. The Q&A must contain the alien's A-number, the date of the interview, and the APSO's name.

## 9. Conducting an Interview in a Language other than English

Each asylum office has a local policy on whether an APSO may conduct a credible fear interview in a language other than English. If the local policy allows an APSO to conduct interviews in a language other

than English, either the INS or Department of State (DOS) must certify that the APSO is proficient in that language.

Language certification may be obtained through the Immigration Officer Academy (Glynco) in Brunswick, GA.

The APSO 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 APSO. In addition, the APSO updates box 1.16 on Form I-870, indicating the language used by the alien and that the interview was conducted in that language.

If there is any concern that the alien is having difficulty understanding the APSO, or might later claim that the APSO did not interpret correctly, the APSO should use an interpreter and put a "4" in box 1.17 on Form I-870.

Form I-870 Updates Required:

Box 1.16 and box 1.17, if applicable.

## 10. Aliens Unable to Testify on their own Behalf

An alien may be incapable of testifying on his/her own behalf due to mental incompetence or a physical disability. These include individuals who suffer from acute mental disorders, or have suffered an injury, such as a stroke, that makes them unable to communicate.

If an APSO believes that a particular alien is not sufficiently competent to be interviewed, he or she must contact the SAPSO. The APSO must also complete boxes 2.19 through 2.21 in Section II of Form I-870, which concerns aliens who have medical conditions. The SAPSO, local INS personnel, and PHS personnel should make every effort to see if the alien can testify on his or her behalf. If, however, the alien is not capable of proceeding with an interview, the SAPSO takes the following action:

- Completes only those portions of the Form I-870 that provide a record of information the APSO is able to retrieve from databases or documents included in the alien's A-file. The APSO should not complete any portion of Section IV, Credible Fear Findings, Form I-870, because the APSO is unable to adjudicate the claim of an alien incapable of proceeding with an interview.
- Forwards the I-870, I-867 A&B, I-860, interview notes, and documentation pertaining to the alien's mental well-being to the HQASM credible fear program manager by facsimile for review, and awaits concurrence. Form I-870 Updates Required:

Boxes 2.19 through 2.21

[Appendix L:](#)

[Langlois, Joseph E.,](#)

[INS Asylum Division.](#)

[Mentally Incompetent Aliens in the Credible Fear Process, Memorandum to Asylum Office Directors, Deputy Directors, Supervisory Asylum Officers, QA/Trainers and Asylum Officers \(Washington, DC 20 September 2001\), 2 p.](#)

- Prepares a Form I-862, Notice to Appear (NTA), upon concurrence by HQASM. In addition to the charge of inadmissibility that appears on the I-860, asylum staff also alleges that the alien is a "Public Charge," and charges the alien with violating section 212(a)(4) of the INA.
- Serves the NTA on the alien according to Serving the Determination on the Alien procedures set forth in section III.J of this Manual and files it with the Immigration Court according to procedures in section III.K, concerning Post-Service Processing.

Charging the alien with violating section 212(a)(4) enables him or her to receive a full removal hearing before an immigration judge, pursuant to section 240 of the INA.

## 11. Aliens Unwilling to Testify on their own Behalf

An alien may be unwilling to testify on his or her own behalf due to a mental disorder or due to an intentional resistance to INS requirements in the expedited removal process. If the alien appears to understand the APSO's questions, has communicated coherently with the APSO in prior instances, but refuses to answer questions that would permit the APSO to make a positive finding of credible fear, the APSO should find negative credible fear for the alien. Each question the APSO asks must be explicitly recorded in the notes. Because the alien is unresponsive, the APSO should write, "Alien refused to answer" following each question. Owing to the alien's failure to provide any evidence supporting a positive finding, the case is completed as a negative credible fear determination.

## 12. Requests for Reconsideration ("RFRs")

USCIS credible fear screening determinations are not subject to motions to reopen. However, the Asylum Office may, in its discretion, reconsider a negative credible fear finding that has been concurred upon by an immigration judge, provided such reconsideration is requested by the noncitizen or initiated by USCIS no more than 7 calendar days after the concurrence by the IJ, or prior to the noncitizen's removal, whichever date comes first. USCIS will not accept more than one request for reconsideration of a negative credible fear finding.

Upon receiving an RFR or initiating reconsideration on its own, the Asylum Office may either gather additional information regarding the request, reconsider the negative determination, or not reconsider and let the determination stand. If the Asylum Office needs to gather additional information regarding the request, then the asylum office prepares a notice indicating that they would like to meet with the noncitizen to gather additional information.

If the asylum office reconsiders the negative credible fear finding, then the asylum office prepares a positive credible fear determination and serves it on the noncitizen along with a notice indicating that the negative credible fear finding has been reconsidered. The asylum office may either retain the asylum application for an asylum merits interview (AMI) or place the noncitizen into original section 240 removal proceedings by issuing an NTA.

If the asylum office does not reconsider the negative credible fear finding, then the credible fear determination remains negative. The asylum office does not prepare or serve a new credible fear determination on the noncitizen and the decision to not reconsider the negative credible fear finding is

not subject to immigration judge review. The noncitizen receives a notice stating that USCIS determined that reconsideration is not warranted.

### 13. Tape Recording an Interview

Tape recording a credible fear interview by an alien or consultant is prohibited. If a consultant or an alien requests to tape-record an interview, the APSO informs the individual that HQASM policy prohibits such practice. An APSO also cannot tape record an interview without the express permission of the credible fear program manager at HQASM.

## III.F. APSO CONDUCTS A CREDIBLE FEAR INTERVIEW

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

At the conclusion of the interview, the APSO reads to the alien the paragraph at box 3.2 on Form I-870. If the alien does not have any questions, the APSO notes this in the lines provided after the paragraph. The APSO then must review a summary of material facts from the alien’s testimony with the alien and provide him or her an opportunity to correct any mistakes. See 8 CFR §208.30 (d)(6). Form I-870 Updates Required:

Box 3.2

### 1. Q&A Notes (if any)

At the conclusion of the interview, the APSO reads back any Q&A notes to the alien and makes any corrections requested by the alien. See this Manual’s section III.H.1, Completing the Form I-870, for information about typing notes in Q&A format if they were handwritten during the interview.

### 2. Informing the Alien About the Next Step in the Process

The APSO does not inform the alien of the decision during the course of the interview, or give any hint, suggestion, or any other indication of what the determination will be at the interview’s conclusion. The APSO must, however, tell the alien how and when (if possible) he or she will be informed of the determination.

An asylum office Director maintains the discretion to have a credible fear determination served either in-person with the APSO or via telephone. The asylum office Director should consider the same factors outlined in section III.E.I about mode of interview. If a credible fear interview was conducted telephonically, then in most cases, the service of the determination will also be performed the same way, under the same set of conditions.

### 3. Dismissing the Alien

An APSO must follow local INS policy for alerting an INS officer when the interview is finished. Unless permitted by local INS policy, an APSO should not leave an alien unattended in an interview room.

### 4. Updating APSS

Once an interview is complete, an APSO completes the PREC screen. In addition, the APSO creates an interview record using the Interview Record (INTC) command. Asylum office staff must finish updating the PREC screen and update the INTC screen within seven (7) business days of the interview. APSS Updates Required:

“PREC” and “INTC”

#### III.G. RESEARCHING A CASE

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

Country conditions research may be necessary to reach a credible fear determination. See the AOBTC Basic Training Materials, Country Conditions Research and the RIC, Credible Fear, Section VII, Parts A and B, and the Affirmative Asylum Procedures Manual for guidance on country conditions research..

#### III.H. PREPARING A DETERMINATION

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: 1 (2022-05-31); 2 (2022-05-31); 3.a & 3.b (2022-05-31)

Once the APSO completes a credible fear interview, he or she prepares a determination. There are two (2) possible determinations: positive credible fear and negative credible fear. Although asylum office staff prepares different sets of documents for the two types of determinations, a completed Form I-870 constitutes the basis of each determination.

## 1. Completing the Form I-870

In addition to completing all numbered items in Sections I and II and signing the completed form, the APSO must fully complete Sections III and IV and ensure the information provided in one section is consistent with information in the other section.

### III.I. SAPSO REVIEWS DETERMINATION

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: 3. (2020-02-28)

## 1. Case Review Checklist

The SAPSO reviews each case for procedural and substantive correctness and completeness, which includes the following:

- The APSO updated all numbered boxes and lines pertaining to the alien’s case on Form I-870.
- For a positive determination, box 3.1 of Section III: Credible Fear Interview on Form I-870 contains sufficient information to support the decision.
- For a negative determination, an assessment is attached along with typed Q&A notes and any handwritten Q&A notes, and the assessment supports the decision.
- The APSO signed Form I-870.
- Interview notes are legible and sufficient to support the determination.
- Identifying information (e.g., name, A-number) is consistent in all determination documents.
- NTA allegations/charges and the location of the Immigration Court are correct (if applicable).
- The APSO put a “4” in the appropriate boxes on Form I-863, and the location of the Immigration Court is correct (if applicable).
- The APSO correctly updated the boxes in section 1 on Form I-869 to match the reason for the negative finding on the Form I-870 (if applicable).
- The APSO completed the bottom portion of Form I-860 (if applicable).
- APSS is properly updated.

Normally, an Immigration Court will only accept an NTA or Form I-863 with a SAPSO’s original signature. Therefore, depending upon arrangements that have been made with a court administrator and local asylum office policy, a SAPSO either signs one (1) NTA that is photocopied, or signs multiple NTAs.

## 2. Signature on Documents

A SAPSO’s signature on a document means that he or she reviewed the case in accordance with the instructions in the previous section and concurs in the determination made by the APSO. After reviewing the determination, the SAPSO takes the following action:

- Signs the Form I-870
- Signs or initials the assessment, if any
- Signs and dates the NTA, if any
- Signs the Form I-863, if any.

### 3. Standard of Review

It is not the role of the SAPSO to ensure that the APSO decided the case as she or he would have decided it. APSOs must be given substantial deference, once it has been established that the analysis is legally sufficient.

In the event that the SAPSO disagrees with the APSO’s decision, he or she discusses the case with the APSO. If the SAPSO and APSO are not able to resolve their differences, the SAPSO elevates the issue to the Director (or Deputy Director). The Director may decide, in his or her discretion, to refer the case to Headquarters Quality Assurance Branch (HQASM/QA) for further review.

As a complementary process to the above, in some instances, OCC attorneys stationed at local asylum offices may assist with resolving disagreements on cases. Where an APSO and SAPSO disagree on a case, they may consult with the OCC attorney embedded at the local asylum office to assist with a resolution.

OCC consultation on a case does not replace HQASM QA review for cases that require such review under current referral policies. Regardless of whether OCC was consulted on a case, if the case falls within a category of cases requiring HQASM QA review, the case must still be sent for such review.

See section IV.I on Quality Assurance Review for a list of cases subject to mandatory HQASM/QA review.

## III.J. SERVING THE DETERMINATION ON THE NONCITIZEN

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: Sections: 1 (2022-05-31); 2, 2.a. & 2.b. (2022-05-31); 2.b.(2022-11-09)

### 1. Preparing the Documents for Service

Once the SAPSO and HQASM/QA, if applicable, have reviewed the case, asylum office staff prepares the documents for service on the noncitizen. This includes making the necessary photocopies and packaging together the documents that the APSO will serve on the noncitizen. The asylum office must maintain copies of all documents served on the alien, as outlined in the Manual’s section IV.E, File Management.

### 2. Serving the Determination on the Noncitizen

Service may be done in person or telephonically. Normally, an APSO will serve a determination telephonically if the interview was conducted telephonically.

If the noncitizen has a consultant, the asylum office prepares one (1) additional copy of the documents for the consultant. The noncitizen receives the consultant's copy of the documents at the time of decision and is responsible for forwarding the documents to the consultant. The asylum office does not provide copies of the documents to the consultant directly, in order to protect the confidentiality of the noncitizen as required by 8 CFR 208.6.

If the noncitizen has a legal representative with a properly executed G-28 (a G-28 signed by both the noncitizen and the legal representative) then the asylum office prepares and serves a copy of the documents on the legal representative in addition to serving the noncitizen.

Depending upon the determination, the noncitizen receives one (1) of the following sets of documents, and a copy of such documents if a consultant was present at the credible fear interview.

#### *a. Positive Credible Fear Determination*

Noncitizens who receive a positive credible fear evaluation and determination and who meet the participation criteria for the asylum merits interview process will generally have their asylum applications retained by USCIS for the asylum merits interview process, unless USCIS, in its discretion, decides to issue an NTA to place them into original section 240 removal proceedings.

1. Noncitizen is placed into original section 240 removal proceedings

The noncitizen must be served with the following documents when placed into original section 240 removal proceedings following a positive credible fear evaluation and determination:

- Form I-870, Record of Determination – copy.
- Typed Q&A Notes
- Credible Fear Determination Checklist and Written Analysis
- EOIR List of Free Legal Services Providers
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy (only if the noncitizen was not previously given a copy of the form)
- Form I-860, Notice and Order of Expedited Removal – copy (only if the noncitizen was not previously given a copy of the form)
- Form I-862, Notice to Appear – if the noncitizen will be placed into original section 240 removal proceedings.
  - The noncitizen receives a copy of original that was signed by SAPSO or one (1) of several NTAs the SAPSO signed.
  - For family units, an NTA will be served on each family member and an NTA for each family member will be filed with EOIR.
- EOIR –33 Change of Address Form – if the noncitizen will be placed into original section 240 removal proceedings.

When serving the decision, the person serving the decision:

- Explains to the noncitizen that USCIS found them to have a credible fear of persecution or torture, and they will be placed into proceedings before the Immigration Court where they may apply for asylum, withholding of removal, and protection under the Convention Against Torture
- Explains to the noncitizen that, if he or she is released from detention, the noncitizen must notify EOIR of any change in address by completing and mailing the EOIR-33, Change of Address Form to EOIR and notify USCIS in writing or on a Form AR-11.



## 2. Noncitizen is placed in the asylum merits interview process

The noncitizen must be served with the following documents when their asylum application is retained by USCIS for the asylum merits interview process following a positive credible fear evaluation and determination:

- Form I-870, Record of Determination – copy.
- Typed Q&A Notes
- Credible Fear Determination Checklist and Written Analysis
- EOIR List of Free Legal Services Providers
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy (only if the noncitizen was not previously given a copy of the form)
- Vacated or Cancelled Form I-860, Notice and Order of Expedited Removal. Only vacate the Form I-860 if it has been completed. If not completed, cancel the I-860. Provide a copy of the vacated or cancelled Form I-860 to the noncitizen.
- Information About Your Asylum Merits Interview document – for family groups, each accompanying immediate family member receives their own and must sign and date. Parents may sign on behalf of children who are too young to do so themselves. This document is provided in the noncitizen’s language or read to the noncitizen in their language.
- G-56 Asylum Merits Interview Notice (if available)
- AR-11, Change of Address Card (USCIS)
- A copy of the AMI receipt notice

When serving the decision, the person serving the decision:

- Explains to the noncitizen that USCIS found them to have a credible fear of persecution or torture, and USCIS will retain their asylum application and schedule them for an asylum merits interview.
- Explains to the noncitizen that, if he or she is released from detention, the noncitizen must notify USCIS in writing or on a Form AR-11.

### ***b. Negative Credible Fear Determination***

Each noncitizen must receive a complete service packet:

- Form I-870, Record of Determination –copy.
- Typed Q&A Notes
- Credible Fear Determination Checklist and Written Analysis
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge – original. If the alien requests immigration judge review, or refuses to either request or decline such review, also serve:
- Form I-863, Notice of Referral to Immigration Judge- - copy of original that was signed by SAPSO or one (1) of several forms that the SAPSO signed.
- List of Free Legal Services Providers.
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy (only if the alien was not previously given a copy of the form).
- Form I-860, Notice and Order of Expedited Removal – copy (only if the alien was not previously given a copy of the form).

When serving the decision, the person serving the decision:

- Explains to the noncitizen that USCIS did not find him or her to have a credible fear of persecution or torture.
- Explains to the noncitizen that he or she may request review of the decision by an immigration judge.

If the noncitizen requests review of the decision, or refuses to request or decline such review, the APSO:

- Marks the “yes” box at question 2 on Form I-869 and completes the bottom portion of the form.
- Asks the alien to sign the Form I-869.
- Marks box 1 on Form I-863 (if this update was not already made).
- Fully and correctly completes the certificate of service section on Form I-869.

If the noncitizen affirmatively declines immigration judge review, the APSO:

- Marks the “no” box at question 2 of Form I-869 and completes the bottom portion of the form.

Country conditions research may be necessary to reach a credible fear determination. See the AOBTC Basic Training Materials, Country Conditions Research and the RIC, Credible Fear, Section VII, Parts A and B, and the Affirmative Asylum Procedures Manual for guidance on country conditions research..

### III.K. POST-SERVICE PROCESSING

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: Sections: 1 and 2 (2022-02-08); 2 (2022-04-27); 1 and 3 (2022-05-31)

#### 1. Positive Credible Fear Determination

Noncitizens who receive a positive credible fear evaluation and determination may receive an NTA placing them into original section 240 removal proceedings or a G-56, Asylum Merits Interview Notice and Information About Your Asylum Merits Interview document for cases that will be retained by USCIS for an asylum merits interview.

For noncitizens who are placed into original section 240 removal proceedings, the asylum office must file an NTA and a copy of the typed Q&A notes from the credible fear interview with the Immigration Court having jurisdiction over the noncitizen's place of detention. All court packets must be electronically submitted to the EOIR Courts & Appeals System (ECAS), which is accessed through the [DHS Portal](#). ECAS is an EOIR system that is managed and updated by EOIR on a regular basis. For more information regarding how to properly upload documents into the DHS Portal/ECAS, please review the resources provided by EOIR on their [ECAS DHS Resources](#) webpage. The NTA and Q&A notes are the only documents required to be filed with the Immigration Court; however, if a particular Immigration Court requires other documents along with the NTA and the Q&A notes, the SAPSO should provide these documents.

In instances where Asylum personnel are unable to upload supporting evidence into the DHS Portal/ECAS, for example where an NTA was previously paper filed and not yet available in ECAS, Asylum personnel should contact the local EOIR court for guidance on how to submit the court.

When USCIS will retain the case for the asylum merits interview process, the positive credible fear determination service date will serve as the filing date for the asylum application. Asylum Offices must create the asylum merits interview case in Global prior to decision service.

[Appendix Q: Langlois, Joseph E., INS Asylum Division. Filing Notices to Appear \(NTAs\) with the Executive Office for Immigration Review \(EOIR\) after Credible Fear Interviews. Memorandum to Asylum Office Directors, Deputy Directors, and Supervisory Asylum Officers \(Washington, DC: 26 March 2002\), 3 p.](#)

[Appendix AF: Caudill-Mirillo, Ashley, USCIS Asylum Division. Guidance for Submitting Immigration Court Packets Electronically Through EOIR Courts & Appeals System \(ECAS\) \(Camp Springs, MD: 07 February 2022\), 2 p.](#)

## 2. Negative Credible Fear Determination

### *a. Noncitizen Requests Review of the Determination, or Refuses to Request or Decline Such Review*

The asylum office files the following documents on the Immigration Court:

- Form I-863, Notice of Referral to Immigration Judge
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge
- Form I-867, Parts A&B, Sworn Statement and Jurat
- Form I-860, Notice and Order of Expedited Removal
- Form I-870, Record of Determination
- Typed Q&A notes (See the Manual's section IV.K , Stowaways, for requirements in these cases)
- Credible Fear Determination Checklist and Written Analysis

Section 235(b)(1)(B)(iii)(III) of the INA requires an immigration judge to review a negative credible fear determination as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the negative credible fear determination, which for these purposes is the date on the first page of Form I-863. EOIR will use the date on the I-863 as the date when EOIR's 7-day review period begins. All court packets must be electronically submitted to the EOIR Courts & Appeals System (ECAS), which is accessed through the [DHS Portal](#), **within 24 hours** of the date on the first page of Form I-863. Form I-863 must be signed by an SAO. The date on the first page of the I-863 must correspond with the date that the SAO signs the form.

For locations where ICE uploads the I-863 and supporting evidence into the DHS Portal/ECAS, Asylum personnel must communicate to ICE the importance of uploading the I-863 within 24 hours of the date on the I-863; failure of ICE to timely electronically submit the I-863 in the DHS Portal/ECAS could result in EOIR rejecting the I-863. If ICE cannot commit to uploading the I-863 within 24 hours of the date on the I-863 then the Asylum Office will need to take over uploading the I-863 in those locations.

In instances where Asylum personnel are unable to upload supporting evidence into the DHS Portal/ECAS, Asylum personnel should expeditiously contact the local EOIR court for guidance on how to submit the package to the court.

If the immigration judge vacates the APSO's negative determination, the Department of Homeland Security must place the noncitizen into removal proceedings under section 240 of the INA. Either ICE ERO or the Asylum Office is responsible for preparing and serving a NTA on the noncitizen and filing the NTA with the Immigration Court after an immigration judge vacates a negative credible fear finding, through the DHS Portal/ECAS.

[Appendix R: Creppy, Michael J. Office of the Chief Immigration Judge. Interim Operating Policy and Procedure Memorandum 97-3: Procedures for Credible Fear and Claimed Status Reviews, Memorandum to Assistant Chief Immigration Judges, Immigration Judges, Court Administrators and Support Staff \(Washington, DC: 25 March 1997\), 9 p.](#)

[Appendix AG: Maggard, Print, Chief Immigration Judge \(Acting\). Memo to Immigration Judges and Court Administrators: The Record in Credible Fear Review Proceedings \(Falls Church, VA: 17 September 2015\), 2 p.](#)

#### ***b. Alien Affirmatively Declines Review of the Determination***

If the noncitizen declines immigration judge review of his or her determination, the APSO refers the noncitizen to the ICE ERO office having jurisdiction over the noncitizen's place of detention, who is then responsible for removing the noncitizen from the United States.

### **3. Post-IJ Vacate**

If the immigration judge vacates the asylum officer's negative credible fear determination, the asylum office will either retain the asylum application for an asylum merits interview or will coordinate with ICE to place the individual into original section 240 removal proceedings by issuing an NTA.

When the asylum office retains the asylum application for an asylum merits interview, the asylum office must request the A-file from ICE. The asylum office must receive all documents that the Immigration Judge used to make the positive CF determination and review the information before conducting the asylum merits interview. The asylum office serves the noncitizen with a G-56, Asylum Merits Interview Notice for the asylum merits interview along with the Information About Your Asylum Merits Interview document.

## IV. EXPANDED TOPICS (in alphabetical order by subject)

### IV.A. ALIENS WHO DO NOT RECEIVE A CREDIBLE FEAR DETERMINATION

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

#### 1. Crewmembers

Crewmembers who arrive on board a vessel and express a fear of persecution or harm are not entitled to a credible fear determination. A crewmember who wishes to seek asylum must complete a Form I-589 Application for Asylum and Withholding of Removal and submit it to the District Director having jurisdiction over the port where the alien arrived. The District Director files a Form I-863 and the Form I-589 with the Immigration Court. An immigration judge will determine the alien's asylum claim. 8 CFR 208.5(b)

#### 2. Cubans (Certain)

A Cuban native or citizen who arrives at a port-of-entry by aircraft is not subject to expedited removal, even if he or she seeks admission to the United States by misrepresentation, without documentation, or with documentation proving citizenship in another country. The INS places the Cuban national into INA section 240 removal proceedings. 8 CFR 235.3(b)(1)(i)

#### 3. Minors

An alien under the age of 18 is considered a minor. If the minor is accompanied by a relative or guardian, INS places the minor into the same type of proceeding as the adult (e.g., expedited removal or INA section 240 proceedings), or permits the minor to withdraw his or her application for admission.

See this Manual's section IV.K, Stowaways, for information about processing stowaways who are also minors.

As a matter of policy, INS does not place unaccompanied minors into expedited removal proceedings except under the following conditions:

- the minor has engaged in criminal activity, in the presence of an INS officer, that qualifies as an aggravated felony if committed by an adult;

- the minor has been convicted or adjudicated delinquent of an aggravated felony in the U.S. or in another country and the inspecting officer has confirmation of that order; or
- the minor has previously been formally removed, excluded, or deported from the U.S.

[Appendix S:](#)

INS charges an unaccompanied minor, who does not fall into a category listed above, with violating sections 212(a)(7) and 212(a)(4) of the INA. As a general rule, unaccompanied minors are not charged with violating section 212(a)(6)(C) of the INA unless the minor clearly understands that he or she is committing fraud. By placing section 212(a)(4) [likely to become a public charge] on the charging document, INS may place the minor into section 240 removal proceedings.

Inspectors also may allow a minor to withdraw an application for admission.

If an Inspector refers a confirmed unaccompanied minor for a credible fear interview, and the minor does not fall within one of the exceptions listed above, the asylum office should refer the minor back to Inspections for modification of the charges. Inspections must add “§ 212(a)(4)” to the list of charges to place the minor in section 240 proceedings. [Virtue, Paul. INS Office of Programs. Unaccompanied Minors Subject to Expedited Removal. Memorandum to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, Director, PDI, ODTF Glynco, and ODTF Artesia \(Washington, DC: 21 August 1997\), 4 p.](#)

During an orientation or interview, an APSO may reasonably believe that an alien claiming to be an adult is a minor. In such cases, the APSO immediately contacts a SAPSO and suspends processing the case. The SAPSO refers the name of the alien to the INS district office staff member responsible for the alien’s care.

INS should confirm the alien’s age by dental and/or wrist bone examination, which is a process usually coordinated by PHS. If PHS determines the alien is not a minor, the asylum office continues to process the credible fear claim.

## IV.B. CONFIDENTIALITY ISSUES

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

The confidentiality provisions outlined in [8 CFR 208.6](#) protect information pertaining to a credible fear interview and determination, as well as an asylum interview and determination. For more information on

confidentiality protections, see the [Confidentiality Issues section of the Affirmative Asylum Procedures Manual](#).

## IV.C. DETENTION AND PAROLE OF ALIENS

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

APSOs do not make parole determinations, nor do they make recommendations on parole. An APSO may, however, gather information during a credible fear interview that a District Director may consider in making a parole determination (e.g., medical condition). The information in this section provides general information about detention requirements and parole considerations to gain a fuller understanding of the process.

Section 235(b)(1)(B)(iii)(IV) of the INA mandates the detention of an alien during the credible fear determination process and, if no credible fear is found, until INS removes the alien. An alien who is subject to detention can be detained in an INS contract facility (e.g., Elizabeth Detention Center), an INS Service Processing Center (SPC) (e.g., Krome), a local jail, or a hotel/motel.

Although the regulations at § 235.3(b)(4)(ii) specify that the Attorney General makes parole determinations as a matter of discretion for a medical emergency or to meet a legitimate law enforcement objective, this authority has been delegated to the Commissioner and his designees, including INS District Directors.

Pursuant to 8 CFR 212.5(a), a District Director may exercise discretion to parole an alien from detention for urgent humanitarian reasons or for significant public benefit, assuming that the alien presents neither a security risk nor a risk of absconding.

A District Director may parole an alien from detention at any time after an alien’s arrival at a detention site. The factors a District Director considers include, but are not limited to, the following:

- the alien’s identity, and whether it has been established with a reasonable degree of certainty;
- the possibility for community support, such as whether the alien has a relative, sponsor, or other community ties;
- whether the alien may leave the United States or fail to appear before the Immigration Court for section 240 proceedings;
- the alien’s medical condition, both mental and physical, and
- whether an APSO found that the alien may be subject to a mandatory bar to asylum status.

## IV.D. DISSOLUTION OF A CREDIBLE FEAR CLAIM

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

During the course of the credible fear process, an alien may express a desire to be removed from the U.S. and no longer pursue a credible fear claim.

If an alien expresses such a desire to an APSO, the APSO must speak to the alien to ensure that he or she is aware of the consequences of dissolving an asylum claim, and to ascertain why the alien no longer wishes to remain in the credible fear process.

The APSO must read and explain to the alien the Request for Dissolution of Asylum Claim. If, after the APSO explained the contents of the form, the alien changes his or her mind and wants to remain in the credible fear process, the APSO continues processing the alien through the credible fear process.

If, however, the alien signs the Request for Dissolution of Asylum Claim, the APSO does not process the case any further. He or she refers the case to the INS district office staff member who is responsible for the alien's detention. Generally, the INS district officer will determine whether to offer the alien a withdrawal of his or her application for admission or to issue a Form I-296, Notice to Alien Ordered Removed/Departure Verification, to the alien; however, a District Director may permit an APSO to make this determination. Regardless of whether the deciding officer is an INS district officer or an APSO, the option of offering the alien a withdrawal of his or her application for admission must be considered before a formal order of removal (Form I-296) is signed and served by an INS officer (APSO or district officer). Form Required:

[Request for Dissolution of Asylum Claim, attached to Langlois, Joseph E. INS Asylum Division. Dissolution of Credible Fear Claims, Memorandum to Asylum Office Directors, Deputy Directors, and Supervisory Asylum Pre-Screening Officers](#)

[\(Washington, DC: 26 July 2000\), 2 p.](#)

[\[Appendix T\]](#)

## 1. Alien is NOT Offered the Opportunity to Withdraw the Application for Admission

Once a decision has been made to not allow an alien to withdraw his or her application for admission, it is generally the responsibility of the INS district, not an APSO, to complete the bottom portion of the Form I-860, which is the Notice and Order of Expedited Removal.

The asylum office closes the case in APSS by updating the Close Case (CLOS) screen within seven (7) business days from the date the asylum office is notified of the INS district office's decision. The reason for the closure is "T2 -DISSOLVE"- dissolution of the interview request. APSS Updates Required:

"CLOS" – T2

## 2. Alien is Offered the Opportunity to Withdraw the Application for Admission



Once a decision has been made to allow an alien the opportunity to withdraw his or her application for admission, the SAPSO should consult with the INS district to determine whether an INS district officer or an APSO will prepare a [Form I-275, Withdrawal of Application for Admission/Consular Notification \(Appendix Y\)](#), which permits the alien to withdraw his or her application for admission.

If the APSO is preparing the Form I-275, asylum office staff should close the case in APSS by updating the CLOS screen, selecting "T6- WITHDRAWAL" in the REASON field. See this Manual, Section IV.M, Withdrawal of an Application for Admission, for more information.

APSS Updates Required:

"CLOS" - T6

## IV.E. FILE MANAGEMENT

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

Detention staff of the INS district office having jurisdiction over the detention site keeps the A-files of detained aliens. Therefore, unless local arrangements have been made for the asylum office to control an A-file, an asylum office usually will not keep an alien's A-file during the credible fear process.

An asylum office must therefore create its own credible fear folders, which contain all documents related to the credible fear determination. At a minimum, the folders must contain copies of all documents that were served on the alien and Immigration Court. The original versions of these documents, which include but are not limited to those listed below, should remain in the A-file.:

### 1. Positive Credible Fear Determination

- Form I-870, Record of Determination/Credible Fear Worksheet
  - Interview Notes
  - Form I-862, Notice to Appear
  - Form I-860, Notice and Order of Expedited Removal
  - Form I-867, Parts A&B, Sworn Statement and Jurat
  - Comments and accompanying documents from HQASM/QA, if any
  - Notes or memos to the file documenting contact with a consultant, if any
- Memo of Adverse Information, if any.

### 2. Negative Credible Fear Determination

- Form I-870, Record of Determination/Credible Fear Worksheet
- Interview Notes – non-Q&A and Q&A format, both handwritten and typed

- Assessment of Negative Credible Fear Claim
- Form I-860, Notice and Order of Expedited Removal
- Form I-867, Parts A&B, Sworn Statement and Jurat
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge
- Form I-863, Notice of Referral to Immigration Judge, if applicable
- Comments from HQASM/QA regarding negative credible fear determination
- Notes or memos to the file documenting contact with a consultant, if any
- Memo of Adverse Information, if any.

### 3. Maintenance and Retention of Credible Fear Records

The Asylum Division (HQASM) requires an office to keep records of the credible fear cases that APSOs have completed. Therefore, each asylum office Director must decide how the office will maintain its records. For example, an office may keep the credible fear folders, scan the documents from the folder onto disks, or create a database that contains relevant information about a credible fear claim. Whatever system the Director chooses, it must enable an asylum office to provide information about a case in the event of an inquiry.

In the event the SAPSO and asylum office Director conclude that they lack space to continue storing their office’s credible fear folders, they may dispose of the folders by shredding their contents. Before shredding, however, the SAPSO must ensure that

- More than six months have passed since the Clock-in Date,
- The case has not been subjected to an unusual amount of scrutiny, and
- All necessary APSS updates to complete the case have been performed.

### IV.F. INTERPRETERS – DOCUMENTING COSTS

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<b><u>Will be Updated, Changes Pending Review</u></b>	<b><u>Finalized Updates</u></b>
Sections:	Sections:	Sections: Sections: (2020-08-24);

See section III.E.3 Interpreters and the [Interpreter Services ECN](#) for instructions. M

### IV.G. MANDATORY BARS - FOUO

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<b><u>Will be Updated, Changes Pending Review</u></b>	<b><u>Finalized Updates</u></b>
Sections:	Sections:	Sections: 6/18/2015

Mandatory bars to being granted asylum do not affect the determination of whether an alien has a credible fear of persecution or torture. However, whenever a mandatory bar appears to apply to an alien, an asylum office must flag the possible bar on the I-870 and in APSS.

Asylum offices must also complete a Memo of Adverse Information whenever an APSO, in conjunction with the SAPSO, has reasonable grounds to believe that a mandatory bar may apply to an alien, except for the mandatory bar of firm resettlement. The memo should include a detailed explanation for the basis for believing that the alien may be subject to a bar as well as an explanation of how the possible bar was discovered (for example, through testimony or security check).

When a Memo of Adverse Information is completed, the asylum office must send the memo to ICE to notify them of the possible mandatory bar to asylum.

The APSO must include the original memo on the non-record side of the A-file and place a copy in the alien’s W-file.

Whenever the possible mandatory bar relates to a terrorism-related inadmissibility ground, the asylum office must also email an electronic copy of the Memo of Adverse Information to the ASYLUM QA – CREDIBLE FEAR mailbox at Asylum Headquarters with the subject line, “ZXX CF Adverse Info Memo TRIG A000000000.” The memos should be saved using that same naming convention.

[Appendix W: Memo of Adverse Information](#)

#### IV.H. NACARA-ELIGIBLE ALIENS

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

An alien who appears eligible to apply for benefits under NACARA 202 or NACARA 203 is subject to expedited removal, just as any other arriving alien who seeks admission through misrepresentation or without documentation. However, an APSO must be aware of special considerations for ABC class members.

An ABC class member who is apprehended at the time of entry after December 19, 1990, loses eligibility for ABC benefits and may be placed into expedited removal. If the ABC class member expresses a fear of persecution or harm upon return to his or her home country, the inspecting officer refers the alien for a credible fear interview according to established procedures.

The SAPSO coordinates with the NACARA/ABC Coordinator within the asylum office to issue the appropriate ABC ineligibility letter and, if the applicant has an asylum application pending with the asylum office, to make the necessary updates to RAPS.

The ABC settlement agreement prohibits removal of any class member for 30 days from the date the class member is notified of his or her loss of ABC benefits. This 30 days allows the class member to challenge the adverse finding in federal court. Therefore, unless the class member waives the right to challenge the

finding of ABC ineligibility, INS may not remove a class member who is found not to have a credible fear until 30 days have passed since service of the ABC ineligibility letter.

See the ABC/NACARA Procedures Manual, Class Members Apprehended at the Border at the Time of Entry

## IV.I. QUALITY ASSURANCE REVIEW

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: IV.I (6/12/14)

The Headquarters Asylum Division Quality Assurance Branch (HQASM/QA) monitors the quality of credible fear determinations by conducting pre-decisional review of credible fear determinations. Pre-decisional review by HQASM/QA of the following types of cases is **mandatory**. An APSO may not serve a determination on an alien whose case falls into one of the categories described below, until HQASM/QA concurs in the determination:

- Random sampling of positive and negative credible fear of persecution and torture determinations, at established numbers of sample.
- High-profile claims.
- Claims involving novel legal issues.
- Any case in which the Asylum Office Director seeks review by HQASM/QA.

Before sending the case to HQASM/QA for review, the SAPSO must have concurred in the decision. Once all necessary parties have concurred in the decision, the Asylum Office must send the following documents to HQASM/QA by sending an email to the Asylum QA – Credible Fear mailbox:

Required in all cases

QA Referral Sheet  
 Form I-860  
 Form I-213  
 Form I-867A & I-867B  
 M-444  
 Interview Notes  
 CF Determination Checklist  
 Form I-870

Required, if negative

I-863  
 I-869

Required, if positive

NTA

Required, if present in A-file

G-28

Any supporting documents submitted by the alien  
 Any documents relied upon in making the determination (other than routine country conditions reports)  
 Any relevant USCIS memoranda in file

A member of HQASM/QA must respond to the SAPSO in writing (by e-mail), indicating whether HQASM/QA concurs in the decision or suggests modification. None of the comments from HQASM/QA remain part of the A-file.

## IV.J. STATUS CLAIMS

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

An Inspector must verify the status of an alien who claims to be a U.S. citizen, lawful permanent resident (LPR), asylee, or refugee. If the Inspector cannot verify the alien’s status claim, he or she places the alien into expedited removal but cannot order the alien removed until an immigration judge has made a determination on the alien’s claimed status.

When the individual making the unverified status claim also claims a fear of persecution or harm upon return to his or her country, the Inspector should refer the alien for a credible fear interview. In some jurisdictions, however, an Inspector may place an alien before an immigration judge for a status determination before the credible fear process. 8 CFR 235.3(b)(5)

### 1. Inspector Places the Alien before an Immigration Judge for a Status Determination before the Credible Fear Process

If the immigration judge determines that the alien does have the status he or she claims, the immigration judge terminates proceedings and vacates the expedited removal order.

If the immigration judge determines that the alien does NOT have the status he or she claims, the alien receives a credible fear determination according to the procedures in paragraph 2 of this section.

### 2. Credible Fear Process for Status Determination Cases

#### *a. Positive Credible Fear Determination*

The APSO prepares the documents for a positive credible fear determination outlined in the Preparing a Determination section in III.H of the Manual, which are served upon the alien and filed with the Immigration Court according to procedures in the Manual’s sections III.J, Serving the Determination on the Alien and III.K, Post-Service Processing, respectively. If the alien has not already seen an immigration

judge for a review of the status claim, the immigration judge will make a determination on the alien’s status claim during the section 240 proceedings.

***b. Negative Credible Fear Determination***

**i. Alien has NOT seen an immigration judge for a review of the status claim**

- If the alien requests immigration judge review or refuses to request or decline such review, the APSO places a “4” in box 4 on Form I-863 and indicates which status claim applies to the individual’s case. In addition, the APSO places a “4” in box 1.
- If the alien affirmatively declines review, the APSO places a “4” only in box 4 on Form I-863 and indicates which status claim applies to the individual’s case

• Asylum office personnel serve the documents upon the alien and file them with the Immigration Court. See Manual sections III.J, Serving the Determination on the Alien, and III.K, Post-Service Processing, for specific procedures.

**ii. Alien has already seen an immigration judge for a review of the status claim**

If the alien requests immigration judge review or refuses to request or decline such review, the APSO places a “4” only in box 1 on Form I-863. Asylum office personnel serve the documents upon the alien and file them with the Immigration Court. See Manual sections III.J, Serving the Determination on the Alien, and III.K, Post-Service Processing, for specific procedures.

- If the alien affirmatively declines review of the determination, the APSO refers the alien to the INS district for removal of the alien.

**IV.K. STOWAWAYS**

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<b><u>Will be Updated, Changes Pending Review</u></b>	<b><u>Finalized Updates</u></b>
Sections:	Sections:	Sections:

An alien stowaway is exempt from the provisions of expedited removal; however, if the stowaway expresses a fear of harm or persecution, INS must detain the stowaway and refer him or her to an asylum office for a credible fear interview pursuant to 8 CFR 208.30. This includes unaccompanied minors. 8 CFR 235.1(d)(4)

A credible fear interview and determination for a stowaway follow the same rules and procedures as an interview and determination for an alien placed into expedited removal. The only difference relates to the types of documents an APSO prepares and serves upon the stowaway and files with the Immigration Court. For an overview of the process for an alien in expedited removal compared with the credible fear process for an alien stowaway, see [Appendix X](#). APSS Updates Required:

Place an “X” next to “Stowaway” on the PREC screen.

## [Appendix X:](#)

### [Chart- Overview of Process, Aliens in Expedited Removal vs. Stowaways, 1 p.](#)

## 1. Positive Credible Fear Determination

### *a. Preparing the Documents*

All of the documents and APSS updates listed in section III.H, Preparing a Determination, also are completed for a stowaway, except that the APSO prepares a Form I-863 instead of a Form I-862. On Form I-863, the APSO puts a "4" in box 3 and puts a "4" in the box that states, "Stowaway: credible fear determination attached."

### *b. Serving the Determination on the Stowaway*

The procedures for serving the determination outlined in section III.J, Serving the Determination on the Alien, are the same for a stowaway. The APSO serves the following documents:

- Form I-870, Record of Determination – copy
- Form I-863, Notice of Referral to Immigration Judge - - copy of original that was signed by SAPSO or one (1) of several I-863s that the SAPSO signed
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy (only if the alien was not previously given a copy of the form)
- List of Free Legal Services
- EOIR –33 Change of Address Form. In the event the District Director paroles the alien from detention, the alien must be aware of his or her obligation to notify the court of any changes in address.

### *c. Filing the Determination with the Immigration Court*

The asylum office files the following documents with the Immigration Court:

- Form I-863, Notice of Referral to Immigration Judge – original
- Form I-870, Record of Determination – copy
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy

An Immigration Court's court administrator may accept documents for filing by facsimile, rather than in-person or via mail. Each asylum office must coordinate with the court administrator to determine the local court's requirements.

## 2. Negative Credible Fear Determination

### *a. Preparing the Documents*

All of the documents and APSS updates listed in section III.H, Preparing a Determination, are the same for a stowaway, except for the following:

- The APSO does not complete a Form I-860.
- On Form I-863, the APSO puts a "4" in box 2 in the event the stowaway requests immigration judge review, or the stowaway refuses to either request or decline such review.

***b. Serving the Determination on the Stowaway and Filing it with the Immigration Court***

The procedures and documents outlined in section III.J, Serving the Determination on the Alien, are the same for a stowaway, except that an APSO does not serve a Form I-860 on the stowaway. If the stowaway declines immigration judge review of his or her determination, the APSO refers the stowaway to a Detention Officer for removal from the U.S.

If a stowaway requests review of the determination, or refuses to request or decline such a review, the asylum office files the following documents with the Immigration Court:

- Form I-863, Notice of Referral to Immigration Judge – original
- Form I-870, Record of Determination – copy
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge – original
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy
- Typed Q&A notes – copy

An Immigration Court’s court administrator may accept documents for filing by facsimile, rather than in-person or via mail. Each asylum office must coordinate with the court administrator to determine the local court’s requirements.

**IV.L. VISA WAIVER PERMANENT PROGRAM (VWPP)**

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

The VWPP waives the nonimmigrant visa requirement for nationals of those countries listed in 8 CFR 217.2(a). The Visa Waiver Pilot Program ended on April 30, 2000. The Visa Waiver Permanent Program went into effect October 30, 2000. Both are referred to as "VWPP." Individuals who seek admission under the VWPP and are determined to be ineligible for admission, including those who fraudulently claim to be nationals of a VWPP country, are not subject to expedited removal and do not receive a credible fear interview. If such persons request asylum, they are referred directly to an immigration judge for proceedings in accordance with 8 CFR 208.2(c)(1).

An individual is not considered to be seeking admission under the VWPP unless he or she has completed and signed a green Form I-94W, which should be attached to the alien’s A-file. An APSO may interview any alien who used a passport from one of the countries listed in 8 CFR 217.2(a) if that alien did not complete and present a signed Form I-94W to an Inspector.

During the period between the expiration of the Visa Waiver Pilot Program on April 30 and enactment of the Visa Waiver Permanent Program on October 30, 2000, the INS paroled aliens into the U.S. for a period of ninety (90) days if the alien would have been eligible for admission to the U.S. under the VWPP. If such



an alien's parole expired or was revoked by the District Director, the alien is subject to expedited removal. Aliens who, upon their arrival, were determined ineligible for the parole described above, were subject to expedited removal.

## IV.M..WITHDRAWAL OF AN APPLICATION FOR ADMISSION

<b><u>Reviewed, No Substantive Changes since 2002</u></b>	<b><u>Will be Updated, Changes Pending Review</u></b>	<b><u>Finalized Updates</u></b>
Sections:	Sections:	Sections:

Once an INS district officer has determined that an alien will be given the opportunity to withdraw his or her application for admission after the dissolution of the credible fear claim, either an INS district officer or an APSO prepares a Form I-275, Withdrawal of Application for Admission/Consular Notification. The SAPSO coordinates with the INS district office having jurisdiction over the alien to determine which party will prepare a Form I-275 and the other forms that accompany a withdrawal. [Appendix Y: Form I-275, Withdrawal of Application for Admission/Consular Notification](#)

### 1. Asylum Office is NOT Responsible for Preparing Form I-275

If an Immigration Officer will process the paperwork for a withdrawal, including the Form I-275, the asylum office closes the case in APSS by updating the Close Case (CLOS) screen, within seven (7) business days of the date the Asylum Officer prepares the Request for Dissolution of Asylum Claim form (Appendix T). The reason for the closure is "T6" – I-275 withdrawal issued.

APSS Update Required:

"CLOS" – T6

### 2. Asylum Office Prepares a Form I-275

If an APSO prepares the Form I-275, he or she completes a Form I-275, Withdrawal of Application for Admission/Consular Notification, with the alien according to the following instructions:

- Complete the top portion on page 1. Place a "4" in the box that states, "Application for Admission Withdrawn."
- Confer with the INS district office regarding the type of information to place in the section called Reasons
- Print the name and title of the APSO at the bottom of page 1, and sign where indicated.
- Ask the alien to date and sign the boxed section on page 2. Place a "4" in the box that states "by an immigration officer." [Appendix Z:](#)

[Virtue, Paul. INS Office of Programs. Withdrawal of Application for Admission \(IN 98-05\), Memorandum to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, ODTF Glynco and ODTF Artesia \(Washington, DC: 22 December 1997\), 3 p.](#)

After completing the Form I-275, the APSO attaches the Form I-867, Parts A&B that was completed at the time the alien dissolved his or her credible fear claim, and provides the documents to the contact person at the INS district office. The INS district office is responsible for completing the paperwork necessary for the alien to withdraw the application for admission, and for removing the alien.

The asylum office closes the case in APSS by updating the Close Case (CLOS) screen within seven (7) business days of the date the alien signs the Form I-275. The reason for the closure is "T6" – I-275 withdrawal issued. APSS Update Required:

## IV.N. NON-DETAINED INDIVIDUALS

<b><u>Reviewed, No Substantive Changes since 03/31/2023</u></b>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: IV.N.1-4

### 1. Referral

If an asylum office receives an affirmatively filed Form I-589 from a noncitizen in expedited removal proceedings, the asylum office should treat the filing of Form I-589 as an expression of fear and process the noncitizen as a credible fear referral if the asylum office has the following completed DHS forms: Form I-860 and Form I-867 Parts A&B. If the non-detained noncitizen did not receive a Form M-444 and list of free legal service providers from CBP or ICE, the asylum office may still process the noncitizen for credible fear but must complete the Form M-444 orientation prior to conducting the credible fear interview. See Section IV.N.4. Orientation. The asylum office must notify ICE that the asylum office has all the required forms for a credible fear referral and is processing the noncitizen for credible fear. If the asylum office does not have all the required forms for the noncitizen, the office must contact ICE ERO for the referral documents. If ICE ERO chooses to cancel the noncitizen's expedited removal order in lieu of providing the referral documents, the asylum office may proceed with processing the affirmative asylum application.

Asylum offices may also receive referrals for non-detained individuals directly from ICE or CBP in accordance with the procedures in Section III.C.

### 2. Consultation Period

Asylum offices are not required to wait 48 hours from the time a non-detained noncitizen expresses a fear to the time a credible fear interview is conducted for a non-detained noncitizen. Therefore, a Waiver of the 48-Hour Period is not required for non-detained noncitizens.

### 3. Interview Scheduling and Notification Procedures

Asylum offices may conduct the credible fear interview at the time of the previously scheduled affirmative asylum interview, if applicable. If an interview has not been scheduled, then asylum offices shall use Form G-56, Interview Notice, to schedule a non-detained noncitizen for a credible fear interview. Interview notices should be mailed to the non-detained noncitizen at least 21 days before the scheduled credible fear interview date, unless otherwise agreed to by the applicant.

If the noncitizen has an attorney or accredited representative with a properly executed G-28, the asylum office provides a copy of the interview notice to the attorney/representative.

### 4. Orientation

If the referral documents or the A-file do not include a completed Form M-444 dated and signed by the noncitizen or with a notation that the noncitizen refused to sign, the asylum officer must have the interpreter read Form M-444 to the noncitizen and, after answering any questions, ask the noncitizen to sign and date the form at the conclusion of the orientation. If the noncitizen refuses to sign the form, the asylum officer should note the noncitizen's refusal in the noncitizen's signature space. This must be done before or at the time of the credible fear interview, prior to beginning the substantive part of the interview. The noncitizen must also be provided with a copy of Form M-444 and the list of free legal service providers.

If there is a completed M-444 signed by the noncitizen or with a notation that the noncitizen refused to sign, the asylum officer should follow the procedures in Section III.D.1.b. Orientation.

### 5. Determination Service

Asylum offices should make every effort to serve the credible fear determination on a non-detained noncitizen on the same day as the credible fear interview. However, if the office is unable to serve the determination on the same day, determinations may be scheduled for pick-up in one week or less (especially where positive cases are retained by USCIS for an asylum merits interview), or may be mailed. The following procedures apply to all non-detained credible fear cases.

#### *a. Positive credible fear determination*

Noncitizens that receive a positive credible fear evaluation and determination may receive an NTA placing them into original section 240 removal proceedings or a G-56, Asylum Merits Interview Notice and Information About Your Asylum Merits Interview document for cases that will be retained by USCIS for an asylum merits interview. For noncitizens placed into original section 240 removal proceedings, officers must fully and correctly complete the certificate of service section on Form I-862, indicating the type of mail (certified or regular) that was used to serve the document, if by mail. The "date of service" for mailed decisions refers to the date that the notice is placed in an envelope and placed in outgoing mail.

Noncitizens who will receive an Asylum Merits Interview will receive a G-56, Asylum Merits Interview Notice and Information About Your Asylum Merits Interview document.

#### *b. Negative credible fear determination*

For mail out determinations, an asylum officer will first call the noncitizen (or the noncitizen's attorney if there is a properly executed G-28) to go over the determination, answer any questions that the noncitizen might have, and ask whether the noncitizen would like to request that an Immigration Judge review the decision. The asylum officer will explain that the conversation is being documented and the noncitizen will receive a copy of the determination documents in the mail. Asylum office personnel should then document on the Form I-869, that, due to the COVID-19 pandemic, the determination is being served by mail, the content was explained to the alien in a phone call on XXX date, the noncitizen's decision regarding IJ review, and that the asylum office documented the noncitizen's decision by marking the appropriate box. The noncitizen's signature on the I-869 is not required.

In addition to the call, the asylum office will send a "Notice Regarding Negative Credible Fear Determination" to the noncitizen documenting what happened during the call and explaining that service is being made by mail because of the COVID-19 pandemic.

If the asylum office is unable to reach the noncitizen's attorney (if there is one) and/or the noncitizen, the office will send the "Notice Regarding Negative Credible Fear Determination" documenting the attempted call(s). The notice must also be sent to the attorney of record.

If the noncitizen elects IJ review over the phone or cannot be reached by phone, the asylum office should mail the Notice Regarding Negative Credible Fear Determination, I-869, and I-863 to the noncitizen at the same time, and will file the I-863 with the immigration court right away, so as not to create any delays that implicate the EOIR review deadline in INA 235(b)(1)(B)(iii)(III).

## **6. Failure to Appear for Credible Fear Interview**

If a non-detained noncitizen fails to appear for one (1) credible fear interview, regardless of the reason for the failure to appear, then asylum offices should write a Memorandum to File explaining that the asylum office was unable to complete the credible fear determination due to the noncitizen's failure to appear for the interview. Asylum offices also should notify ICE that the noncitizen failed to appear. See Sample Memo to File (Failure to Appear for CF Non-Detained Interview or Determination). The asylum office will administratively close the case in Global for failure to appear.

Should the noncitizen present himself or herself for the credible fear interview at a later date, asylum offices will then process the case.

## **7. Failure to Appear for Determination Pick-Up**

If the noncitizen fails to appear for determination pick-up, then asylum offices should write a Memorandum to File explaining why the asylum office was unable to complete the credible fear process. Asylum offices also should notify ICE that the noncitizen failed to appear. See sample Memo to File (Failure to Appear for CF Non-Detained Interview or Determination).

Should the noncitizen present himself or herself for the determination pick-up at a later date, asylum offices will then process the case. Asylum officers may need to revisit the credible fear determination depending on the amount of time that has elapsed from the time of the first

interview to the time the noncitizen is physically present to be served the credible fear determination.

## Appendix – List of Documents

- A. Form I-867, Parts A&B, *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*
- B. Form I-860, *Notice and Order of Expedited Removal*
- C. Virtue, Paul. INS Office of Programs. *Supplemental Training Materials on Credible Fear Referrals*, Memorandum to Regional and Expedited Removal “Experts” (Washington, DC: 6 February 1998), 6 p.
- D. Form I-296, *Notice of Alien Ordered Removed/Departure Verification*
- E. [Form M-444, Information about Credible Fear Interview](#)
- F. [Waiver of the Consultation Period - 5.10.2023](#)
- G. Form I-870, *Record of Determination/Credible Fear Worksheet*
- H. Form G-56, *Interview Notice*
- I. Perryman, Brian R. INS Office of Field Operations. *Security and Privacy Provisions for Credible Fear Interviews Under Expedited Removal*, Memorandum to Regional Directors, District Directors, Assistant District Directors for Detention and Deportation and Asylum Office Directors (Washington, DC: 1 July 1997), 2 p.
- J. Langlois, Joseph E. INS Asylum Division. *Interpreters in the Credible Fear Process*, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 10 February 1998), 4 p.
- K. Langlois, Joseph E. INS Asylum Division. *Role of Consultants in the Credible Fear Interview*, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 14 November 1997), 2 p.
- L. Langlois, Joseph E. INS Asylum Division. *Mentally Incompetent Aliens in the Credible Fear Process*, Memorandum to Asylum Directors, Supervisory Asylum Officers, Quality Assurance Trainers, and Asylum Officers (Washington, DC: 20 September 2001), 2 p.
- M. Form I-862, *Notice to Appear* (NTA)
  - [Form I-862 NTA \(Inland\)](#)
  - [Form I-862 NTA \(POE\)](#)
- N. Form I-869, *Record of Negative Credible Fear Finding and Request for Review by Immigration Judge*
- O. Form I-863, *Notice of Referral to Immigration Judge*
- P. Langlois, Joseph E. INS Asylum Division. *Distribution of Credible Fear Documents to Applicants*, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 15 December 1997), 1p.
- Q. Langlois, Joseph E. INS Asylum Division. *Filing Notices to Appear (NTAs) with the Executive Office for Immigration Review (EOIR) after Credible Fear Interviews*, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 2002), 2 p.
- R. Creppy, Michael J. Office of the Chief Immigration Judge. *Interim Operating Policy and Procedure Memorandum 97-3: Procedures for Credible Fear and Claimed Status Reviews*, Memorandum to Assistant Chief Immigration Judges, Immigration Judges, Court Administrators and Support Staff (Washington, DC: 25 March 1997), 9 p.
- S. Virtue, Paul. INS Office of Programs. *Unaccompanied Minors Subject to Expedited Removal*, Memorandum to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors,

- T. Director, PDI, ODTF Glynco, and ODTF Artesia (Washington, DC: 21 August 1997), 4 p.  
Langlois, Joseph E. INS Asylum Division. *Dissolution of Credible Fear Claims*, Memorandum to Asylum Office Directors, Deputy Directors, and Supervisory Asylum Pre-Screening Officers (Washington, DC: 26 July 2000), 2 p., which includes the *Request for Dissolution of Credible Fear Process*.
- U. *Language Access in Credible Fear Screenings 7.6.2022 signed*
- V. Langlois, Joseph E. INS Asylum Division. *Procedures for Contacting HQASM on Terrorist Cases*, Memorandum to Asylum Office Directors, Supervisory Asylum Officer Contacts on Terrorist Issues, Quality Assurance Trainers, and HQASM Staff (Washington, DC: 3 January 2002), 8 p.
- W. *Memorandum of Adverse Information*
- X. Overview of Process – Aliens in Expedited Removal vs. Stowaways
- Y. Form I-275, *Withdrawal of Application for Admission/Consular Notification*
- Z. Virtue, Paul. INS Office of Programs. *Withdrawal of Application for Admission (IN 98- 05)*, Memorandum to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, ODTF Glynco and ODTF Artesia (Washington, DC: 22 December 1997), 3 p.
- AA. Form I-589 Adjudication Reference Chart 2021-01-11
- AB. Form G-56 Non-Detained Interview Notice
- AC. Credible Fear Pick-up Notice
- AD. Sample Memo to File – Failure to Appear for CF Non-Detained Interview or Determination
- AE. Language Access Memo 8.2.22
- AF. 2022-02-07 Guidance for Submitting Immigration Court Packets Electronically Through the ECAS
- AG. Memo to IJs Cas; The Record in Credible Fear Review Proceedings
- AH. I-870 Record of Determination Credible Fear Worksheet 05.31.2022