



# U.S. Citizenship and Immigration Services

## USCIS Asylum Division Quarterly Stakeholder Meeting

Feb. 22, 2019

Tomich Center

111 Massachusetts Avenue, N.W.

Washington, D.C. 20001

2 – 4 p.m. EST

### I. Welcome and Introductions

### II. Asylum Division Updates

- a. Case Status Online – On Jan. 28, 2019, USCIS launched Case Status Online (CSOL) to enable affirmative asylum applicants to check the status of their applications online. Now, affirmative asylum applicants can go to <https://www.uscis.gov/casestatus> to view the status of their application and how many days until they can apply for an employment authorization document (EAD).
- b. Regularly Provided Statistics available on [uscis.gov](http://uscis.gov)
  - Affirmative Asylum Statistics (October 2018 – January 2019)
  - Credible and Reasonable Fear Statistics and Nationality Reports (October 2018 – January 2019)
  - Unaccompanied Alien Children (UAC) Statistics (October 2018 – December 2018)

*Please note that the Asylum Division has transitioned to a new case management system. Therefore, the format used during today's engagement will serve as the new format moving forward. Also, due to the transition, we are unable to provide updated NACARA statistics at this time.*

### III. Statistics

- a. What are the current approval rates at each asylum office? How have these rates changed over time?

**Response:** Please see the regularly provided statistics posted on [uscis.gov](http://uscis.gov) for the current approval rates. To determine each office's approval rate add cases approved, cases denied, referred (interviewed), and filing deadline referrals, then divide cases approved into this total.

- b. Has there been a change in the number of affirmative asylum applications received since the change to last in, first out (LIFO) scheduling?

**Response:** New receipts of affirmative asylum applications decreased by approximately 30 percent following the resumption of LIFO.

#### IV. Scheduling Asylum Interviews/Processing Times

- a. Is the asylum office still operating under last in, first out (LIFO) scheduling for affirmative adult filings? What about for UACs?

**Response:** Yes, the Asylum Division is still operating under LIFO scheduling for affirmative filings. UACs are subject to the same scheduling priorities as all other applicants. New receipts of affirmative asylum applications decreased by approximately 30 percent since the Asylum Division resumed LIFO scheduling. As a result, more applicants with genuine asylum claims can have their applications adjudicated in a timely manner.

- b. What is the percentage of asylum cases that receive a decision within two weeks? What policy or regulation provides the basis for setting and communicating this two-week turnaround? Has such policy changed? What is the average length of time needed to make a determination on an affirmative asylum application after the interview?

**Response:** In Fiscal Year 2019 through January, 68.7 percent of asylum office final decisions were made within two weeks of the completed interview, 76.7 percent were made within 30 days, 83.3 percent were made within 60 days, 86.9 percent were made within 90 days, 92.1 percent were made within 180 days, and 7.9 percent were made after 180 days.

Two weeks is the timeframe allowed for post-interview processing during the 60-day period USCIS is provided for the full asylum adjudication process. The Immigration and Nationality Act (INA) provides that the initial interview should take place within 45 days after the date the application is filed. The INA also states that the full adjudication should be complete within 180 days, including EOIR court proceedings. See INA section 208(d)(5). The 180-day period is divided to allow USCIS 60 days for processing and EOIR 120 days for processing. Asylum claims interviewed 45 days after the filing date have a remaining 15 days of the USCIS 60-day processing period. Fourteen of these days are provided for the post-interview process. This process has not changed.

- c. Will USCIS consider allocating a certain number of interview slots each month to backlogged asylum cases?

**Response:** We will take this suggestion under consideration, but our current emphasis is on LIFO processing.

- d. Are backlog cases being scheduled for interviews? If so, in what order? How are attorneys and applicants to know when to expect an interview date for backlog cases so that they can properly prepare? Is the online case status system still planned, and, if so, when will it be implemented?

**Response:** At any given time there are backlog cases on the interview schedule. There are many factors that might lead to scheduling a backlog case, such as a previously canceled interview. Backlog cases are scheduled starting with the most recently filed cases and working backwards.

Asylum Case Status Online is now available and allows affirmative asylum applicants to learn the most up-to-date status of their applications without having to contact USCIS by phone, fax, email, or by visiting an asylum office. By providing online access, applicants are now able to learn their current case status instantaneously on their mobile device or from the privacy of their home 24 hours a day, seven days a week.

- e. Since the change to LIFO for affirmative filings, which asylum offices are keeping up with receipts and which are increasing their backlog? Would it be possible to get regular updates on how much progress is being made at each office in the backlog?

**Response:** The statistics posted on [uscis.gov](http://uscis.gov) for each stakeholder engagement include the pending affirmative filings at each asylum office. Please review the previously posted statistics to see the changes in each office's backlog over time.

## V. Unaccompanied Alien Children (UACs)

- a. Can you confirm that the May 28, 2013, Memorandum On Initial Jurisdiction Over Asylum Applications Filed by UACs and related June 2013 policy documents remain in effect?

**Response:** The May 28, 2013, Memorandum On Initial Jurisdiction Over Asylum Applications Filed By UACs and the related June 2013 policy documents remain in effect.

- b. Is the Asylum Division making independent assessments about whether an applicant is a minor and/or unaccompanied?

**Response:** Yes. If there was no prior UAC determination in place on the date an applicant first applied for asylum, the Asylum Division will make an independent assessment as to whether the applicant was a UAC at the time of filing.

- c. How is the Asylum Division interpreting/applying *Matter of M-A-C-O-* with respect to UAC jurisdiction? If a Form I-589 was filed with USCIS post-*M-A-C-O-* and the attorney received a receipt notice, does that mean USCIS has accepted jurisdiction?

**Response:** The Asylum Division is still reviewing our current policies in light of the decision in *Matter of M-A-C-O-*. Sending a receipt notice does not mean that USCIS has accepted jurisdiction over an asylum application. USCIS generally determines jurisdiction at the time of interview.

## **VI. Employment Authorization Documents**

- a. Can an asylum applicant submit Form I-765 at the same time as Form I-589? What are the differences in submitting the two forms together or separately?

**Response:** Asylum applicants who applied for asylum on or after Jan. 4, 1995, must wait 150 days before they can file a Form I-765 if the asylum application remains pending. Therefore, they cannot submit Form I-765 at the same time as Form I-589. See 8 C.F.R. § 208.7(a). Any delays requested or caused by the applicant, such as failure to comply with biometrics collection requirements without good cause, requesting that an asylum interview be rescheduled or failure to appear at an asylum interview, do not count toward the 150-day period required for filing a Form I-765. If an applicant is granted asylum, he or she will receive an initial employment authorization document without needing to file a Form I-765. See 8 CFR § 274a.12(a)(5).

## **VII. Matter of A-B-**

- a. On what date did the Asylum Division advise its officers about the precedent established in *Matter of A-B-* (27 I&N Dec. 316 [A.G. 2018])? Were there any specific, particular social group formulations that officers were instructed by the Division to no longer consider? If so, were these instructions rescinded? On what date were officers advised of the decision in *Grace v. Sessions* (No. 18-cv-01853)?

**Response:** On June 13, 2018, the Asylum Division issued general instructions to asylum officers regarding the Attorney General's decision in *Matter of A-B-*, reminding asylum officers of what issues to cover in cases involving particular social groups and non-governmental actors. On July 11, 2018, USCIS issued a [USCIS Policy Memorandum](#) providing guidance to USCIS officers on the application of the Attorney General's decision while processing asylum, refugee, credible fear, and reasonable fear claims. The Asylum Division did not issue any instruction to asylum officers about what particular social groups they could or could not consider following this guidance or the *Matter of A-B-* decision. On Dec. 19, 2018, the Asylum Division notified asylum officers of the decision by the U.S. District Court for the District of Columbia in *Grace v. Whitaker*, explaining the decision's impact on credible fear processing.

## **VIII. Public Services**

- a. USCIS announced that it will stop accepting walk-in requests and scheduling InfoPass appointments. These have been the only ways that we have been able to obtain Form I-94s for numerous asylee clients or to correct errors on Form I-94s. How will asylees request their Form I-94s or make corrections to them in a timely manner?

**Response:** Individuals who need to obtain a Form I-94 as proof of a grant of asylum by an immigration judge and individuals who need to correct their Form I-94 should call the USCIS Contact Center. The USCIS Contact Center will make an InfoPass appointment for individuals who need to obtain a Form I-94. The USCIS Contact Center will provide the best option to individuals who need to correct their Form I-94, which may involve making an InfoPass appointment.

- b. Is it possible to generate an online system that enables applicants to check on the status of applications and when an interview may be scheduled?

**Response:** The newly released Asylum Case Status Online informs the asylum applicant if an interview is scheduled and if an interview was previously scheduled and not attended.

- c. Why was the public phone number for each asylum office removed from the corresponding USCIS webpage?

**Response:** Contact information was inadvertently omitted when USCIS redesigned its website for office profiles. All asylum office profile pages now list a telephone number, a fax number, and an email address.

- d. Even when a case is pending a decision for more than one year post-interview, the most detailed information an applicant can usually get from an inquiry is that the “decision is pending.” Is there any additional information that can be provided to the applicant about the case status (e.g., file location)?

**Response:** Please contact the director of the asylum office with jurisdiction over the case in writing via email, fax, or mail as described on the office locator on [uscis.gov](http://uscis.gov).

## **IX. Remain in Mexico/Migrant Protection Protocols**

- a. How will new and pending defensive asylum cases proceed under the “Remain in Mexico” policy? What access to attorneys, legal services, and legal information will asylum seekers have? How will an asylum seeker and his/her attorney or representative attend a hearing or multiple hearings? At which venue(s) will those cases be heard? Will the asylum process be the same for Central Americans and for other nationalities approaching the southern border? What will be the process for people arriving at airports who want to seek asylum? What will happen with affirmative asylum cases once their status (tourist, student, etc.) expires, if their asylum application is still pending?

**Response:** Please refer to [Department of Homeland Security \(DHS\)](#), [USCIS](#), and [U.S. Customs and Border Protection \(CBP\)](#) materials issued at the end of January.

The Migrant Protection Protocols (MPP) have not changed the process for people who arrive at airports and want to seek asylum. Generally, if an individual is found not eligible

to enter the United States, that individual will be placed into expedited removal proceedings and referred for a credible fear screening or issued a notice to appear.

The MPP have not changed the impact of falling out of legal immigration status while an affirmative asylum application is pending.

- b. Please describe the role that USCIS will play in the administration of the “Remain in Mexico” plan.

**Response:** Please refer to the [USCIS memo](#) issued at the end of January.

- c. When will USCIS begin conducting assessments under the “Remain in Mexico” plan?

**Response:** USCIS currently conducts assessments under MPP. These assessments are conducted when a DHS immigration officer refers an individual who may be amenable to the MPP.

- d. Please identify where (e.g., San Ysidro, San Diego) and in what settings (e.g., ICE detention facilities) individuals screened assessed by USCIS under the “Remain in Mexico” plan will be located during the assessments. Will USCIS asylum officers conduct assessments in person or remotely? If USCIS will implement these assessments in phases, please describe each phase and identify the associated locations and timeframes.

**Response:** We currently have staff at the San Ysidro port of entry to conduct interviews of individuals amenable to MPP who have claimed a fear of return to Mexico. Asylum officers have conducted all assessments in person.

- e. Please describe the legal standards that USCIS will apply towards individuals assessed by the agency under the “Remain in Mexico” plan, including but not limited to individuals who express a fear of returning to Mexico.

**Response:** Please refer to the [USCIS memo](#) issued at the end of January.

- f. Please describe what training and/or guidance USCIS asylum officers have received and/or will receive to prepare for conducting USCIS assessments under the “Remain in Mexico” plan. Will USCIS make any associated training materials and/or guidance publicly available?

**Response:** Asylum officers who are currently conducting or preparing to conduct interviews under MPP have received training on the guidance document issued by USCIS. All asylum officers conduct the same analysis related to persecution and/or torture claims on a daily basis when they conduct credible fear screening interviews.

- g. Please describe how USCIS will ensure that individuals assessed by the agency under the “Remain in Mexico” plan will have access to counsel before, during, and after those assessments.

**Response:** Because the MPP assessments are part of either primary or secondary inspection, DHS is currently unable to provide access to counsel during the assessments, given the limited capacity and resources at ports-of-entry and Border Patrol stations. In addition, there is a need to process individuals in an orderly and efficient manner. Consistent with the law, aliens can use counsel of their choosing at no expense to the U.S. government once they are placed into removal proceedings.

## **X. Credible and Reasonable Fear**

- a. In the context of defensive asylum applications, what is the criteria used to determine whether to grant an alien a re-interview after receiving negative CFI/RFIs from an office and CFR/RFs from an Immigration Judge?

**Response:** Please note that credible fear and/or reasonable fear screenings are a different process from a defensive asylum application. A defensive application for asylum is filed in removal proceedings, which generally would only be initiated for someone who underwent the expedited removal process and received a positive CF determination. Regulations provide that the avenue for an applicant to challenge a USCIS CF or RF screening determination is to seek review of that determination from an immigration judge. USCIS can, in its discretion, review the screening determination when information comes to its attention that it believes warrants such action. Each request is reviewed on a case by case basis. There are no specific criteria.

## **XI. Untimely Filing and Optional Waiver of Asylum Interview**

- a. What is the status of the interview waiver notice initiative?

**Response:** In 2018, the Asylum Division conducted a pilot project to reduce the backlog of untimely filed cases. The pilot project addressed cases where the applicant claimed to enter the U.S. 10-plus years prior to filing or failed to state any date of entry on the Form I-589. The Asylum Division issued two rounds of notices. No further notices have been issued. The Asylum Division is still analyzing the data from this pilot to see whether it is an effective tool for addressing this particular workload. Twenty percent of the individuals to whom we sent notices waived the interview.

- b. Are such notices sent irrespective of whether there was an explanation included in the submission for the late filing? The language in the Form I-797C notice makes it seem as though the evidence and arguments addressing the one-year filing deadline have been reviewed but were found not compelling.

**Response:** USCIS deemed cases untimely filed based on the claimed date of entry and the filing date of the Form I-589. By these two elements, these applications appear to have failed to meet the burden of proof to demonstrate by clear and convincing evidence that they were filed within the first year of arrival to the United States. However, an applicant may be able to establish a “changed circumstance” or an

“extraordinary circumstance” exception to the one-year filing deadline. Any finding that an applicant has established an exception to the one-year filing deadline may require credible, sworn testimony from the applicant or witness(es) in an asylum interview. The applicant may offer such testimony if he or she decides not to waive the interview.

- c. How long after filing their applications can applicants expect to receive these notices?

**Response:** Under 8 CFR §208.4(a), all affirmative asylum applicants who file a Form I-589 should expect that they will be interviewed by an asylum officer. The effectiveness of the pilot is still being analyzed, but no further notices are expected at this time.

- d. Are non-LIFO cases also subject to these new processing procedures? Should these applicants also expect to receive these notices? If so, when?

**Response:** If the Asylum Division determines that this effort was a productive use of the Division’s resources, any further notice issuance would go to untimely filed cases in the third scheduling priority. Please see the [Affirmative Asylum Interview Scheduling page](#) on uscis.gov for more information.

- e. Once an applicant receives this notice, how long does he or she have to respond to waive the interview?

**Response:** The applicant has 45 days to respond if the applicant would like to waive the interview. No response is necessary if the applicant does NOT wish to waive the interview.

## **XII. Miscellaneous Questions**

- a. If an asylum applicant’s (or asylee’s) persecutor travels to the United States for business on a B-1 visa several times per year, would he or she ever be prevented or barred from entering the United States as a result of being named as the persecutor in the asylum application?

**Response:** There is no systematic process for passing on the name of each asylum applicant’s persecutor to law enforcement agencies. In individual cases, the Asylum Division can inform appropriate law enforcement officials, who can place lookouts in systems.

- b. If an attorney files a Form I-589 with a service center and does not receive a receipt within a reasonable period of time (e.g., two months), is there any redress other than refiling? When refiling, is there a process for notifying USCIS that this is a resubmission so as not to confuse the service center with multiple filings?

**Response:** Please contact the director of the asylum office with jurisdiction over the case in writing via email, fax, or mail as described on the office locator on uscis.gov to see if there is evidence that a case was filed but a receipt was not sent.

- c. How does the USCIS memo about filing applications with all required documents apply to Form I-589s? What are considered “required documents” for Form I-589s? Can applicants continue to supplement with more detailed declarations and supporting evidence at the interview?

**Response:** The USCIS policy memorandum [Issuance of Certain RFEs and NOIDs: Revisions to Adjudicator’s Field Manual \(AFM\) Chapter 10.5\(a\), Chapter 10.5\(b\)](#) does not apply to the Form I-589 because the memorandum is based on 8 CFR 103.2(b)(8), which does not apply to Form I-589. The Asylum Division asks that asylum applicants try to submit any supporting documentation at the time of submitting the application, not at the time of the asylum interview. Submitting supporting documentation for the first time at the asylum interview could result in rescheduling of the interview, which means that other asylum applicants will need to wait longer to be interviewed.

- d. Many asylum applications are now taking up to five years to process. Some have been forcefully deported and are now facing life-threatening dangers. What is the Division doing to ensure that people are given the fair attention and treatment they deserve?

**Response:** Unfortunately, the heavy demands on our program have challenged our capacity and resulted in longer processing times. We take every case seriously and believe that every case deserves a full and complete interview. We have tripled the number of asylum officers approved to work for the Asylum Division over the last four years. We continue to hire and train new asylum officers so that we can interview each asylum applicant in a more timely fashion.