U.S. Citizenship
and Immigration
Services

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Memorandum

TO: January Contreras
        Citizenship and Immigration Services Ombudsman

FROM: Lori Scialabba *Lori Scialabba*
        Deputy Director

SUBJECT: Response to Recommendation 50; Employment Authorization for Asylum
         Applicants: Recommendations to Improve Coordination and Communication

Recommendations

The Citizenship and Immigration Services Ombudsman recommends that U.S. Citizenship and
Immigration Services (USCIS):

1. Engage in ongoing interagency dialogue to clearly define the roles of USCIS and the
    Executive Office for Immigration Review (EOIR) regarding the asylum clock.

2. Establish more effective internal communication channels to improve coordination on
    asylum clock issues:
    (a) Increase communication between USCIS components regarding asylum clock-related
        issues; and
    (b) Provide updated asylum clock training to appropriate USCIS personnel.

3. Make asylum clock information easily available to asylum applicants:
    (a) Provide direct public access to USCIS Service Centers on asylum clock issues;
    (b) Allow customers to view their asylum clock online; and
    (c) Give clear, written notice when a clock has been stopped.

USCIS Response to Recommendations

USCIS thanks the CIS Ombudsman for the opportunity to respond to these recommendations to
improve coordination and communication regarding employment authorization for asylum
applicants. We welcome this recommendation and consider these issues a high priority.

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1. **Engage in ongoing interagency dialogue to clearly define the roles of USCIS and EOIR regarding the asylum clock.**

USCIS concurs with this recommendation. EOIR and USCIS components, specifically the Asylum Division, Service Center Operations Directorate (SCOPS), and the Office of Chief Counsel (OCC), periodically meet to discuss joint operational and policy concerns.

In the past year, USCIS has met regularly with EOIR to discuss asylum clock issues of mutual and individual concern. These issues include data systems, procedures for inquiries and requests for correction, the effect of remands on clock calculations, and clock calculations in cases involving unaccompanied children. USCIS and EOIR communicate on a policy level and also work closely on specific cases to address problems and issues. A specific example of this coordinated approach was seen in the September 19, 2011 stakeholder meeting "Employment Authorization Document and the Asylum Clock," which was co-hosted by the USCIS Office of Public Engagement and the EOIR Office of Legislative and Public Affairs. Stakeholders were invited to participate in person or telephonically and to ask questions or express concerns related to employment authorization for asylum applicants.

USCIS appreciates the suggested "potential areas of discussion" highlighted in the recommendation. USCIS currently participates in efforts to develop a Memorandum of Agreement (MOA) between the Department of Homeland Security (DHS) and EOIR regarding the sharing of information in immigration cases. This MOA will supersede outdated interagency agreements, formalize the ongoing information sharing arrangements between DHS and EOIR, and clarify our joint commitment to protecting the privacy and confidentiality of all immigration case data. Under this agreement, both DHS and EOIR will have access to the immigration case data necessary to conduct their business processes. While the scope of the MOA will encompass all case-related information, it will include the transfer and visibility of asylum clock information.

2. **Establish more effective internal communication channels to improve coordination on asylum clock issues.**

USCIS concurs with this recommendation, which coincides with current efforts.

(a) **Increase communication between USCIS components regarding asylum clock-related issues.**

The Asylum Division and SCOPS participate in the Employment Authorization Policy Review Working Group led by the Office of Policy and Strategy. One of the goals of this group is to collect and synthesize policy information about employment authorization and consolidate it into the new USCIS Policy Manual. The manual will contain information about employment authorization for asylum applicants and the asylum clock.

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Additionally, SCOPS, in coordination with the Asylum Division and OCC, is drafting a national
standard operating procedure that will provide guidance to adjudicators about the asylum clock.

(b) Provide updated asylum clock training to appropriate USCIS personnel.

Both the Asylum Division and SCOPS provide training on the asylum clock. Asylum Officers
are instructed on basic information about the asylum clock during the Asylum Officer Basic
Training Course in the "History of the Affirmative Asylum Program" lesson plan. The officers
receive additional training about how to use the Affirmative Asylum Procedures Manual, which
contains extensive information about the asylum clock. In addition, the Asylum Division is
updating procedures regarding the rescheduling of interviews and applicants' failure to appear
for interviews, both of which affect the asylum clock. The Asylum Division will provide
appropriate training to the Asylum Offices on the new procedures. The Asylum Division is also
reviewing and updating the Affirmative Asylum Procedures Manual Appendix 20, "Impact of
RAPS[1] Actions on the KLOK,"[2] and informational notices provided to applicants and will
provide appropriate training to Asylum Offices on these changes.[3]

SCOPS ensures that asylum clock training is provided to both new and experienced officers in
each of its four Service Centers. New trainees are assigned a mentor to work with until
certification requirements are met. Service Centers also hold regular team meetings to further
educate officers on the clock process and identify any training issues that need additional
clarification. Training modules on the asylum clock used at the Service Centers include:

- Definition of the Processing Clock – Explanation of what the clock is used for, who
  maintains it, and what types of filings it applies to, including the 180-day EAD issuance
  rule for post reform approvals after 4/1/1997;
- Delays – Applicant caused delays and EOIR administrative uses for the clock, identifying
  stops and restarts;
- Clock systems (RAPS, CAF[4] (ANSIR),[5] and EOIR) – System capabilities, uses, and field
  codes;
- How to Identify Clock Stops in the KLOK Screen;
- How to Identify Clock Stops in CAF;
- How to Identify Clock Stops in EOIR;
- Julian Calendar; and

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[1] RAPS is the Refugee Asylum and Parole System. RAPS tracks the processing of affirmative asylum and
suspension/special rule cancellation (NACARA 203) applications through the affirmative asylum process.
[2] The Clock Query (KLOK) screen in RAPS indicates how long the clock has been running, any stoppage (tolling)
of the clock that has occurred at any time in the process, and the earliest possible date the applicant is eligible to
apply for employment authorization.
[3] See the USCIS, "Refugee, Asylum, and International Operations Directorate, Affirmative Asylum Procedures
Manual, appendices (2007, revised July 2010) ("AAPM"), appendix 20,
http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/2007_AAPM.pdf.
[4] EOIR's Central Address File.
[5] Automated Nationwide System for Immigration Review.

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- Manual Clock Calculation Exercises – Trainee exercises are used to determine if an applicant had 150 days on the clock at the time the I-765 was filed.

The CIS Ombudsman specifically suggests providing training to personnel at the National Customer Service Center (NCSC) regarding the asylum clock. The Asylum Division conducted general asylum process training at the NCSC Eastern and Western Telephone Centers in August 2011 and will request to review standard NCSC "call scripts" to insert language where asylum clock information could be shared. Please note that, under asylum confidentiality regulations,[6] the NCSC cannot release case-specific information over the phone if the caller's identity cannot be confirmed and typically refers callers to the Asylum Office. Unless the Asylum Office can confirm the caller's identity, it will respond to the caller's inquiry with a letter sent to the address of record as appropriate.

3. Make asylum clock information easily available to asylum applicants.

USCIS concurs with this recommendation. USCIS provides general information about the asylum clock online in the following locations:

1. The instructions for Form I-589, Application for Asylum and for Withholding of Removal. http://www.uscis.gov/files/form/i-589instr.pdf
2. The instructions for Form I-765, Application for Employment Authorization. http://www.uscis.gov/files/form/i-765instr.pdf
3. The home page for Form I-765, Application for Employment Authorization. USCIS - I-765, Application for Employment Authorization
4. The asylum home page on the web. USCIS - Asylum
5. Information Guide for Prospective Asylum Applicants. USCIS - Information Guide for Prospective Asylum Applicants
6. The Affirmative Asylum Procedures Manual (July 2010) on the web. http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/2007_A APM.pdf
    a. Sect. III.F.3, Employment Authorization Document (EAD)
    b. Appendix 20, Impact of RAPS Actions on the "KLOK"
7. Minutes from the USCIS Asylum Division stakeholder meetings. USCIS - Refugees and Asylees
8. The USCIS Customer Service Guide on the web. http://www.uscis.gov/USCIS/About%20Us/Electronic%20Reading%20Room/Customer %20Service%20Reference%20Guide/SpecialPrograms.pdf

The Asylum Division also published on the USCIS website the names of the eight Asylum Office points of contact, as well as the point of contact and email address for the headquarters Asylum Division, who can be contacted about questions specific to a customer's asylum clock.

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[6] *See* 8 C.F.R. 208.6.

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Furthermore, USCIS will enhance the existing USCIS online page "Questions and Answers: Asylum Interviews" to include more information on the asylum clock, and create a separate "Question and Answer" section to specifically address clock issues.[7] USCIS is also exploring the possibility of creating an information pamphlet on the asylum clock.

In addition, the EOIR Hotline may be used to obtain asylum clock information, status on an asylum application pending in immigration court proceedings, and any upcoming hearing dates. The toll-free number for EOIR is **1-800-898-7180**.[8]

(a) Provide direct public access to USCIS Service Centers on asylum clock issues.

The Service Centers are responsible for adjudicating an asylum applicant's Form I-765, Application for Employment Authorization, based on the asylum clock. Customers with questions about their Form I-765 may contact a Service Center through the NCSC at 1-800-375-5283. If the customer service representative is unable to answer the inquiry, then the inquiry will be forwarded to a Service Center for resolution. Customers should receive a response within thirty days. If more than thirty days have passed without receiving a response, customers may email the appropriate USCIS Service Center with their inquiry:

> California Service Center: csc-ncsc-followup@dhs.gov
>
> Vermont Service Center: vsc.ncscfollowup@dhs.gov
>
> Nebraska Service Center: ncscfollowup.nsc@dhs.gov
>
> Texas Service Center: tsc.ncscfollowup@dhs.gov

If customers do not receive a response within twenty-one days of sending the follow-up email to the Service Center, they may contact SCOPS by email at: SCOPSSCATA@dhs.gov.

(b) Allow customers to view their asylum clock online.

USCIS will explore the feasibility of making an applicant's asylum clock information available online in the Electronic Immigration System (ELIS), the agency's new online case management system currently in development.

(c) Give clear, written notice when a clock has been stopped.

The Asylum Division uses several notices to provide asylum applicants and their representatives with information about their asylum applications while their cases are pending with the Asylum Division, some of which indicate that the asylum clock has stopped. Other notices provide general clock information, the specific date on which an applicant can apply for employment authorization (i.e., the projected 150-day date), the number of elapsed clock days, and the

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[7] *See* USCIS - Questions & Answers: Asylum Interviews.
[8] *See* Contact the Office.

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specific date on which the clock will restart. The Asylum Division is currently reviewing more than eighty existing notices and forms to determine whether they contain the appropriate asylum clock information and whether new notices should be created to provide further clarification. This includes examining the technology and resource requirements needed to make the appropriate changes.

There are several existing notices that provide asylum clock information relevant to the applicant's specific situation. The following notices inform an applicant that the asylum clock has stopped:

1. Notice of Scheduling of Fingerprint Appointment – Employment Authorization Clock Stopped[9]
2. Rescheduling of Asylum Interview – Interpretation Problems[10]
3. Request for Evidence to Establish Residence[11]
4. Interview Cancellation Notice (by applicant)
5. Interview Reschedule Notice (by applicant)
6. Dismissal of Asylum Application – Failure to Appear[12]
7. Case Reschedule History[13]

The Asylum Division reviewed the existing applicant-specific notices for five types of clock information: general clock information; if the applicant's clock has stopped; when the applicant's clock may restart; the number of elapsed clock days; and the projected 150-day date (i.e., the date on which the applicant can apply for employment authorization). The majority of these notices contain at least one or more of the five types of asylum clock information (indicated below by asterisks). Depending on the notice and the situation in which they are used, USCIS will consider adding more of these data points to the following notices:

1. Administrative Termination (C3)
2. Notice of Lack of Jurisdiction[14]
3. Dismissal of Asylum Application (CR)
4. Dismissal of Asylum Application - Reinstatement of Prior Removal Order[15]
5. Notice of Dismissal - Abandonment of Asylum Application[16]
6. *Standard Referral Notice[17]
7. Standard Final Denial[18]

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[9] *See* the USCIS, "Refugee, Asylum, and International Operations Directorate, Affirmative Asylum Procedures Manual, appendices (2007, revised July 2010) ("AAPM"), appendix 5, http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/2007_AAPM.pdf.
[10] *See id.* at appendix 7.
[11] *See id.* at appendix 38.
[12] *See id.* at appendix 31.
[13] *See id.* at appendix 9.
[14] *See id.* at appendix 59.
[15] *See id.* at appendix 30.
[16] *See id.* at appendix 65.
[17] *See id.* at appendix 51.

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8. *Referral After Notice of Intent to Deny (NOID)[19]
9. *Notice of Scheduling of Fingerprinting Appointment Employment Authorization Clock Stopped[20]
10. *Rescheduling of Asylum Interview – Interpretation Problems[21]
11. Rescheduling of an Asylum Interview[22]
12. *Case Reschedule History[23]
13. *Notice of Scheduling of Fingerprinting Appointment
14. *Request for Evidence to Establish Residence[24]
15. *Referral Notice - 1 - Year Deadline[25]
16. Referral - Prior Denial[26]
17. Notice of Intent to Deny (NOID)[27]
18. *Pick-Up Notice[28]
19. *Mail-Out Notice[29]
20. *Notice of Change in Decision Service From Pick-Up to Mail-Out[30]
21. Asylum Interview Notice
22. *Interview Reschedule Notice (USCIS)
23. *Interview Reschedule Notice (Applicant)
24. Administrative Termination (C1)
25. Acknowledgment of Receipt
26. *Interview Cancellation Notice (Applicant)
27. *Interview Cancellation Notice (USCIS)
28. *Fingerprint Notification
29. *Dismissal of Asylum Application - Failure to Appear[31]

The Asylum Division is also creating the following new notices to address, in part, asylum clock information deficiencies:

1. Failure to Appear to Pick Up Your Asylum Decision
2. Referral Notice for Failure to Appear
3. Determination of Failure to Demonstrate "Exceptional Circumstances"
4. Determination Demonstrating "Exceptional Circumstances"

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[18] *See id.* at appendices 56 and 57.
[19] *See id.* at appendices 52 and 53.
[20] *See id.* at appendix 5.
[21] *See id.* at appendix 7.
[22] *See id.* at appendix 32.
[23] *See id.* at appendix 9.
[24] *See id.* at appendix 38.
[25] *See id.* at appendix 54.
[26] *See id.* at appendix 55.
[27] *See id.* at appendix 45.
[28] *See id.* at appendix 11.
[29] *See id.* at appendix 12.
[30] *See id.* at appendix 33.
[31] *See id.* at appendix 31.

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5. Interview for "Exceptional Circumstances" for Failure to Appear: Mail Out Notice
6. Denial of Interview Reschedule Request
7. Response to Asylum Clock Inquiry

If you have any questions please feel free to contact me.