



U.S. Citizenship
and Immigration
Services

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HQRAIO 120/9

Memorandum

TO: Asylum Office Directors and Deputy Directors
Supervisory Asylum Officers
Training Officers
Asylum Officers

FROM: John Lafferty
Chief, Asylum Division

SUBJECT: Processing Affirmative Applications (Form I-589) Filed by Applicants in Expedited Removal and Processing Credible Fear Cases of Non-Detained Individuals

I. Purpose

The purpose of this memorandum is to issue procedures for processing affirmative asylum applications (Form I-589) filed by individuals who are in expedited removal. It is also to issue procedures for processing credible fear cases of individuals who are in expedited removal and who are not in immigration detention (non-detained).

The Asylum Division has identified at least 600 I-589s in our pending caseload that may have been filed by individuals in the expedited removal process. See the attached IIDS report. Each asylum office must conduct additional system checks to confirm that the individuals are in the expedited removal process.

After an asylum office confirms an I-589 has been filed by an individual in expedited removal, the office must close the applicable I-589 in RAPS by April 15, 2016.

Once these cases are closed in RAPS, the asylum office must process these individuals through the non-detained expedited removal/credible fear process indicated below.

II. Background

Individuals are in expedited removal proceedings if they have received a Notice and Order of Expedited Removal (Form I-860) that remains outstanding. If the individual is in expedited removal,

EXHIBIT	8
WIT:	Mura
DATE:	8-27-17
Kinkade RDR CRR CSR	

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www.uscis.gov

ATLA Doc. No. 17122137. (Posted 12/21/17)

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AILA Doc. No. 17122137. (Posted 12/21/17)

USCIS does not have jurisdiction over an I-589 filed by that individual, even if the individual is paroled out of immigration detention. The attached reference chart indicates when the Asylum Division has jurisdiction to adjudicate an I-589 filed by a non-detained individual for whom a Notice to Appear (Form I-862) or an I-860 has been issued.

III. Procedures

Identifying I-589s

Asylum offices should use the IIDS report to identify I-589s that may have been filed by individuals in expedited removal and may be closed after verifying that they are in expedited removal. This report was created by removing all special group codes and then bouncing A-numbers on the RAPS 5-Part Backlog Detail Report that have a "Y," "C," or blank entry in the EARM column against ICE records in EARM. The report also contains information from RAPS and APSS.

At issuance of this memo, the IIDS report contains approximately 2,000 A-numbers that have an EARM encounter and a pending I-589. At least 600 pending I-589s appear to have been filed by individuals in expedited removal. Headquarters will provide an updated IIDS report to the asylum offices on a regular basis. Beginning with the attached IIDS report, and then regularly, asylum offices must review the report, cross-check each A-number individually using EARM, EOIR, and US-VISIT to confirm that the individual is in expedited removal, and after confirmation close the applicable I-589 in RAPS.

The other pending I-589s on the report may have been filed by individuals who have NTAs or who are subject to a reinstatement of the prior order. See AAPM section III.L., *Jurisdiction*, and section III.S., *Reinstatement of the Prior Order*, for procedures to handle those I-589s.

Case Processing

Once asylum offices confirm an I-589 has been filed by an individual in expedited removal, asylum office personnel:

- Close the I-589 in RAPS using the Admin Close Update (CLOS) command with "No/IJ Jurisdiction" (C4) as the close reason and indicate on the CLOS screen that the asylum office will not issue an NTA/referral.
- Issue a *Notice of Lack of Jurisdiction (Expedited Removal)* letter (AAPM Appendix 94) to the individual.
- Write a memorandum to file that explains why the affirmative asylum case was closed and that the individual may be processed for credible fear (see attached *Sample Memo to File – No Jurisdiction*).
- Notify U.S. Immigration and Customs Enforcement (ICE) that the asylum office has all the required forms for the individual and will treat the case as a credible fear referral, or, if the asylum office does not have all the required forms for the individual, instruct the individual to contact ICE to make a proper credible fear referral.

- Schedule the individual for a credible fear interview as the office would normally schedule non-detained cases using Form G-56, *Notice of Credible Fear Interview*. If the individual was already scheduled for an affirmative asylum interview or appears for an affirmative asylum interview, the credible fear interview may be conducted at that time.
- Enter the credible fear case in APSS following the procedures described in Section IV below.
- Conduct the credible fear interview, make a credible fear determination, and serve the credible fear decision following the procedures in new CFPM section IV.N., *Non-Detained Aliens*.

An asylum office may treat the case as a credible fear referral if the asylum office has Form I-860 and Form I-867 Parts A&B for the individual prior to conducting the interview. If the non-detained individual did not receive a Form M-444 and the attached list of free legal service providers from U.S. Customs and Border Protection (CBP) or ICE, then asylum offices may still process the individual for credible fear after providing and explaining the M-444 and providing the attached list of free legal service providers at the time of the credible fear interview. The asylum office should notify ICE that it has the required forms and will be processing the non-detained individual for credible fear. This supersedes past draft guidance that required an explicit referral from CBP or ICE documenting an individual's expression of fear even when USCIS had the required DHS documents, including the M-444. Pursuant to this new guidance, asylum offices may treat the filing of an I-589 as the individual's expression of fear. The guidance in CFPM section III.D.1.b., *Orientation*, has been revised to clarify that it does not apply to non-detained individuals. Orientation guidance for non-detained individuals is included in the new CFPM section IV.N., *Non-Detained Aliens*.

IV. APSS Data Entry

Asylum office personnel should enter the non-detained credible fear case on the Preliminary Record (PREC) screen when the asylum office has the Form I-860 and the Form I-867 Parts A&B for the individual. The detention facility should be entered as *NONDET. Asylum office personnel should complete as much information as possible on the PREC screen but not enter a clock-in date. The clock-in date is the date the asylum office interviews the individual and should be entered when the individual appears for the non-detained credible fear interview.

V. Conclusion

The new and updated procedures and notices are located in the following sections of the Credible Fear Procedures Manual (CFPM) and the Affirmative Asylum Procedures Manual (AAPM):

- New AAPM appendix 94, *Notice of Lack of Jurisdiction (Expedited Removal)*
- Revised CFPM appendix, *Form G-56, Interview Notice*
- Revised CFPM section III.D.1.b., *Orientation*
- New CFPM section IV.N., *Non-Detained Aliens*
- New CFPM appendix, *Notice of Failure to Appear (Credible Fear Interview)*
- New CFPM appendix, *Notice of Failure to Appear (Credible Fear Decision)*
- New CFPM appendix, *Credible Fear Decision Pick-Up Notice*

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- New AAPM section III.L.6., *Applicants in Expedited Removal*
- New AAPM section III.N.4., *Applicant Receives Parole and Form I-860*

AAPM section III.B.3, *Credible Fear-Screened Affirmative Asylum Applicants*, contains procedures on how to process affirmative asylum applications from individuals previously screened through the credible fear program. Those procedures remain unchanged.

These procedures are effective immediately and are incorporated into the AAPM and the CFPM on the ECN and the APSS User's Guide. If you have any questions regarding the guidance in the attached procedures, please contact the HQASM Operations Branch.

cc: ICE

Attachments (12) (excluding IIDS Report)

Asylum Jurisdiction Reference Chart

Scenario	Asylum Jurisdiction over I-589?	Asylum Jurisdiction over Credible Fear?
Individual issued I-860 and files an I-589 with USCIS.	No. Individual is in expedited removal.	Yes. No explicit referral from CBP or ICE is required for non-detained cases if the asylum office has all the required forms. Notify ICE that the asylum office is treating the case as a credible fear referral, then process the case accordingly. If the asylum office does not have the required forms then instruct the individual to contact ICE to make a proper credible fear referral.
Individual issued I-860 and NTA. No evidence ICE filed the NTA with the immigration court. Files I-589 with USCIS.	No. Individual is in expedited removal.	Maybe. Contact ICE to determine whether ICE will file the NTA with the immigration court. If ICE does not file the NTA and the asylum office is treating the case as a credible fear referral, then process the case accordingly. If the asylum office does not have the required forms, instruct the individual to contact ICE to make a proper credible fear referral.
Individual issued NTA and files I-589 with USCIS.	Maybe. Contact ICE to determine whether ICE will file the NTA with the immigration court. If ICE does not file the NTA with the immigration court then process I-589.	No. Individual is not in expedited removal.
Individual issued I-860 and NTA. IJ terminated proceedings for technical flaws in the NTA. Files I-589 with USCIS.	No. Individual is in expedited removal.	Maybe. Contact ICE to determine whether ICE will refile the NTA with the immigration court. If ICE does not refile the NTA and the asylum office has all the required forms, notify ICE that the asylum office is treating the case as a credible fear referral, then process the case accordingly.
Individual issued I-860 and NTA. IJ terminated proceedings for substantive or nontechnical reasons. Files I-589 with USCIS.	Yes.	No. Expedited removal order was terminated by the filing of the NTA with the immigration court.
Individual issued I-860 and NTA. IJ terminated proceedings for unknown reasons. Files I-589 with USCIS.	Maybe. Contact ICE.	Maybe. Contact ICE.
Asylum office issues an NTA to the individual after positive credible fear determination but the NTA was not filed with EOIR or was terminated by the IJ due to a technical fault. Files I-589 with USCIS.	No. Individual is in expedited removal.	Yes. Reissue the NTA and file the NTA with the immigration court.
Asylum office issues negative credible fear determination. Individual is not removed and later files I-589 with USCIS.	No.	Yes. Asylum office may treat the I-589 as a request for IJ review of the negative credible fear determination, or may exercise discretion to reconsider the negative determination.
Individual issued NTA and is in EOIR proceedings. Files I-589 with USCIS.	No.	No.

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