



U.S. Citizenship  
and Immigration  
Services

120/12.6

April 17, 2012

## Memorandum

TO: All Asylum Office Staff

FROM: Ted Kim, Acting Chief /s/

SUBJECT: Implementation of Reasonable Fear Processing Timelines and APSS Guidance

This memorandum implements the reasonable fear processing timelines and reporting mechanisms introduced in the September 28, 2011 Joseph Langlois memorandum, "Proposed Reasonable Fear Performance Goals."<sup>1</sup> It also revises and replaces three sections of the 2003 Draft Reasonable Fear Procedures Manual (RFPM) and provides important updates to the 2005 "User's Guide to Entering Information in the Asylum Pre-Screening System (APSS)."

### I. Reasonable Fear Procedures Manual Updates

The sections listed below revise and replace sections III.B.1 and 3 and section III.H.1 of the 2003 Draft RFPM in its entirety.

- III.B.1. Initiation of the Claim
- III.B.3 Expedited Adjudication (re-named "Processing Timelines")
- III.H.1 Mandatory Review by HQ Asylum

### II. Memorandum Template: Reasonable Fear Case Pending Over 150 Days Since Clock In

The September 28, 2011 Joseph Langlois memorandum, "Proposed Reasonable Fear Performance Goals," requires that Asylum Offices submit to Headquarters a written justification on any reasonable fear case pending for more than 150 days.<sup>2</sup> Offices must provide updates every 30 days regarding the progress on the cases.

At the beginning of each week, the Reasonable Fear Aging Summary and Detail Report is posted to the RAIOVL. This report shows the number of days each reasonable fear case has been

<sup>1</sup> See Langlois, Joseph E., Memorandum to Steve Bucher, "Proposed Reasonable Fear Performance Goals," (Washington, D.C., 28 September 2011.) 2 p.

<sup>2</sup> See id.

pending since clock in. On the first of the month, the asylum office must use the current week's report to determine which cases (if any) have been pending for more than 150 days since clock in. The asylum office must submit a "Memorandum: Reasonable Fear Case Pending Over 150 Days Since Clock In" to the Chief of the Asylum Division on the appropriate ECN website by the end of the month. The memorandum must be updated and resubmitted every 30 days while the case remains pending, until the determination is served on the alien. The memorandum must include reasons why the case was delayed.

See attachment 3, "Memorandum Template: Reasonable Fear Case Pending Over 150 Days Since Clock In," and attachment 4, "Memorandum Example: Reasonable Fear Case Pending Over 150 Days Since Clock In."

### **III. APSS User's Guide**

Attachment 5, "User's Guide to Entering Information in the Asylum Pre-Screening System (APSS)," dated April 16, 2012, has been amended to include a column explaining reasonable fear APSS procedures where those procedures differ from credible fear procedures. The amendments also eliminate obsolete field and screen references.

### **IV. Questions**

Contact the Asylum Operations Branch with questions regarding RFPM updates, the memorandum template and reporting; and the APSS User's Guide. Contact TRAQ with questions regarding HQ review.

Attachments: (5)

### III. The Reasonable Fear Process

#### B. Asylum Office Receives Referral From Immigration and Customs Enforcement (ICE) Enforcement and Removal Office (ERO).

##### 1. Initiation of Claim

For an asylum office to have jurisdiction over an alien in the reasonable fear process, the alien must have expressed a fear of return, and the asylum office must receive one of the following documents charging the alien with a ground of removal pursuant to section 238(b) or section 241(a)(5) of the Immigration and Nationality Act:<sup>1</sup>

- Form I-851A, Final Administrative Removal Order (with Certificate of Service), or
- Form I-871, Notice of Intent/Decision to Reinstate Prior Order (with Decision, Order and Officer's Certification at bottom fully executed)

Unless the office has the A-file, the SAPSO should request that the removal order(s) be faxed or e-mailed to the asylum office, especially if the alien is detained at a remote location. The SAPSO or designated Asylum Office staff should carefully review the appropriate document(s). If it is not yet fully executed and does not show certification of service on the alien, it is not completed<sup>2</sup> and the asylum office does not take jurisdiction and should not schedule the case for a reasonable fear interview. The SAPSO should contact the appropriate person at the ICE field office to explain that either the Form I-851A or Form I-871 must be fully executed and served on the alien before the asylum office has jurisdiction and can conduct a reasonable fear interview. The SAPSO should also keep a record of this contact in the reasonable fear folder.

After the asylum office has been contacted by the referring ICE Enforcement and Removal (ERO) officer and jurisdiction has been verified, the SAPSO or the APSO should confirm with the referring officer that the alien received the *Information on Reasonable Fear Interview* (Form M-488),<sup>3</sup> as well as a current list of legal service providers, prior to the interview. The contact person should also ask whether there is a G-28, *Notice of Entry of Appearance of Attorney or Representative*, in the A-file and, if so, request that the G-28 be faxed or e-mailed to the asylum office.

The interviewing officer must have access to the A-file and any T-files prior to the interview. If possible, the asylum office should make arrangements to have ICE send the A-file by express mail to the asylum office prior to the interview. If ICE will not send the A-file to the asylum office, arrangements must be made to give the APSO sufficient

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<sup>1</sup> See 8 C.F.R. 208.31(b).

<sup>2</sup> See Appendix F: Davidson, Christine, Memorandum to APSO Supervisors, Removal Orders in Reasonable Fear Cases, (Washington, D.C., 26 October 1999), 2 p.

<sup>3</sup> See Appendix G: Form M-488, Information on Reasonable Fear Interview.

time to review the A-file before the interview. The APSO should also be given access to a copy machine and time to make copies of all relevant file documents.

A case is not considered referred from ICE and clocked into APSS until the asylum office has received (1) notice that a person requires a reasonable fear screening, (2) the completed decision to reinstate the prior order (Form I-871) or the completed Final Administrative Removal Order (Form I-851A), and (3) has reviewed<sup>4</sup> (or received) the A-file, including any associated T-files.

Once the SAPSO receives the removal order and verifies that the asylum office has jurisdiction to make a reasonable fear determination, asylum office staff updates as much information on the Preliminary Record (PREC) screen in APSS as soon as possible. The "CLOCK-IN DATE" on the PREC screen is the date the asylum office receives the referral of the reasonable fear case from the ICE field office by receiving (or reviewing) the A-file and receiving either a completed Form I-851A or completed Form I-871 from the ICE field office. Asylum office staff must update the preliminary information on the PREC screen within three (3) business days of receiving or reviewing the A-file.<sup>5</sup>

Entering the case into APSS on the PREC screen initiates the batch IBIS check and FBI name check on the alien's primary name and date of birth. The SAPSO and APSO must follow the security check procedures as described in the May 14, 2010 memorandum, *Issuance of Updated Credible Fear and Reasonable Fear Procedures*. The procedures include initiating or confirming initiation and completion of IBIS checks, FBI name checks, FBI fingerprints and US-VISIT checks before issuing a charging document.<sup>6</sup>

## **2. Log of Referred Cases (unchanged)**

## **3. Processing Timelines**

Regulations require APSOs to conduct the reasonable fear interview and make the determination within ten (10) days after the case has been referred to the asylum office, unless there are exceptional circumstances.<sup>7</sup> HQASM does not specify what constitutes an "exceptional circumstance," because it is difficult to anticipate the various factors that may arise. However, HQASM recognizes the many changes in administrative removal since the promulgation of the regulations and many variables over which the asylum offices have little control, such as remote detention facilities and inadequate interviewing space, which require asylum offices to coordinate the transportation of the detainees with ICE. Detainees are often transferred among different detention locations. The asylum offices must also coordinate with the contract interpreter services and attorney retained

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<sup>4</sup> In situations where ICE will not send the A-file to the asylum office prior to the interview, the APSO will review the A-file and any T-files prior to the interview.

<sup>5</sup> APSS Update Required: "PREC."

<sup>6</sup> See Langlois, Joseph E., Memorandum to Asylum Office Directors et. al., *Issuance of Updated Credible Fear and Reasonable Fear Procedures*, (Washington, D.C., 14 May 2010) 2 p.

<sup>7</sup> See 8 C.F.R. 208.31(b).

by the individuals, if any. In determining whether the interview or adjudication should be delayed, the asylum office should err on the side of ensuring that the alien is able to present his or her full claim, so long as there is no evidence of intentional delay tactics or abuse of process.

As such, HQASM established two performance goals for the processing of reasonable fear cases.<sup>8</sup>

- Reasonable fear referrals from ICE completed within 90 days of referral: 85%
- Open reasonable fear cases pending for 150 days or less since referral: 95%

The 90-day period within which the case must be completed runs from the referral from ICE (*i.e.* clock in date in APSS) until the service date or close effective in APSS. A case is not considered referred from ICE (*i.e.* the CLK-IN field on the PRELIMINARY CASE RECORD ENTRY (PREC) screen in APSS is entered) until the asylum office has:

- Received notice that a person requires a reasonable fear screening,
- Received the completed decision to reinstate the prior order (Form I-871) or the completed Final Administrative Removal Order (Form I-851A), and
- Received or reviewed the A-file and any associated T-files.

A positive or negative reasonable fear case is not considered completed (*i.e.* the DECISION SERVED DATE field on the APSO DECISION (ADEC) screen in APSS is entered), until the asylum office has:

- Served the determination on the alien,
- Served the Form I-863, Notice of Referral to Immigration Judge, on the Immigration Court, transferring jurisdiction; and
- Placed the determination in the A-file, which has been returned to ICE.

A reasonable fear case that is administratively closed<sup>9</sup> is not considered completed (*i.e.* the EFFECTIVE DATE is entered on the Close a Case (CLOS) screen in APSS), until the asylum office has notified:

- ICE of the closure of the case (generally in the A-file), and
- The alien of the closure of the case.<sup>10</sup>

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<sup>8</sup> See Langlois, Joseph E., Memorandum to Steve Bucher, Proposed Reasonable Fear Performance Goals, (Washington, D.C., 28 September 2011) 2 p. See also Kim, Ted, Memorandum to the Asylum Office Directors et. al., "Revised Fiscal Year 2012 Productivity Planning," (Washington D.C., 31 January 2012) 6p.

<sup>9</sup> Most administratively closed reasonable fear cases are alien-initiated withdrawals of the claim. Other reasons for administrative closures may include, but are not limited to, alien transfer to U.S. Marshals custody, death of an alien, placement of the alien in 240 proceedings or alien is no longer eligible for the reasonable fear process.

<sup>10</sup> ICE is generally notified of administrative closure by the placement of the withdrawal form in the A-file. The alien is given a copy of the withdrawal form if they caused the closure of the case.

## Attachment 1

In any case in which the reasonable fear determination is pending over 150 days after the case has been referred to the asylum office (i.e. clocked in), the asylum office must draft a memorandum to the Chief of the Asylum Division identifying the exceptional circumstances that resulted in the delay over 90 days.<sup>11</sup> A copy of the memo must also be placed in the A-file (non-record side). Both the SAPSO and the APSO should initial the memo. The memorandum must be updated and resubmitted every 30 days with efforts made to complete the case and reasons why the case is still pending.

In order to meet the 90-day timeliness standard, it is important that APSOs be given time to prepare the determination following an interview. If a particular APSO is scheduled for annual leave or an extended detail, or is reassigned to another project immediately following a reasonable fear interview, that APSO should not be assigned the case.

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<sup>11</sup> See Appendix H: Memorandum: Reasonable Fear Case Pending Over 150 Days Since Clock In



### III. The Reasonable Fear Process

#### H. Submitting the Case for HQ Review

##### 1. Mandatory Review by HQ Asylum

The following categories of reasonable fear cases must be reviewed by HQASM, Training, Research, and Quality Branch (HQASM/TRAQ) before the determination is served on the alien:<sup>1</sup>

- All negative reasonable fear of persecution and torture determinations;
- All reasonable fear determinations in which the alien is subject to a Final Administrative Removal Order;
- Any case that a SAPSO, Deputy Director, or Director believes should be reviewed by HQASM/TRAQ

The SAPSO should review each case carefully before referring it to HQASM and should arrange for re-interviews or assessment rewrites until the SAPSO is satisfied with the quality of the determination. Barring exceptional circumstances, a reasonable fear case should reach HQASM/TRAQ within 60 days of the referral to the asylum office i.e. clock in, as described above to allow time for review, resubmissions if needed, and service on the alien within 90 days.

The following documents must be electronically submitted to the Asylum QA – Reasonable Fear e-mail box:

- Copy of the removal order (either Form I-871, *Reinstatement of a Prior Order*, or Forms I-851, *Notice of Intent to Issue a Final Administrative Removal Order* and I-851A, *Final Administrative Removal Order*);
- Copy of the prior removal order (for reinstatement cases) or conviction documents (for Administrative Removal cases);
- Form M-488, *Information About Reasonable Fear Interview*;
- Form I-899, *Record of Determination/Reasonable Fear Worksheet*;
- Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*, if applicable;
- Form I-213, *Record of Deportable Alien/Inadmissible Alien*;
- Sworn Statement;
- Assessment;
- Any supporting documents submitted by the alien;
- Any documents relied upon in making the determination (other than routine country conditions reports);
- Form I-863, *Notice of Referral to Immigration Judge*;

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<sup>1</sup> See Langlois, Joseph E, Memorandum to Asylum Office Directors et. al., Further Revised Reasonable Fear Quality Assurance Review Categories, (Washington, D.C., 28 Jan. 2011), 3 p.

Attachment 2

- Form I-898, *Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge* (if the decision is negative, and with only Part 1 completed);
- Copy of the Memorandum "Reasonable Fear Case pending Over 150 Days Since Clock In" if case is pending over 150 days of referral to the asylum office (i.e. clock in); and
- Where the applicant is an ABC class member:
  - ABC checklist
  - Notice of Ineligibility for ABC Benefits (if required).

Within three (3) business days of submission to HQASM, asylum office staff must update the field "DATE FORWARDED TO HQ" on the ADEC screen in APSS.<sup>2</sup>

If HQASM/TRAQ does not concur with the determination, the Asylum Office must within five (5) business days of receipt of the non-concurrence, either:

- re-submit to HQASM/TRAQ the determination with appropriate changes; or
- where a re-interview is necessary, notify HQASM/TRAQ of the scheduled re-interview date. The interview need not occur within five (5) business days of receipt of the non-concurrence but must be scheduled to occur in the near future. The re-submission to HQASM/TRAQ must occur within five (5) business days after the re-interview.

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<sup>2</sup> APSS Updates Required: "ADEC."