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Office of Public Engagement
United States Citizenship and Immigration Services
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Via e-mail: opefeedback@uscis.dhs.gov

**Re: AILA Comments on USCIS Interim Memorandum:
Guidance for Coordinating the Adjudication of Applications
and Petitions Involving Individuals in Removal Proceedings;
Revisions to *Adjudicator's Field Manual* (AFM) New
Chapter 10.3(i): AFM Update AD11-16**

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS interim memorandum, "Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings," AFM Update AD11-16.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this interim memorandum and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

Introduction

We thank USCIS for its commitment to working with ICE to ensure the timely adjudication of petitions and applications for immigration benefits for individuals who are in removal proceedings. The interim guidance sets forth USCIS's overall policy on handling these cases and sets the reasonable goal of adjudicating applications within 30 days for detained cases and 45 days for non-detained cases. The success of this program depends largely upon effective communication between ICE counsel and USCIS, and the logistics of an efficient process for transferring files. As procedures and lines of communication will vary

among each ICE and USCIS jurisdiction, we expect that more detailed guidance will be revealed in the local standard operating procedures (SOPs), which must be submitted to USCIS Headquarters by March 21, 2011.

1. Establish a Meaningful Mechanism for Initiating Expedite Request and Tracking File Transfer

Both the USCIS memorandum and the August 20, 2010 ICE memorandum¹ call for ICE Office of Chief Counsel (OCC) to affirmatively initiate the expedite request by notifying USCIS when an application or petition has been filed by or on behalf of an individual in removal proceedings. ICE will then promptly transfer all necessary A-files to USCIS. The ICE memorandum further states that “No obligation for such [expedite] requests shall be placed on the alien’s attorney, accredited representative, or the immigration judge.”²

The creation of a file and adjudication of a petition or application often involves multiple tiers and actions by different USCIS offices. Depending on the benefit sought, a petition or application may be filed with the USCIS lockbox, transferred to a Service Center or the National Benefits Center for initial processing, and transferred again to a local Field Office for interview. In addition, members who represent individuals in removal proceedings who have a pending application or petition with USCIS, have reported unnecessary delays in file transfer and difficulty in communicating with local OCC and USCIS as to the status of the transfer and/or adjudication.

The memorandum does not clearly address to whom ICE will first reach out to initiate the process and determine where to transfer the A-file. To alleviate these concerns, we recommend that each local ICE OCC and USCIS office establish and clearly identify one or more points of contact who are tasked with routing and tracking files to the appropriate USCIS location.

Moreover, while both memoranda provide for open communication between ICE and USCIS with respect to the progress and status of the case, there is no provision or mechanism for the alien or his or her counsel to intervene if the expedite request and/or file transfer is unnecessarily delayed, or to inquire as to the status of a case when the 30/45 day time period has passed. Therefore, the ICE and USCIS designated contacts should be instructed and encouraged to work with respondents’ attorneys and to advise counsel, when requested, of the status of a file transfer. Attorneys should also be notified via e-mail, fax or telephone when a file has been successfully transferred so that adjudication can be tracked. It is only through open lines of communication that USCIS will succeed in reaching its

¹ ICE Memorandum, John Morton, “Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions” (Aug. 20, 2010).

² *Id.* at 3.

stated adjudication goal of 30/45 days. We ask that the local SOPs establish a clear, effective structure for initiating the expedite request and file transfer process.

2. Provide Direction and Guidance on Reaching the 30/45 Day Adjudication Goal

The memorandum and AFM update state that USCIS will “endeavor to complete action” on petitions or applications within 30 days of A-file receipt for detained cases and 45 days for non-detained cases. While we applaud USCIS for setting this reasonable goal, we note that the memorandum does not give any mechanical direction to achieve that goal, beyond general words of encouragement. Without more specific guidance, we are concerned that the 30/45 day time frame may be rendered meaningless. Guidance is particularly needed for cases that require an interview, which can be further complicated where a party is detained.

3. Remind USCIS Officers to Give Adequate Notice of Interview

For cases that require an interview, we respectfully request that USCIS remind officers to provide adequate notice of the interview to give the parties sufficient time to gather required evidence and make any necessary arrangements for attending the interview.

4. Provide Clarification and Guidance on Treatment of Detained Cases

Beyond the stated 30-day processing time goal, the memorandum does not instruct on appropriate measures to be taken when a party to the application or petition is detained. USCIS must be willing to conduct marriage-based I-130 and I-751 interviews in person at the detention facility, or telephonically in coordination with ICE Enforcement and Removal Operations. Alternatively, and on a case-by-case basis, the detained spouse’s presence should be waived where a decision can be made based on one spouse’s testimony and a review of the evidence submitted. In cases where an interview is required for other types of applications, such as an I-485 or N-400, USCIS should likewise establish a policy and procedure for accommodating detained parties.

Conclusion

AILA appreciates the opportunity to comment on this interim memorandum, and we look forward to a continuing dialogue with USCIS on issues concerning this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION