



AMERICAN
IMMIGRATION
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June 4, 2020

Kenneth Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

Re: Recommendations for the Reopening of USCIS Offices

Dear Mr. Cuccinelli,

The world continues to fight to bring an end to the COVID-19 global pandemic that has resulted in hundreds of thousands of deaths, millions infected, and billions impacted.¹ In March 2020, similar to many offices across the country, USCIS closed its local offices and reduced its operations elsewhere in order to ensure the health and safety its stakeholders and its staff. Throughout this time, many services normally offered to stakeholders have been reduced or temporarily suspended. AILA appreciates the steps USCIS has taken to provide accommodations and flexibilities to stakeholders during this time, including extending certain Requests for Evidence (RFE) and Notices of Intent to Deny (NOID) deadlines and providing additional adjudicatory accommodations. Further, AILA would like to acknowledge USCIS's workforce for its tireless work throughout this time to ensure that the agency's operations do not grind to a halt.

As we begin the gradual process of safely reopening our nation, USCIS has announced the reopening of field offices, asylum offices and application support centers on June 4, 2020 in a May 27, 2020 announcement to stakeholders documenting the many restrictions and safety measures planned at USCIS offices to protect both USCIS staff and members of the general public.² As the agency plans its reopening strategy, AILA has some additional recommendations regarding accommodations and flexibilities that USCIS should adopt in order to account for the uncertain environment that our nation is currently in, as well as the reality that moving forward many members of our nation's workforce, including USCIS staff and stakeholders, will continue to be impacted by this pandemic.

¹ See *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html> (last visited Mar. 2, 2020).

² *USCIS Preparing to Resume Public Services on June 4*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/news/alerts/uscis-preparing-resume-public-services-june-4> (last updated May 27, 2020).

Recommendations for Reopening All USCIS In-Person Service Locations

As USCIS staff and its stakeholders begin physically interacting once again, AILA believes the following recommendations should be put in place at all Field Offices, Asylum Offices and Application Support Centers (ASC):

- **Ensure that personal protective equipment (PPE) is readily available to both USCIS staff and USCIS stakeholders.** According to the May 27, 2020 announcement from USCIS, local offices will be, among other things, following CDC guidelines, making hand sanitizer available at the entrance to offices, requesting that visitors bring their own blue and black pens, and ensuring social distancing guidelines are observed by staggering interview times and appointments and reducing the number of individuals able to enter the office at one time. AILA applauds the agency for taking steps to ensure the safety of its staff and its stakeholders. However, we suggest that the agency take additional measures to ensure that stakeholders have ready access to adequate PPE, by keeping an extra supply of masks, gloves, and hand sanitizer available to applicants who do not already have proper PPE.
- **Employ practical “social distancing” during interviews and in the waiting rooms.** Interview times, window appointments and biometrics appointments should be staggered throughout the day to minimize the number of individuals in the waiting room at any given time.
- **Keep stakeholders and the public apprised of any changes in policies and procedures as local offices gradually return to normal operations.** As offices begin to reopen and USCIS returns to normal operations, AILA recommends that USCIS publicly provide a regularly updated list of the services that are being handled at local USCIS offices to ensure that stakeholders can adhere to changing guidelines and have sufficient notice to prepare for or reschedule an appointment.

Specific Recommendations for Reopening USCIS Field Offices

- **Allow for appointments to be rescheduled for any reason without consequence.** USCIS announced that there will be no penalty for rescheduling an appointment if the individual is sick. We recommend that it be extended to anyone who does not feel safe to attend an appointment or interview. It is important that the agency allow stakeholders adequate time to adjust to our nation’s reopening and ensure that members of the public feel safe when attending an interview or appointment at local USCIS offices.
- **Allow optional telephonic or virtual appearances of attorneys of record for in-person services, such as local InfoMod appointments and interviews.** Providing this option will allow for applicants to be appropriately represented without the need for added persons being present in a local USCIS office and interview/appointment area. It will also ensure

that attorneys of record who are sick, or worried about infecting themselves or their family, are able to represent their clients without posing a risk. Therefore, the option of appearing virtually should be made available to attorneys in order to allow the applicant and their representative to make the safest decision for all involved.

- **End the in-person interview requirement for all individuals seeking lawful permanent residency through their U.S. employer, as well as certain relatives seeking family reunification with asylees and refugees.** This policy was enacted in October 2017³ and has resulted both in an increased number of interviews required at local offices, as well as longer processing times. Under prior policy, USCIS officers had discretion to require such interviews on a case-by-case basis, where, for example, applications presented fraud or national security concerns while waiving this requirement for more routine cases. At a time when local USCIS offices are facing a backlog of requested in-person services and there is continued concern for infection, it is imperative that the agency conserve resources and limit as much in person-contact as possible.

Specific Recommendations for Reopening USCIS Application Support Centers

- **Expand permanently USCIS policy implemented temporarily during the COVID-19 pandemic allowing for the reuse of biometrics.** Currently announced only for those seeking to extend their work authorization, AILA recommends that in order to save personnel and processing costs, USCIS should reuse all biometrics that have been captured within the past five years for any form type and waive the biometrics requirement for individuals under the age of 14 or above the age of 65, as well as for applicants who have been previously vetted, such as Form I-539 and naturalization applicants. This will limit the number of individuals who will be required to physically interact with ASC personnel.

Specific Recommendations for Reopening USCIS Asylum Offices

- **Provide at least four weeks' notice of any rescheduled interviews.** As Asylum offices begin to reopen, all reasonable precautions should be taken to avoid the further spread of COVID-19. Many law offices are still closed and have sporadic access to mail.
- **Where possible, utilize email to provide notices and decisions to asylum seekers and attorneys.** Asylum offices should email the interview notice to representatives and asylum seekers where an email address has been provided as an accommodation for closed offices and difficulties with mail delivery. All Asylum office decisions should be mailed and emailed out rather than scheduled for in-person pick-up to minimize people in the waiting room and the need to use public transportation.

³ USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/news/news-releases/uscis-expand-person-interview-requirements-certain-permanent-residency-applicants> (last updated August 28, 2017).

- **Employ practical “social distancing” during interviews.** USCIS has issued guidance on its website, signaling that asylum officers will conduct video-facilitated interviews from one room, while applicants will be in a separate room.⁴ Asylum Offices should allow the applicant, their legal representative, and their interpreters the opportunity to decide whether they would all like to be in the same room during the interview, or whether they would prefer to have the asylum interview conducted from separate rooms to protect their own health and well-being. Additionally, AILA recommends that if interviews are being conducted by video that applicants be given the opportunity to conduct those interviews from their home or other offsite location, so they do not have to risk exposure while traveling to and from USCIS offices.
- **Allow for submission of requested documents after the interview.** Asylum Offices should allow for additional document submission via email, thereby minimizing contact with external paper for Asylum Office workers. Asylum offices should extend response deadlines to NOIDs or any requests for further supporting documentation to at least four weeks after the reopening date. Given the prevalent closures due to COVID, Asylum Offices should also generously exercise discretion to continue rescheduled interviews and to reopen cases where asylum seekers miss rescheduled interviews given the challenges of client meetings and even representatives accessing their offices during COVID-related shutdowns.
- **Extensively train officers to conduct virtual interviews with asylum seekers and be lenient in allowing rescheduling if an asylum seeker does not feel comfortable interviewing virtually.** AILA understands that Asylum Offices will be conducting interviews via video teleconferencing as a way of mitigating the spread of COVID-19. Asylum officers are tasked with determining credibility of an asylum applicant, which is made even more difficult when an interview is conducted virtually. Victims of trauma may react different on video than other applicants, or they may have an even more difficult time telling their story on a video camera. AILA recommends that asylum officers receive extensive training on how to conduct video interviews and how to determine credibility when the applicant is potentially in full PPE, including masks. USCIS should also offer each applicant and their attorney the opportunity of opting out of a video interview if they do not feel comfortable in this setting and rescheduling the interview when it is safe to do so in person. Asylum applicants, interpreters, and attorneys should not be asked to choose between the health and safety of themselves and their families or moving forward with their case in a setting that they may not find fitting or appropriate.
- **Continuances caused by COVID-19 should not count against the asylum seeker for purposes of the (EAD) asylum clock.** Because government shutdowns and stay-at-home

⁴ *USCIS Response to COVID-19*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/about-us/uscis-response-covid-19> (last updated/reviewed June 4, 2020)

orders are not within the applicant's control, they should not be considered an applicant-caused delay and USCIS should not stop the asylum EAD clock. Similarly, if the applicant reschedules an interview for the purpose of mitigating the spread of COVID-19, it should not be counted as an applicant-caused delay and the asylum EAD clock should not be stopped. Asylum Offices that maintain a "shortlist" for interviews should make these slots available to those on the list if asylum seekers need a continuance for their rescheduled interviews.

Recommendations for Filing Accommodations and Flexibilities

- **Continue to accept reproduced original signatures, as well as allow for digital signatures.** On March 20, USCIS announced that it would accept all benefit forms and documents with reproduced original signatures for the duration of the National Emergency.⁵ In light of the current environment in which many businesses are partially reopening but with social distancing protocols, USCIS should continue to accept reproduced original signatures. As stakeholders may not be able to readily access equipment that allows them to print, copy or scan signed documents while working remotely, USCIS should also allow for digital signatures and clarify its guidance that signatures 'handwritten' through electronic means, such as by using a finger to trace the signature through applications such as Adobe Fill & Sign or CamScanner, are acceptable.⁶
- **Allow for electronic payment for all form types.** The requirement that all petitions and applications submitted to a USCIS Service Center must include a physical check for payment of the filing fee has been problematic for many petitioners and representatives who have been working remotely in light of the COVID-19 pandemic. As many stakeholders will continue to work from home for the foreseeable future, USCIS should allow all applicants and petitioners, regardless of whether they are filing at a USCIS Lockbox or a Service Center, to make electronic payment from a bank account, credit card, or debit card.
- **Extend flexibilities for responding to agency requests.** In March, USCIS announced that it would be providing flexibility to assist applicants and petitioners who are responding to certain agency requests, such as Requests for Evidence (RFE), Notices of Intent to Deny (NOID), Notices of Intent to Revoke (NOIR), and filing date requirements for Form I-

⁵ *USCIS Announces Flexibility in Submitting Required Signatures During COVID-19 National Emergency*, U.S. CITIZENSHIP & IMMIGRATION SERV, <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-submitting-required-signatures-during-covid-19-national-emergency> (last updated May 1, 2020).

⁶ See EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT & BUDGET, M-20-19, HARNESSING TECHNOLOGY TO SUPPORT MISSION CONTINUITY (Mar. 22, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-19.pdf> (stating that "[a]gencies are encouraged to leverage digital methods to meet mission needs, to include leveraging digital forms and electronic signatures to the fullest extent practicable" and that "[I]t is recommended that agencies identify any impediments to using digital signatures, and remove those impediments, consistent with applicable law.").

290B, Notice of Appeal or Motion, among others.⁷ Specifically, USCIS announced that for certain agency requests dated between March 1, 2020 and May 1, 2020, any response submitted within 60 calendar days after the response deadline set forth will be considered by USCIS before any action is taken. On May 1, 2020, USCIS extended this flexibility to agency requests if the issuance date listed on the request, notice, or decision is between March 1 and July 1, 2020. AILA recommends that USCIS continue to extend the flexibility for responding to agency requests, including RFEs, NOIDS, NOIRs, Notices of Intent to Terminate (NOIT) regional investment centers, as well as certain filing date requirements for Form I-290B, by another 60 days, such that this flexibility would apply to all agency requests if the date listed on the request, notice, or decision is between March 1 and August 31, inclusive.

- **Continue to Facilitate Satisfactory Departure Requests and Grant Additional Periods as Needed.** USCIS should continue to facilitate remote requests and adjudication of Satisfactory Departure requests for those individuals under the Visa Waiver Program who find themselves unable to depart the United States before their current period of admission expires due to exigent circumstances. USCIS should continue to monitor the impact of the global pandemic on the ability of individuals to depart the United States and continue to grant additional periods of satisfactory departure as needed.
- **Do not reject or deny applications for failure to include a tax transcript.** Form I-944, Declaration of Self-Sufficiency, requires that applicants must provide an IRS transcript of their Federal income tax returns for the most recent tax year and the IRS transcript(s) of any household members whose incomes are being included. Yet, the IRS' ability to provide taxpayers with their tax transcripts has been impacted by COVID-19. The IRS website indicates that the IRS has “stopped processing transcript requests by mail until further notice”⁸ and the IRS phoneline is unable to offer live support due to “reduced staff services”. The online option to request a tax transcript is not a viable option for all taxpayers, since it requires a social security number as well as a credit card, mortgage, home equity loan, home equity line of credit or a car loan. As not all USCIS stakeholders are able to access their tax transcript, USCIS should refrain from rejecting or denying petitions and applications for failure to include a tax transcript and should accept alternative documentation instead, such as the federal tax return.
- **Pause Requests for Certified Documents and Adjudicate Applications and Petitions Based on Copies.** For some types of evidence, such as police and court records of criminal

⁷ *USCIS Announces Flexibility for Requests for Evidence, Notices of Intent to Deny*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-requests-evidence-notices-intent-deny> (last updated Mar. 27, 2020); *USCIS Expands Flexibility for Responding to USCIS Requests*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/news/alerts/uscis-expands-flexibility-responding-uscis-requests> (last updated Mar. 30, 2020).

⁸ See *Welcome to Get Transcript*, INTERNAL REVENUE SERVICE, <https://www.irs.gov/individuals/get-transcript> (last accessed June 3, 2020).

charges, arrests, or convictions, USCIS requires certified copies of these documents from law enforcement agencies or the courts. In light of the current global pandemic, many law enforcement agencies and courts in the United States and around the world are operating on a limit basis, making it difficult, and in some cases impossible, for applicants to obtain certified copies of certified documents. USCIS should pause requests for certified documents from law enforcement agencies and the courts and adjudicate applications and petitions with copies of such documents, where possible. If a certified copy of a document must be provided, USCIS should request that such document be provided during the interview rather than asking for it in an RFE, NOID, or NOIR.

- **Automatically extend conditional permanent resident status for at least 24 months.** Upon the receipt of a properly filed Form I-751 or Form I-829 petition, USCIS issues a receipt notice (Form I-797) which automatically extends the conditional permanent resident status of the applicant and their dependents (if applicable) for 18 months past the expiration date of their conditional permanent resident card. The receipt notice along with the immigrant's permanent resident card provides documentation for travel, employment, or other situations in which evidence of conditional permanent resident status is required. Within 30 days of the expiration of the automatic extension, or after expiration, a conditional permanent resident with a pending Form I-751 or Form I-829 may contact USCIS and request an InfoMod appointment to visit a local USCIS Field office to request a Form I-551 stamp be placed in his or her passport evidencing his or her status for travel, employment, or other purposes. Some USCIS Field Offices issue I-551 stamps with a one-year validity. Others restrict the validity period of the I-551 stamp to only a few months. As the processing times for Form I-829 is currently 21.5 to 47 months and for Form I-751 is 20 to 46 months at Field Offices, applicants often have to attend several InfoMod appointments over a period of several years to extend their status. In order to minimize the demand for InfoMod appointments and in turn reduce the number of in-person interactions between USCIS officials and I-751 and I-829 applicants, USCIS should increase the duration of the automatic extension of validity of conditional permanent residency provided by Form I-797 Notice of Action Receipts to at least 24 months. Ideally, USCIS should tie the length of the automatic extension to the processing times for I-829 and I-751 petitions and review every six months to consider further increasing or decreasing depending upon processing times.
- **Waive the requirement for police clearance letters in order to grant a “prima facie” determination for VAWA applications.** USCIS requires that VAWA applicants who are 14 years of age or older must provide an affidavit of good moral character accompanied by a local police clearance, state-issued criminal background check, or similar report from each locality or state in the United States or abroad where the applicant has resided during the 3-year period immediately before the filing of the self-petition. This documentary evidence is extremely difficult to obtain right now given that interstate and international travel has been greatly restricted due to the COVID-19 pandemic. Additionally, some law enforcement offices, such as in India, are operating on an extremely reduced or limited

basis to the public. USCIS should waive this requirement for establishing a prima facie determination and allow it to be submitted before USCIS completes its final adjudication of the petition.

- **Eliminate the need for stakeholders to submit a duplicate copy of a petition to USCIS for PIMS processing.** When USCIS approves a nonimmigrant petition, USCIS transmits a copy of the petition to the Kentucky Consular Center (KCC) so that a record of the petition can be created in the Petition Information Management System (PIMS). PIMS is an electronic system that provides U.S. consular posts with notification of nonimmigrant petition approvals by USCIS. USCIS has historically required stakeholders to submit a duplicate copy of nonimmigrant petitions so that USCIS can mail the duplicate copy to KCC to create a record of the petition in PIMS. AILA is aware that USCIS has been collaborating with the KCC on a process for having USCIS scan and digitally transfer copies of nonimmigrant petitions to KCC and that USCIS has implemented the process for petitions requesting H-2, H-3, E, O P, Q, and R visa classification. In the current environment where many stakeholders are working from home and will continue to work from home for the foreseeable future, it is burdensome for stakeholders to generate and submit a duplicate copy of a petition to USCIS. USCIS should take strides to ensure that the digital file transfer process between USCIS and KCC is fully implemented as soon as possible thereby eliminating the need for a duplicate copy to be submitted by stakeholders. For nonimmigrant petition types for which USCIS already has a digital file transfer process in place, USCIS should eliminate the need for stakeholders to continue to submit a duplicate “KCC copy” of a petition to USCIS.
- **Continue the temporary policy enacted for List B identity documents.** Continue until December 31, 2020, the policy regarding expired List B identity documents used to complete Form I-9, Employment Eligibility Verification. The number of different List B documents, coupled with the myriad of different local and state, stay-at-home orders, health issues, and subsequent issues renewing these documents due to COVID-19 have been a source of confusion for many employers. For this reason, USCIS’ April 1, 2020 announcement detailing a process by which identity documents that expired on or after March 1, 2020 may be treated the same as a valid receipt for an acceptable document for the purposes of completing an I-9 was a welcome development.⁹ AILA further recommends that USCIS issue a firm, but lenient, date on which this policy will end in order to provide employers with a sufficient timeline for this temporary policy. AILA suggests December 31, 2020.
- **Expand the temporary policy enacted for List B identity documents to List A and List C documents.** AILA recommends that the accommodations provided in the use of List B documents be made available to employers for the purposes of completing the Form I-9

⁹ *Temporary Policies Related to COVID-19*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/i-9-central/temporary-policies-related-covid-19> (May 21, 2020).

with List A and List C documents. The closing of SSA and USCIS office closures and delays in USCIS Service Center processing have impacted the ability of many stakeholders to obtain documentation showing their status (such as a Form I-751 receipt or ADIT stamp) and ability to legally work. This issue will unfortunately not be resolved upon the re-opening of USCIS offices given the amount of time it will likely return to full operations, and the likely backlog exacerbated by the COVID-19 global pandemic. AILA again recommends that the agency continue to allow the Form I-9 to be completed without the most up to date version of a List A or C document if the employee was unable to obtain said document and asks that this new policy also be in place until December 31, 2020.

- **Urge DHS and ICE to continue flexibilities offered concerning the I-9 physical presence requirements and I-9 compliance.** Due to precautions implemented by employers and employees associated with COVID-19, the Department of Homeland Security (DHS) announced on March 20, 2020 that it would exercise discretion to defer the physical presence requirements associated with the Employment Eligibility Verification (Form I-9) under section 274A of the Immigration and Nationality Act.¹⁰ The agency further announced other leniencies, including completing procedural or technical corrections, and responding timely to Notices of Inspection. DHS and ICE also announced on May 14, that these temporary policies would be extended for an additional 30 days. While this was welcomed, due to the continued and varied precautions implemented by states, local jurisdictions, and employers across the country, in addition to recommendations from the CDC and the possibility of a second wave of infection, it is unlikely that our nation's workforce will be returning to normal any time soon. As such, AILA encourages USCIS to confer with its agency partners and suggest that this leniency be extended until December 31, 2020 to allow stakeholders adequate time to comply with I-9 requirements and address any issues or concerns.

We thank you for your consideration and look forward to hearing from you at your earliest convenience. If you require any additional information or should you have any questions, please do not hesitate to contact Sharvari (Shev) Dalal-Dheini, Director of Government Relations, at (202) 507-7621 or by email at sdalal-dheini@aila.org.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

cc: Joseph Edlow, Deputy Director for Policy, USCIS
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Tracy Renaud, Associate Director, Service Center Operations Directorate

¹⁰ *DHS announces flexibility in requirements related to Form I-9 compliance, U.S. Immigration & Customs Enforcement*, <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>.

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