

USCIS Response to Coronavirus (COVID-19)



U.S. Citizenship
and Immigration
Services

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On May 31, 2022, the Department of Homeland Security (DHS) and Department of Justice (DOJ) will begin implementing a [rule](#) to ensure that those subject to expedited removal who are eligible for asylum are granted relief quickly, and those who are not are promptly removed. Due to existing court backlogs, the process for hearing and deciding these asylum cases currently takes several years on average. By establishing a process for the efficient and thorough review of asylum claims, the new rule will help reduce existing immigration court backlogs and will shorten the process to several months

Interim Final Rule

The March 2022 interim final rule (IFR) titled “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers” (sometimes referred to as the Asylum Officer Rule) authorizes U.S. Citizenship and Immigration Services (USCIS) to consider the asylum applications of certain individuals subject to expedited removal who establish a fear of persecution or torture during their required credible fear screening. Currently, such cases are decided by immigration judges (IJs) within the Department of Justice’s (DOJ’s) Executive Office for Immigration Review (EOIR).

Due to existing court backlogs, the process for hearing and deciding these asylum cases currently takes several years on average. Through a gradual process, and when fully implemented, the rule will shorten the administrative process from several years to several months. Individuals who qualify for asylum will receive protection more swiftly, and those who are not eligible will be promptly removed rather than remaining in the United States for years while their cases are pending.

Scope

Only individuals who are placed into expedited removal proceedings after May 31, 2022, are potentially subject to the new process. Specifically, as noted in the IFR, the rule “applies prospectively and only to adults and families who are placed in expedited removal proceedings and indicate an intention to apply for asylum, a fear of persecution or torture, or a fear of return to their home country, after the rule’s effective date.” The rule does not apply to unaccompanied children.

Phased Implementation

Implementation will take place in a phased manner, beginning with a small number of individuals, and will grow as USCIS builds operational capacity over time. Starting May 31, DHS will aim to refer

approximately a few hundred noncitizens each month to USCIS for an Asylum Merits Interview (AMI) following a positive credible fear determination.

Locations

The first locations for placement under this process will be two detention facilities in Texas. Asylum officers will conduct credible fear interviews telephonically in these two locations, including for individuals who may subsequently be referred to USCIS for an AMI following a positive credible fear determination. Initially, referrals for AMIs will be limited to those individuals who indicate to USCIS and Immigration and Customs Enforcement (ICE) an intent to reside in one of the following seven cities: Boston, Los Angeles, Miami, New York, Newark, San Francisco or Chicago.

Beginning Aug. 15, 2022, a limited number of individuals who intend to reside in one of the seven aforementioned cities will be referred for credible fear interviews in a non-detained setting after being placed in expedited removal and potentially have their cases processed under the rule. Those who establish a credible fear of persecution or torture may subsequently be scheduled for an Asylum Merits Interview with USCIS.

Processing

Below is a step-by-step description of how the process will work during the phased implementation period:

Placement into Expedited Removal: Individuals encountered at the border by Customs and Border Protection (CBP) who are placed into expedited removal and who claim fear will be transferred to ICE detention, consistent with current procedure.

Credible Fear Interview: Individuals will receive their credible fear interview while in detention, consistent with current procedure. DHS and DOJ are working to provide individuals with an opportunity to access Legal Orientation Program providers before their credible fear interview. If the credible fear interview results in a negative determination, the individual can request IJ review of the decision, consistent with current procedure. USCIS also may reconsider, in its discretion, a negative credible fear determination that an IJ has already concurred with, if the request is submitted within seven days of the IJ's concurrence or before removal, whichever comes first.

Referral for an Asylum Merits Interview (AMI): During phased implementation, individuals who are placed in expedited removal, and who receive a positive credible fear determination, and whom ICE determines on a case-by-case basis that it is appropriate to release may be referred to USCIS for a non-adversarial AMI. The individual must indicate an intent to reside in one of seven destination cities where AMIs will take place during phased implementation (Boston, Los Angeles, Miami, New York, Newark, San Francisco and Chicago). Individuals will be notified they are being placed into the AMI process when they are served with their positive credible fear determination. The record of the positive credible fear determination will constitute the asylum application, and the service date of the positive credible fear determination will become the filing date of the asylum application. The AMI will take place no earlier than 21 days and no later than 45 days after the positive credible fear determination.

Individuals who are released from detention during this time period will be placed in alternatives to detention (ATD) as necessary to ensure compliance with their reporting, interview, and hearing obligations.

Individuals will have until seven days (if submitting in person) or 10 days (if submitting by mail) before the AMI to amend or correct the record resulting from the credible fear interview and submit additional evidence. If an individual fails to appear at the AMI, appropriate enforcement action will be taken.

If USCIS finds the individual eligible for asylum, the individual will receive a grant letter informing them of applicable benefits and related procedures.

Streamlined Removal Proceedings: If USCIS does not grant asylum, the agency will refer the case to EOIR for streamlined removal proceedings under Section 240 of the Immigration and Nationality Act. The asylum officer will include an assessment as to whether the applicant demonstrated eligibility for withholding or deferral of removal based on the evidence presented before USCIS.

There will be dockets for these proceedings available in the seven cities listed above. During these proceedings, the IJ will review the noncitizen's asylum application and supporting evidence and determine whether asylum should be granted.

In instances where USCIS does not grant asylum, the asylum officer will include in the decision a determination whether the principal applicant demonstrated eligibility for withholding or deferral of removal based solely on the evidence presented before USCIS. Once the individual is in removal proceedings, if the IJ also does not grant asylum and issues a final removal order, the IJ may confirm the USCIS asylum officer's determination that the individual is eligible for withholding or deferral of removal. If the asylum officer did not find the individual eligible for withholding or deferral of removal, the IJ will further review those claims and make an independent assessment whether the applicant is eligible. If the IJ concludes that the individual is ineligible for relief or protection, they will issue a removal order, and the individual will be expeditiously removed from the United States.

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