

## AILA NATIONAL ASYLUM & REFUGEE COMMITTEE

March 22, 2021

### **Practice Alert on Affirmative Asylum (Form I-589) Filing and Receipt issues** **(Updates on I-589 rejection issues, I-589 receipt delays and the new Asylum Vetting Center)**

*Special Thanks to Asylum & Refugee Committee member Kathryn R. Weber for her work on this alert.*

Over the last two years, USCIS has adopted numerous changes to the affirmative asylum filing procedure.<sup>1</sup> This practice alert highlights updates and issues with the affirmative asylum application filing process and the legal and congressional challenges to this process.

#### I-589 Rejections:

In 2019, the USCIS updated its website page on Form I-589, Application for Asylum and Withholding of Removal, to include the following language:

“We will not accept your Form I-589 if you leave any fields blank. You must provide a response to all questions on the form, even if the response is ‘none,’ ‘unknown’ or ‘n/a.’ We will not accept a Form I-589 that is missing the explanation of why you are applying for asylum or that is missing any addendums that you reference in your application.”

USCIS did not change the published I-589 instructions or the regulations pertaining to this form. The I-589 instructions already contained a warning about possible rejection of an application based on missing information (“You must provide detailed information and answer the questions as completely as possible. If you file your application with missing information, we may return it to you as incomplete.” I-589 instructions, pg. 5), but the new language on the USCIS website indicated that the agency intended to adopt a strict interpretation of what it considers an incomplete application. Between 2019 and 2020, AILA members reported numerous examples of I-589 rejections based on failure to complete each field of the form.

Following class action litigation in *Vangala v. USCIS*, No. 4:20-cv-08143-HSG (N.D. Cal), challenging the “No Blank Space” policy, USCIS agreed to pause implementation of the rejection policy for asylum applications and U visa petitions. Applicants who receive rejection notices, dated on or after December 28, 2020, should contact counsel for plaintiffs at [bspolicy@nwirp.org](mailto:bspolicy@nwirp.org). USCIS and class counsel are engaged in settlement negotiations to resolve the litigation, including the claim in the lawsuit that USCIS provide a remedy to applicants whose applications were previously rejected under this policy. You can read more about the pending litigation and USCIS’ Blank Space Policy in the following Practice Alert: USCIS

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<sup>1</sup> Form I-589, Application for Asylum & Withholding of Removal is used both for affirmative and defensive asylum filings. An applicant who submits the form, simultaneously files for withholding of removal, however, only an immigration judge can adjudicate an application for withholding.

Agrees to Stop Rejecting Applications and Petitions for Blank Spaces and Featured Issue: USCIS's Blank Space Policy (AILA Docs([20122100](#) and [20102030](#)).

*AILA Asylum & Refugee Committee recommendations:*

Even with the termination of the very strict policy regarding blank spaces, to avoid any rejection, delay, or mistake in adjudication, the AILA Asylum & Refugee Committee recommends the following when completing Form I-589:

1. Answer every question. If the question does not pertain to the applicant or the applicant does not know the information, state "N/A" or "Not Applicable," "None," or "Unknown." *See* I-589 instructions, pg. 5.
2. If the I-589 question requires an explanation, provide at least a brief explanation in the question field or addendum section. A more extensive explanation with supporting documentation may be provided at a later date. *See* I-589 instructions, pg. 5.
3. Do not reference any supporting documentation that is not included with Form I-589. For example, do not state "see attached declaration" as the response to a question when no declaration is included.
4. If the USCIS rejects an I-589 and returns it after the one-year filing deadline has passed,<sup>2</sup> the applicant should re-file as quickly as possible and then raise the following exception to the one-year filing deadline: "The applicant filed an asylum application prior to the expiration of the 1-year deadline, but that application was rejected by the Service as not properly filed, was returned to the applicant for corrections, and was re-filed within a reasonable period thereafter." 8 C.F.R. § 208.4(a)(5)(v).

I-589 applicants do not need to supply all supporting documentation with the form. They may provide more extensive explanations and additional information, details, examples, incidents, etc., to the Asylum Office or Immigration Court. They may also amend any incorrect information on the form during an asylum interview or Immigration Court hearing. *See* I-589 instructions, pg. 5 ("You can amend or supplement your application at the time of your asylum interview with an asylum officer and at your hearing in Immigration Court by providing additional information and explanations about your asylum claim."). Indeed, the form itself provides space on the signature page for the asylum officer to indicate how many corrections to the form and application were made during the course of the interview. The AILA Asylum & Refugee Committee recommends that all applicants include the following language in the cover letter with their initial Form I-589: "I reserve the right to provide additional information and documentation in support of my application at a later time." The committee also recommends supplemental supporting documentation be provided in advance of hearings and interviews in accordance with asylum office and immigration court filing deadlines. It is a good practice to

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<sup>2</sup> AILA members have reported that it may take several weeks or months for a rejected I-589 to be returned to them.

gather supporting documentation at the earliest opportunity due to the unpredictability of interviews and hearings.

### I-589 Receipt Delays:

For several months between late 2019 and mid-2020, AILA members reported significant delays in the issuance of receipt notices for filed I-589s, particularly in cases filed with the Texas Service Center. In August 2020, USCIS informed AILA that it had experienced some technological issues that caused delays in issuing I-589 receipt notices.<sup>3</sup> USCIS also reported that the erroneous rejections of I-589 applications by the USCIS Lockbox were allegedly due to a technological issue. To rectify this situation, Asylum Office and Lockbox staff were entering cases into the system manually and individually printing receipt notices.

Given the serious repercussions to asylum seekers with delayed/rejected applications, particularly those approaching the one-year filing deadline, Congress intervened on this matter. In September 2020, Sen. Gillibrand (D-NY) and 11 other U.S. senators sent a letter to USCIS on recent changes to adjudication procedures, including the rejection of asylum, U visa, and other applications for failure to complete irrelevant or immaterial fields.<sup>4</sup> The senators asked for immediate review of these policies.

Since November 2020, AILA members have reported serious delays in USCIS issuing receipts for other types of applications, including Forms I-485, I-131, I-140, I-765, and I-751. Fortunately, I-589s do not appear to be included in this latest round of receipt delays. USCIS has explained that the delays were caused by an increase in filings and issues with the ongoing COVID-19 pandemic. AILA has been monitoring the receipt delays, engaging with USCIS on the issue, and working with the USCIS Ombudsman's Office to resolve this issue. For continued updates on this issue, please see our Practice Alert: Expiring Filing Fee Checks and USCIS Delays in Issuing Receipt Notices (AILA Doc. [20111936](#)).

AILA will continue to monitor the issue of delayed receipts and probe for additional clarification regarding the cause of these problems. AILA members who are experiencing delays and are unable to resolve the issue with USCIS because USCIS has not issued a receipt number may submit an unredacted case example to [reports@aila.org](mailto:reports@aila.org) using the subject: I-589 Receipt Delay 2021. Please include a copy of the delivery confirmation and the first page of the Form I-589 filed. Unfortunately, AILA case liaison assistance is unable to offer individual case liaison assistance given the lack of a receipt number. However, AILA will monitor and can escalate if enough examples show a problematic trend.

In the meantime, the AILA Asylum & Refugee Committee encourages applicants to send fully completed I-589s to USCIS with delivery confirmation and retain proof of delivery. For certain cases where a receipt is not delivered, consider refileing the I-589 with the Service Center, along with proof of the original delivery.

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<sup>3</sup> AILA Doc. No. 20080436 <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-delayed-i-589-receipt-notices>

<sup>4</sup> AILA Doc. No. 20100639 <https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/senators-send-letter-to-uscis-regarding-recent>

### Asylum Vetting Center:

In late 2020, USCIS opened an Asylum Vetting Center in Atlanta, Georgia. USCIS' goal is to shift all asylum intake to this center in place of filing with general USCIS Service Centers. For now, the Asylum Vetting Center is only accepting I-589s that previously would have been filed with a local asylum office. As of November 2, 2020, local USCIS asylum offices no longer accept Form I-589 filings.

USCIS requires applicants filing their I-589s with the Asylum Vetting Center to include a letter explaining why the application is being filed there and identifying which category below applies to the I-589. If the application does not fall within one of these six categories, USCIS will reject it with instructions to file with the appropriate service center.

The USCIS website offers the following instructions for when Form I-589s must be filed with the Asylum Vetting Center:

- *Loss of Derivative Status After Asylum Approval but Before Adjustment of Status (Nunc Pro Tunc):* If you are currently a derivative asylee, but you are unable to adjust status to lawful permanent resident due to a loss of derivative relationship, then you may submit a new Form I-589 and request a grant of asylum nunc pro tunc. In your letter, please provide information about your previous Form I-589 and explain that you are now filing independently as a principal applicant.
- *Loss of Derivative Status After Initial Filing but Before Final Decision:* If you withdrew from a principal's Form I-589 as a dependent, or if you lost derivative status by marriage, divorce, or death of the principal applicant, then you may submit a Form I-589 as a principal applicant. In your letter, please provide information about your previous Form I-589 and explain that you are now filing independently as a principal applicant.
- *Simultaneous Filing as a Principal Applicant and a Derivative Applicant:* If you are already listed as a derivative applicant on another pending Form I-589, you may file a Form I-589 as a principal applicant. In your letter, please provide information about any previous Form I-589s and explain that you are now filing independently as a principal applicant.
- *Previously Issued a Final Action by USCIS on a Form I-589:* If you previously received a denial of your Form I-589 or a notice dismissing your Form I-589 with USCIS, or you previously withdrew your Form I-589 with USCIS, and we did not place you in immigration court proceedings, then you may be eligible to file a new Form I-589 with USCIS.
- *Previously in Immigration Court Proceedings:* If you have reason to believe that USCIS has jurisdiction over your Form I-589 and you were previously in immigration court proceedings, then you may submit a Form I-589.
- *Asylum Office Director or Asylum Division Chief's Consent:* If none of these categories apply to your Form I-589, you must receive explicit consent, in writing, from the local asylum

office director with jurisdiction over your case or from the Asylum Division chief before submitting Form I-589 to the Asylum Vetting Center. The Asylum Vetting Center will not accept your Form I-589 submission if you do not include written documentation of this consent.

For more information on filing an I-589 with the Asylum Vetting Center, including the mailing/courier address for this center, please visit the USCIS website at <https://www.uscis.gov/i-589> and click on the Special Instructions link.

### **Continued Monitoring**

The AILA Asylum & Refugee Committee will continue to monitor changes and updates to the I-589 filing procedure, receipt delays, and the implementation of the Asylum Vetting Center. Please keep AILA informed of any trends with I-589 filing issues by emailing: [reports@aila.org](mailto:reports@aila.org) and using the subject line: Asylum Vetting Center Trends.