



Practice Alert: USCIS Policy Manual Updates Related to Asylees and Refugees

Termination of USCIS-Granted Asylee Status During Adjustment of Status

On August 21, 2020, USCIS issued [policy guidance](#) to “update and clarify” the procedures USCIS officers follow when termination of asylum status is considered in relation to adjudicating an asylum-based adjustment of status application. The policy took effect on the date of issuance.

After a comparison of the [previous policy manual](#) and the [revisions](#), the AILA Asylum & Refugee Committee was able to identify the following changes to the USCIS policy manual related to terminations of asylum granted by USCIS during the adjustment process:

- The new policy manual update clarifies that jurisdiction for termination of asylum granted by USCIS lies with the asylum office with jurisdiction over the applicant’s current residential address, rather than with the asylum office which originally granted asylum.
- USCIS updated the agency options for termination during adjustment to include instructions that the asylum office director, rather than issuing a Notice of Intent to Terminate (NOIT) and giving the applicant 30 days to respond, can instead send a NOIT with a Notice to Appear to Immigration and Customs Enforcement (ICE) to pursue in immigration proceedings. This has been required for asylees in the Ninth Circuit since 2012. *See Nijjar v. Holder*, 689 F.3d 1077 (9th Cir. 2012). The instructions state that if ICE elects to file the NTA in court, USCIS would deny any unadjudicated adjustment application for lack of jurisdiction.
- USCIS also provides further guidance to adjudicators on termination of asylum for derivatives (whether derivatives on the Form I-589 or immediate relatives with a filed Form I-730), explaining that termination of asylum for a principal applicant also terminates asylum for any derivatives who have not yet adjusted status. USCIS further explains that derivative asylum grants by USCIS can be terminated even if the principal was granted asylum by an immigration judge or the Board, as long as independent grounds for termination exist. If USCIS intends to terminate a derivative’s asylum, rather than a principal applicant’s asylum, they can issue a NOIT only for the derivative without impacting the principal asylee’s status.

- USCIS added guidance for post-adjustment actions, explaining that if USCIS granted an asylum application and later an asylee adjustment, and finds that termination grounds applied before the adjustment occurred, they may take steps within five years to rescind LPR status or issue an NTA.

It is important to understand that USCIS cannot terminate asylum status for someone granted asylum by EOIR. These policy manual updates apply only to termination of asylum status after a grant of asylum by USCIS.

AILA is not yet aware of any increase in asylum terminations in response to these policy manual changes and has no data from the agency on recent asylee termination numbers. If members have seen an increase in terminations for asylees at USCIS, please reach out to the AILA Asylum and Refugee Committee using the subject line “Asylee Terminations 2021” and emailing reports@aila.org.

Asylee/Refugee Adjustment Interviews

USCIS also issued updated [policy guidance](#) expanding the criteria for interviews for asylee and refugee adjustments. These updates to [Volume 7, Chapter 5](#) of the policy manual took effect on December 15, 2020 and applies to all adjustment applications filed on or after that date.

As stated in the regulations at 8 C.F.R. §245.6, all applicants adjusting to permanent residence under INA §245 must be interviewed unless USCIS waives the interview requirement. USCIS’ most recent policy update removed asylee and refugee adjustment cases from the short list of case types for which USCIS may waive the interview, though officers maintain discretion to waive interviews on a case-by-case basis.

Further updates to the policy manual at Volume 7, Chapter 5, outline criteria for when [refugee](#) (Part L) and [asylee](#) (Part M) adjustment applications may require an interview, at the discretion of the USCIS officer reviewing the file. 8 C.F.R. §209.2(e). USCIS added eight new criteria to their list of criteria for determining if an interview is required, which include:

- The applicant has an articulable national security or terrorism-related ground of inadmissibility concern.
- Other eligibility fraud, identified on a case-by case basis, where Fraud Detection and National Security (FDNS), Center Fraud Detection Operations (CFDO), or Background Check Units (BCU) recommends interview.
- Immigration records are insufficient for the officer to determine whether or not the applicant is inadmissible based on past or current placement in removal proceedings at any time.
- The applicant has conflicting or multiple identities, other than properly documented by legal name changes.
- A sworn statement is required to address the applicant’s admissibility.
- An interview would yield clarifying information, such as with an unclear response to a request for evidence concerning the applicant’s admissibility.

- The applicant is a citizen of, or last habitually resided in, a country that is now, or was at the time of last residence, a State Sponsor of Terrorism.
- The officer has any other articulable concern regarding identity, inadmissibility, national security, public safety, or fraud, and recommends an interview to help resolve that concern.

AILA does not have data on any increase in refugee or asylee adjustment interview increases. If members have seen an increase in adjustment interviews for refugees and/or asylees at USCIS, please reach out to the AILA Asylum and Refugee Committee using the subject line “Asylee_Refugee Interview Criteria 2021” and emailing reports@aila.org.