



U.S. Citizenship  
and Immigration  
Services

## Interoffice Memorandum

To: Regional Directors  
Service Center Directors  
District Directors  
Officers-in-Charge

From: William R. Yates /s/  
Associate Director, Operations

Date: May 4, 2004

Re: Requests for Evidence (RFE)

### Purpose

This memorandum provides guidance to adjudicators on when a Request for Evidence (RFE) is not required or should not be issued under current regulations at 8 CFR 103.2(b)(8).

### Background

A recent review of CIS practices revealed that in certain instances adjudicators unnecessarily issue an RFE prior to making a final decision on a petition or application. It is unclear how this practice evolved and it has resulted in a process that significantly affects limited CIS resources, increases processing delays, and confuses petitioners and applicants. Further, the current regulations at 8 CFR 103.2(b)(8) do not require RFE issuance in every instance prior to adjudication of a petition or application.

As part of its backlog reduction initiatives, CIS is amending the regulations at 8 CFR 103.2(b)(8) to address when an RFE is required. In the interim, however, this memorandum reiterates that an RFE is not required for every case prior to adjudication and clarifies when an adjudicator may deny an application or petition without issuing an RFE.

### Procedural Guidance

- Denial of an Application or Petition without RFE Issuance

An application or petition may be denied without a request for evidence in the following instances:

*(1) Evidence of Clear Ineligibility*

8 CFR 103.2(b)(8) provides that an application or petition may be denied if there is clear evidence of ineligibility, notwithstanding the lack of initial evidence. Clear ineligibility exists when an applicant or petitioner does not meet a basic statutory or regulatory requirement.

Failure to meet a basic statutory or regulatory requirement includes circumstances where the applicant or petitioner fails to establish that they are eligible to file for the requested benefit. Examples include:

- An applicant seeking to file for naturalization who is under the age of 18 (INA § 334(b))
- A petitioner seeking to file a Form I-130 who is not a qualifying relative (INA 204)
- A petitioning company seeking to file an L-1 petition which has no relationship to a foreign company abroad (INA 101(a)(15)(L)).

Failure to meet a basic statutory or regulatory requirement also includes circumstances where the applicant or petitioner clearly fails to meet a substantive requirement needed to establish eligibility for the benefit. Examples include:

- An H-1B petition filed on behalf of a beneficiary whose education documents clearly establish that the beneficiary does not have the required degree or equivalency to qualify for H-1B status (INA 101(a)(15)(H)(i)(b));
- An E-1 treaty trader or E-2 treaty investor petition filed on behalf of a beneficiary who is not a national of a country with a qualifying treaty with the United States.
- An employer seeking to file an H-2B petition on behalf of an H-2B alien who has exceeded the three-year maximum period of stay.

In all such instances, the petition or application may be denied, without issuance of an RFE, based on evidence of clear ineligibility.

*(2) Record is Complete*

An applicant or petitioner must establish eligibility for the requested benefit. 8 CFR 103.2(b)(1). If the record is complete with respect to all of the required initial evidence as specified in the regulations and on the application or petition and accompanying instructions, the CIS adjudicator is not required to issue an RFE to obtain further documentation to support a decision based on that record. Upon review of the record, if the CIS adjudicator determines that the applicant or petitioner has not met his or her burden to establish eligibility for the benefit, the case may be denied. For example:

- An I-140 petitioner is required to file initial evidence establishing its ability to pay the beneficiary the proffered wage. 8 CFR 204.5. The required initial

evidence as specified in the regulation is copies of annual reports, federal tax returns, or audited financial statements. The petitioner submits a single copy of one of these required documents. On review, the CIS adjudicator determines that these documents do not establish the petitioner's ability to pay. The CIS adjudicator may deny the petition since the applicant has not met his or her burden to establish eligibility for the requested benefit.

- Issuance of an RFE

Under 8 CFR 103.2(b)(8), the CIS is only required to issue an RFE in one circumstance – when initial evidence is missing. Initial evidence is evidence specified in the regulations and on the application or petition and accompanying instructions. In all other instances, such as when the evidence raises underlying questions regarding eligibility or does not fully establish eligibility, issuance of an RFE is discretionary. As provided above, the CIS adjudicator may deny the case if he or she determines that the applicant or petitioner has not met his or her burden to establish eligibility for the benefit, rather than exercise discretion and issue an RFE prior to final adjudication. If the case is denied, the applicant or petitioner may, in certain circumstances, file an appeal or a motion to reopen or reconsider in accordance with 8 CFR 103.3 and 103.5.

## **Denials**

CIS is committed to providing quality decisions. Adjudicating officers must evaluate records of proceeding in their entirety and are required by regulation to clearly explain the specific reasons for denial. Denials should be written with sufficient specificity to withstand judicial scrutiny and must include proper notice of any applicable appeal process to the applicant or petitioner.

## **Notice**

This memorandum is intended solely for guiding USCIS personnel in performance of their professional duties. It is not intended to be, and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.