

Citizenship and Immigration Services Ombudsman

Recommendation Regarding the Adjudication of Applications for Refugee Status

EMERGENT OR DENIED REFUGEE APPLICATIONS: EXPEDITING CASES, ARTICULATING REASONS FOR DENIAL, AND ISSUING GUIDANCE FOR REQUESTS FOR RECONSIDERATION

April 14, 2010

Part of the privilege of serving as the Department of Homeland Security's Citizenship and Immigration Services Ombudsman is the responsibility to identify new steps that can be taken to improve the delivery of citizenship and immigration services and the implementation of existing laws. Today we do so with the goal of increasing transparency, consistency, and efficiency for those who seek refugee status as well as for those who administer this critical benefit.

As we carry out our mission in the area of refugee processing, we have many partners who play an important role: stakeholders who work in the interest of refugee rights; attorneys, many *pro bono*, and other representatives who provide legal advice and services to those seeking refugee status; and other critical non-governmental organizations, including those that are faith-based. In addition, the Ombudsman's staff works with various governmental partners with central roles in refugee services.

Those seeking refugee status are among the most vulnerable populations in the world. The recommendations made here touch on certain elements of the process that people experience when seeking refugee status.

In advance of and apart from the recommendations made here, USCIS has recently instituted meaningful innovations to enhance its administration of refugee status adjudications. Those steps already taken, coupled with these recommendations, represent continuous opportunity to strengthen the delivery of services for applicants seeking refugee status.

I thank my staff for their work in researching and developing this review. We welcome your feedback on these recommendations and suggestions for future areas of focus. We can be reached at CISOmbudsman@dhs.gov.

Thank you,



January Contreras
Citizenship and Immigration Services
Ombudsman

RECOMMENDATIONS

The Ombudsman recommends that USCIS:

1. Publicly state, on the USCIS website and through stakeholder groups, the criteria by which USCIS expedites certain emergent refugee cases and how to access that expedited process.
2. Clearly state the reason for denying a refugee application:
 - (a) Identify issues of concern during the applicant's interview to enable the applicant to address, at that time, any potential grounds for denial; and
 - (b) Articulate in the Notice of Ineligibility for Resettlement clear and case-specific information regarding the grounds for denial.
3. Issue guidance on how to file a Request for Reconsideration for a denied refugee application:
 - (a) Provide a tip sheet on relevant supporting documents outlining the information applicants could include; and
 - (b) Publish mailing address(es) for Request for Reconsideration submissions.
4. Acknowledge receipt of each Request for Reconsideration.

REASONS FOR THE RECOMMENDATIONS

- Stakeholders described a lack of transparency surrounding how to request an expedited review of emergent cases and how those requests are evaluated, and additionally, how to file a Request for Reconsideration after denial of an application.
- The Ombudsman has learned that although required, not all refugee officers consistently inform the applicant during the interview of a potentially adverse determination and provide an opportunity for rebuttal at that time.
- *Ad hoc* lines of communication exist, but applicants do not have access to a public process to confirm receipt or status of Request for Reconsideration submissions.
- The Notice of Ineligibility for Resettlement often lacks case-specific information, leaving applicants and their representatives without notice of specific areas of concern. This can result in an inefficient use of resources spent on developing and adjudicating overly inclusive and unwieldy Requests for Reconsideration.



**Homeland
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The Citizenship and Immigration Services Ombudsman, established by the Homeland Security Act of 2002, provides independent analysis of problems encountered by individuals and employers interacting with U.S. Citizenship and Immigration Services, and proposes changes to mitigate those problems.

EXECUTIVE SUMMARY

In this study, the Citizenship and Immigration Services Ombudsman and staff (Ombudsman) review and make recommendations regarding three aspects of U.S. Citizenship and Immigration Services (USCIS) refugee¹ adjudications: (1) expedited processing for applicants who find themselves in an exigent circumstance; (2) interviews leading USCIS to deny an application; and (3) denials prompting the filing of a Request for Reconsideration (RFR).

During FY 2009, USCIS made several service innovations including launching a “Quality Assurance” pilot² implementing information-sharing measures with resettlement partners, and nearly doubling the refugee corps.³ These changes facilitated a 25 percent increase in worldwide admissions over FY 2008. Among the increased numbers were 35 percent more Iraqi admissions than in FY 2008.⁴ In FY 2009, USCIS interviewed 110,000 persons worldwide for classification as refugees and approved 74,654.⁵

In refugee adjudications that are not successful, USCIS notifies denied applicants of an adverse decision with a Notice of Ineligibility for Resettlement (Notice). The Notice communicates, via a checklist, the legal grounds for an adverse determination; it does not typically annotate the case-specific grounds for the negative finding. Without detailed information, denied applicants are hindered in having denials meaningfully reviewed.

During the study, individuals and stakeholders expressed concerns with both the beginning and end of the process: how to request an expedited review in emergent cases and, after denial of an application, how to file

¹ A refugee is a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it." 1951 *United Nations Convention Relating to the Status of Refugees*, as amended by the 1966 *Protocol Relating to the Status of Refugees* (Protocol) (Oct. 4, 1967). The Refugee Act of 1980 (Act), Pub. L. No. 96-212, incorporated the U.N. definition of “refugee,” contained in the Convention, into the Immigration and Nationality Act (INA) § 101(a)(42)(A). INA § 208(a) vests the Attorney General, now the Secretary of the Department of Homeland Security, with discretion to provide asylum to any foreign national determined to be a “refugee” as defined by INA § 101(a)(42)(A). The 1980 Act has served as the basis for the current United States Refugee Admissions Program (USRAP) jointly administered by the Department of Homeland Security/USCIS, Department of State/Bureau of Population, Refugees, and Migration (PRM), and the Department of Health and Human Services/Office of Refugee Resettlement (ORR).

² Information provided by USCIS to the Ombudsman (Mar. 24, 2010).

³ *Id.*

⁴ USCIS admitted 13,823 Iraqi refugees in FY 2008, compared with 1,608 FY 2007 admissions. By the conclusion of FY 2009, USCIS had approved 18,833 Iraqi refugee applicants. Information provided by USCIS to the Ombudsman (Nov. 5, 2009).

⁵ Information provided by USCIS to the Ombudsman (Mar. 24, 2010).

an RFR. They cited lack of transparency in requesting USCIS to expedite an exigent refugee case. Those not knowledgeable about how to request expeditious review, when facing an imminent threat, remain in the standard queue.

CASE PROBLEM: *Pro bono* counsel contacted the Ombudsman in August 2009 regarding a pending refugee case for an Iraqi whom counsel stated had been employed for three years with a U.S. civil society organization and was in imminent danger of being killed, due to that affiliation. The applicant had just been deported from a third country back to Iraq; third country officials cited that a Special Immigrant Visa (SIV) application the applicant had pending, at the time, demonstrated intent to immigrate to the United States. Subsequently, however, the SIV application was denied because of the employer's funding category. The applicant's hiding place had been located by persons who painted, in blood, "Death to Traitors/Death to [applicant's name]" on the door. The Ombudsman facilitated interagency collaboration to expedite this case. The applicant was assisted to another country in September 2009. USCIS processed the case expeditiously and the applicant arrived in the United States in early December 2009.

Regarding the latter concern, stakeholders cite insufficient information on which case-specific grounds USCIS makes adverse determinations, and on how and where to file an effective RFR, as well as the lack of confirmation of RFR receipt by USCIS.⁶ They further report that conflicting information on the RFR filing process is given by refugee-processing components. These issues adversely impact applicants, the organizations that serve them, and USCIS itself as the agency must respond to inquiries and adjudicate RFRs that may include irrelevant or redundant information.

CASE PROBLEM: Two Iraqi siblings were denied refugee status in March 2009. Their *pro bono* attorney contacted the Ombudsman for assistance in June 2009. According to counsel, his clients' family had suffered numerous threats, including a partial destruction of the family home by grenades. The lawyer stated that because the applicants received information on only the general grounds for their denials, he prepared and submitted two 70+ page RFRs on their behalf, with multiple exhibits "to cover everything and anything." In addition, because the applicants were not provided specific instructions on where to send the RFRs, the attorney sought assistance from the Ombudsman's office. The Ombudsman's office liaised with USCIS and the RFRs were reviewed immediately. The siblings are scheduled to arrive in the United States in April 2010.

The Ombudsman recommends that USCIS:

- (1) Present on the USCIS website and to stakeholder groups the criteria by which it expedites certain emergent refugee cases and how to access that process.**
- (2) Clearly state the reason for denying a refugee application:**
 - (a) Identify with particularity potentially adverse determinations arising during the interview to enable the applicant to address, at that time, any potential grounds for denial; and**
 - (b) Articulate in the "Notice of Ineligibility for Resettlement" clear and case-specific information regarding the grounds for denial.**

⁶ In FY 2009, USCIS received 2,522 RFRs. Information provided by USCIS to the Ombudsman (Nov. 5, 2009).

(3) Issue guidance on how to file a “Request for Reconsideration” of a denied refugee application:

(a) Provide a tip sheet on relevant supporting documents with the “Notice of Ineligibility for Resettlement” outlining the information applicants could include; and

(b) Publish mailing address(es) for “Requests for Reconsideration.”

(4) Acknowledge receipt of each “Request for Reconsideration” submitted.

Instituting these recommendations would expedite processing for certain refugee applicants, add transparency to the adjudication process, lessen customer confusion and streamline USCIS operations.

BACKGROUND

Methodology. The Ombudsman reviewed refugee processing generally, with a special focus on Afghani and Iraqi persons, two nationalities comprising the majority of all refugees currently assisted by the Office of the United Nations High Commissioner for Refugees (UNHCR) worldwide.⁷ Iraqi nationals are among the larger groups admitted to the United States in the past two fiscal years.⁸ The Ombudsman observed the multi-stage refugee processing conducted in Amman, Jordan, by visiting all relevant entities: the UNHCR initial screening facility; the Department of State (DOS) /Bureau of Population, Refugees, and Migration (PRM) overseas processing entity (OPE), the USCIS circuit rider interviewers,⁹ and state-side U.S. government officials as they conducted security checks.¹⁰

Since March 2009, the Ombudsman has frequently assisted with individual case problems for refugees of all nationalities, including emergent cases where Afghani and Iraqi applicants’ lives, health, or family unity were threatened or severely compromised due to overlong processing times. The Ombudsman conducted a public teleconference on refugee processing.¹¹ Additionally, the Ombudsman met with a number of stakeholders: U.S. law school clinical programs that represent refugee applicants, law firms that provide *pro bono* services to

⁷ UNHCR, “2008 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons,” p. 3 (June 19, 2009). The United Nations General Assembly established UNHCR in 1950 to coordinate global aid and assistance for refugees. See <http://www.unhcr.org/pages/49c3646c2.html> (accessed Mar. 24, 2010).

⁸ In accordance with INA § 207, and after consultations with relevant government agencies, non-governmental organizations, and Congress, the President annually determines the number of refugees to be admitted and sets processing priorities for the refugee program. In 2009, this determination allocated 37,000 principal admissions to refugees from the Near East/South Asia regions (which include Afghanistan and Iraq) out of 80,000 total admissions; in 2008, the corresponding figures were 28,000 out of 80,000 total admissions. “Presidential Determination No. 2008-29: Fiscal Year 2009 Refugee Admissions Numbers and Authorizations of In-country Refugee Status,” 73 Fed. Reg. 58,865 (Oct. 7, 2008) and “Presidential Determination No. 2008-1: Fiscal Year 2008 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status,” 72 Fed. Reg. 58,991 (Oct. 18, 2007), respectively; see also INA §§ 101(a)(42) and 207.

⁹ Short-term assignments or details of USCIS officers to a designated processing station are termed “circuit rides.”

¹⁰ The majority of Iraqi applicants are interviewed and given medical screenings in Amman, Jordan, and Damascus, Syria. However, the Refugee Assistance Act of 2008, Pub. L. No. 110181 (Jan. 28, 2008), expanded the P-2 “direct-access” refugee program for persons of “special humanitarian concern” to include Iraqi nationals. Whereas typical refugees apply for designation as a refugee to the UNHCR office in the country to which they have fled, Iraqi P-2 applicants may also seek refugee status determination directly from the DOS Refugee Processing Center administered by PRM in Iraq, and other locales. Then, applicants file a Form I-590 (Registration for Classification as Refugee), and USCIS interviews them. Certain Iraqis may also avail themselves of the Special Immigrant Visa (SIV) program. See Ombudsman’s Annual Report 2009, pp. 41-44.

¹¹ Ombudsman Teleconference, “Refugee Processing--How Is It Working For You?,” (Feb. 25, 2009); <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543fd1a/?vgnextoid=6ea25869c9326210VgnVCM10000082ca60aRCRD&vgnnextchannel=2dd6dbbb86c3e110VgnVCM1000004718190aRCRD> (accessed Mar. 23, 2010).

refugee applicants, refugee resettlement organizations, and humanitarian organizations that regularly assist refugee applicants. Finally, the Ombudsman met with USCIS refugee processing leadership to discuss issues of concern and to learn more about improvements both already implemented and forthcoming.

The Ombudsman has learned that USCIS recently developed and implemented significant innovations, including a “Quality Assurance pilot to assess decisional and procedural quality,”¹² implementing a confidentiality release to enhance information sharing with resettlement partners, training staff to issue more substantive decision notices, and nearly doubling the refugee corps from 46 officers to 84.¹³ As noted, these changes facilitated a 25 percent increase in worldwide admissions over FY 2008. As the Ombudsman evaluates further steps that can be taken to increase transparency and uniformity in refugee processing, recognition is appropriate for the foundation that USCIS has been building upon.

A. Initial Refugee Status Determinations & Worldwide Statistics

Persons displaced from their home country by war or other qualifying reasons, including fleeing persecution, may seek refugee status from UNHCR posts worldwide.¹⁴ In a June 2009 report, UNHCR estimated that there were 42 million such “forcibly displaced persons worldwide;” this figure includes 26 million displaced within their own country due to regional fighting.¹⁵ Nearly 25 million people received some type of assistance from UNHCR during FY 2008; Afghani and Iraqi refugees comprise nearly half of the refugee population receiving assistance from UNCHR.¹⁶ Nearly 11 million persons sought refugee or asylee status and 604,000 were permanently resettled during the same span of time.¹⁷ During FY 2008, the United States resettled the largest percentage of any single nation from this pool of intending refugees numbering 60,200.¹⁸ Family members, including spouses and unmarried children under 21, may derive refugee status from the principal,¹⁹ but such derivative family members are not counted in the approval total noted.

B. USCIS’ Adjudicatory Role in Refugee Admissions

Individuals UNHCR identifies as refugees who are referred to the United States for resettlement can file Form I-590 (Registration for Classification as Refugee) with USCIS. USCIS reviews the I-590 and interviews applicants to determine whether they: (1) are of special humanitarian concern; (2) are unable or unwilling to return to their country due either to past persecution or to a “well-founded fear” of future persecution on a protected ground;²⁰ (3) have not firmly resettled in a third country; and (4) are admissible.

¹² *Id.* at 2.

¹³ *Id.* at 2.

¹⁴ There are 75 such posts. Persons may seek refugee status to avoid “*refoulement*” (forcible return) by the government of the third country to which they have fled. Protocol signatories have pledged *non-refoulement* of persons who have obtained this designation by UNHCR and who await firm resettlement or repatriation. Two Middle Eastern countries to which the majority of displaced Afghans and Iraqis have fled, Jordan and Syria, are not signatories to the Protocol, and those who have fled there may be at risk for *refoulement*. Jordan signed a Memorandum of Understanding with UNHCR in 1998 that allows for UNHCR’s residence and processing. However, Iraqis are still deemed “guests,” cannot obtain work permits, are subject to summary deportation without due process if Jordan deems it necessary, and may be assessed an overstay fine payable upon any re-entry.

¹⁵ UNHCR, “2008 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons,” p. 3 (June 19, 2009).

¹⁶ *Id.* One out of four refugees in the world – 2.8 million – is from Afghanistan. Afghans are located in 69 different asylum countries. Iraqis are the second largest refugee group, with 1.9 million having sought refuge mainly in neighboring countries. *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 2.

¹⁹ INA § 207(c)(2)(A).

²⁰ Pursuant to INA § 101(a)(42), “protected grounds” include race, religion, nationality, membership in a particular social group, or political opinion.

USCIS is one of several international and U.S. government entities comprising the U.S. Refugee Admissions Program.²¹ The USCIS Refugee Affairs Division (RAD), under the Refugee, Asylum and International Operations Directorate (RAIO), is responsible for adjudicating Forms I-590, conducting the refugee interviews and determining, with DOS, whether to issue travel documents to beneficiaries of approved I-730 (Refugee/Asylee Relative Petition).²² International Operations officers, also under RAIO leadership, along with RAD officers in some instances, decide the outcome of RFRs.²³ The USCIS refugee corps conducts interviews worldwide, often inside refugee camps or in secured buildings in urban areas.

When USCIS denies a refugee application, it issues the Notice formally notifying applicants whether USCIS denied status based on statutory or discretionary grounds, or both.²⁴ Prior to October 12, 2009, the Notice had nine line-items; then, it was expanded to include additional line-items and more room for officer comments. These categories or “grounds” for adverse determination are listed alongside separate checkboxes. The list now includes the following four broad categories: “Special Humanitarian Concern,” “Persecution of Others,” “Firm Resettlement,” and “Other Reason(s).” Specific line-items were added to the checklist beneath the standing grounds of: “Refugee Claim,” “Admissibility,” and “Credibility.”

USCIS stated it revamped the Notice to provide additional transparency to the applicant regarding his or her denial. Agency training reminded officers to indicate why the claim was not found credible and to record how the credibility issues were identified, and that applicants must be given an opportunity to explain any credibility issues identified.²⁵

In certain international regions, staff at the OPE deliver the Notice at a “counseling session.” Staff conducting counseling sessions may discuss applicant perceptions of the cause for the denial and the RFR process. Yet, staff members do not have access to the interviewing officer’s notes and, therefore, may not be familiar with the case-specific grounds for the denial to provide information about how the grounds for denial were identified. Furthermore, some international regions do not provide the counseling session forum at all. Iraqi P-2²⁶ applicants in Baghdad, Iraq, or in Istanbul, Turkey, receive the Notice by email only.

The Notice itself also provides an opportunity to build transparency into the process by giving the applicant an expanded view into the grounds for a denial. However, the new Notice’s checkboxes for grounds do not necessarily help applicants understand the factual basis that caused the adverse determination. Although the Notice provides space for notes and additional information, stakeholders have found that portion is not normally utilized by USCIS. In the course of this study, the Ombudsman has only once encountered a Notice that included an explanation written by a USCIS official. Stakeholders and applicants report that the spaces are

²¹ Other major entities include: PRM, which supervises all refugee processing at overseas processing entities (OPE), and the ORR, which contracts with voluntary organizations that receive arriving refugees into the United States and equips them with housing, language and vocational training (or recertification for professionals with foreign licensure), transportation, access to federal benefits and psycho-social support for a time-limited period.

²² Specially-trained detailees from other USCIS components may also conduct such interviews, as do officers from the International Operations Division.

²³ After USCIS adjudicates refugees’ applications, some face extended processing delays due to security screening by other U.S. government agencies.

²⁴ Unlike denial letters issued to applicants and petitioners filing for other immigration benefits, USCIS’ Notice is not a formal denial letter, but its effect is the same: it states the agency’s decision not to grant the benefit.

²⁵ Information provided by USCIS to the Ombudsman (Oct. 2, 2009).

²⁶ See Footnote #10.

routinely left blank.²⁷ As noted, USCIS addressed this lack of transparency by expanding three categories to include line-items with checkboxes for officers to indicate the general factual basis for the decision.

Another endorsement of transparency exists in the USCIS Adjudicator's Field Manual (AFM). The AFM states that a denial notice must contain:

...a description...[of] both the documentation submitted by the applicant or petitioner, and the other evidence which is contained in the case file. If the applicant cannot reasonably be presumed to be already aware of the evidence, he or she must be given an opportunity to rebut the evidence before a decision is made.²⁸

The AFM further states, “[i]n many cases, there may be more than one reason for the denial, in which case normally all should be discussed.”²⁹

The revised October 2009 Notice states that “during the interview, the USCIS officer informed you of concerns about the credibility of your testimony and provided you an opportunity to explain....” The addition of this statement reflects the direction from RAD that such dialogue is intended to be a part of standard interview practice in these cases.³⁰ However, refugee applicants and stakeholder groups, including *pro bono* counsel, continue to inform the Ombudsman that the Notice is often the first communication of any problem with the application.

RAD has told the Ombudsman that all refugee officers are directed to inform the applicant during the interview of a potentially adverse determination to provide an opportunity for rebuttal at that time. Yet, stakeholders report that this practice is neither consistent nor common.³¹ Without detail about the grounds for a negative outcome or a chance to address concerns at the interview, applicants and their counsel must speculate about what led to the denial.

Changes may already be afoot to address these issues. USCIS reports that, after hearing from stakeholders and the Ombudsman, RAD conducted training for refugee officers in January 2010 reminding officers to provide this opportunity to applicants during the interview. Moreover, the interview sheet has checkboxes wherein officers must confirm, on the interview notes, having conducted a discussion about any potentially adverse determinations. This sheet is placed in the file. All refugee files are subject to 100 percent post-interview, supervisory review.

Coordinators of *pro bono* services for refugees say the problem persists. Representatives from a large organization told the Ombudsman that the October 2009 Notice is “still too hard to understand without the ‘Immigration and Nationality Act’ beside one of us for reference, much less could one of our non-English

²⁷ Information provided to the Ombudsman (May 19, 2009).

²⁸ Adjudicator's Field Manual (AFM), Chapter 10.7(b)(3)-(4), Preparing Denial Orders (Mar. 2010); Subpart (4) limits explanatory expectations: “In some cases, however, when the statutory basis for the denial is clear and incontrovertible, a discussion of discretionary issues may be unnecessary.”

²⁹ AFM, Chapter 10.7(b)(4) Preparing Denial Orders (Mar. 2010).

³⁰ Information provided by USCIS to the Ombudsman (Mar. 11, 2010).

³¹ Information provided to the Ombudsman (May 19, 2009, Dec. 5, 2009).

speaking applicants use it to prepare an RFR.”³² Another said, “It takes weeks and weeks of work to assemble one of these RFRs for clients, because I don’t know enough about why they were denied in the first-place.”³³

Human Rights First issued a report in March 2010, after seeing these new Notices, saying “the information [refugees] receive is not sufficient for them to meaningfully appeal.”³⁴ The report calls for “increasing transparency and accountability... [by] requiring written Notices of Ineligibility for Resettlement describing the basis for the denial.”³⁵

C. The Request for Reconsideration (RFR)

USCIS provides no formal appeal process for denied refugee applications, but as a matter of policy, allows RFRs for those seeking additional review of denied applications. This is an exercise of agency discretion and not an entitlement under the law. Perhaps owing to the discretionary nature of the process, applicants view its operation as vague, while stakeholders express concerns regarding the lack of USCIS guidance on how to prepare a meaningful RFR and where to send it.

Currently, the DOS contractor handling refugee matters in Iraq, the International Organization on Migration (IOM), Baghdad Info Center, sends to inquiring Iraqi applicants a one-page sheet entitled “What do I do if DHS Denies my Application for Refugee Status?”³⁶ The information on this sheet is more detailed than the RFR information USCIS provides on the Notice. The IOM sheet states the RFR must be typed or computer-generated, have an original signature in blue ink, be written in both Arabic and English, must only be accompanied by supporting evidence that mentions the applicant’s name directly, must contain specific identifying information on every page submitted, must not repeat what was said in the interview nor contradict anything said therein and that the RFR must be “no more than two or three pages.”³⁷ USCIS has stated it will accept hand-written RFRs, in English, and with as much written material the applicant or representative deems necessary.³⁸

Another reported source of frustration is the absence of tracking capabilities coupled with no published process for individuals to inquire about the status of a pending RFR. In addition, stakeholders report extensive waiting periods, sometimes exceeding a year. USCIS has worked to address processing times and reported, as of November 2009, cycle times of 2.6 months.³⁹ The IOM sheet on RFRs states “[t]he review process generally takes between three months to a year.”⁴⁰ Case problems received by the Ombudsman continue to reflect extensive waiting periods. Among RAD’s FY 2010 “Planned Initiatives,” is an examination “of the realignment of all or part” of the RFR workload.⁴¹ The Ombudsman encourages such proactive steps and further encourages USCIS to implement related findings that would enhance customer service.

³² Information provided to the Ombudsman (Feb. 25, 2010).

³³ Information provided to the Ombudsman (Mar. 25, 2010).

³⁴ Human Rights First, “Renewing U.S. Commitment to Refugee Protection: Recommendations for Reform on the 30th Anniversary of the Refugee Act” (Mar. 15, 2010), p. 21.

³⁵ *Id.* at 4.

³⁶ Email to a stakeholder from Baghdad Info Center (Oct. 8, 2009).

³⁷ *Id.*

³⁸ Information provided by USCIS to the Ombudsman (Mar. 11, 2010).

³⁹ Information provided by USCIS to the Ombudsman (Nov. 5, 2009).

⁴⁰ Email to a stakeholder from Baghdad Info Center (Oct. 8, 2009).

⁴¹ Information provided by USCIS to the Ombudsman (Mar. 24, 2010).

Within 90 days of receiving the Notice, an applicant or representative may request review of the denial either by alleging clear service error or by presenting new evidence unavailable at the time of the interview. These grounds are identical to those for filing a Form I-290B (Notice of Appeal or Motion) requesting review by the Office of Administrative Appeals of an adverse USCIS decision.⁴² However, there are critical differences between the two notices. The RFR has no fee and is not statutorily required, whereas the I-290B is required both by law and by implementing regulations and carries a fee of \$585.⁴³ While I-290B filers are usually issued a receipt notice on Form I-797 (Notice of Action)⁴⁴ and are able to inquire about the status of their motion, RFR applicants receive no formal acknowledgement of receipt by USCIS and are unable to track the progress of their case.

Although the less formalized process for RFRs has its challenges, the approach benefits applicants who miss the 90-day appeal window. The Ombudsman has learned of USCIS routinely accepting RFRs well beyond 90 days, when requests are accompanied by an appropriate explanation by the applicant or representative. Stakeholders report receiving from USCIS or IOM varying information regarding submission deadlines.⁴⁵

On balance, disadvantages of the lack of a formal RFR receipt process outweigh benefits, as refugee applicants and stakeholders are left to infer whether USCIS has received RFRs timely and is acting on them. Anxieties and duplication of efforts result. Stakeholders reported that lack of a receipt notice leads them to email anyone they know at USCIS to confirm receipt.⁴⁶ Applicants reported multiple filings when unaware whether the RFR was ever received or is under consideration. The Ombudsman suggests that lack of systematic notices of receipt imposes greater resource demands on USCIS staff than would a published, standardized process whereby applicants could be assured of receipt and processing.

RECOMMENDATIONS

To increase transparency, consistency and efficiency within refugee processing, to deliver visible expedite criteria for emergent cases and to standardize and streamline the RFR process, the Ombudsman recommends that USCIS:

- (1) Present on the USCIS website and to stakeholder groups the criteria by which it expedites certain emergent refugee cases and how to access that process.**

DHS and DOS PRM have stated they have “specific procedures” for handling limited numbers of expedited/emergency cases,⁴⁷ and that these cases have “occasionally been processed in a very short time.”⁴⁸

⁴² Form I-290B is used to file an appeal or motion within 30 days of receipt of a USCIS decision not otherwise under the appellate jurisdiction of the Board of Immigration Appeals. *See also* Ombudsman Recommendation #42, “Motions Matter: Improving the Filing and Review Process for Motions to Reopen and Reconsider” (May 15, 2009).

⁴³ *See* 8 C.F.R. §§ 103.3, 103.5.

⁴⁴ Ombudsman Recommendation #42, “Motions Matter: Improving the Filing and Review Process for Motions to Reopen and Reconsider” (May 15, 2009), p. 8.

⁴⁵ Case problems the Ombudsman received in the summer of 2009 complained that IOM instructed applicants to submit RFRs well in advance of a 90-day deadline; in several cases, according to attorneys, denied applicants were told to submit RFRs within two-weeks of receiving the Notice.

⁴⁶ Thirteen-months after filing, the applicant had received no confirmation of receipt or adjudication by USCIS. December 2009 case problem submitted to the Ombudsman.

⁴⁷ *See* UNHCR Department of International Protection, “Resettlement Handbook--U.S.A. Country Chapter” (June 2004 revision), p. 5. Additionally, practitioners note awareness of a 2001 working group to develop a protocol for emergency resettlement cases referred by UNHCR. Information received by the Ombudsman, (Feb. 18, 2010).

⁴⁸ UNHCR, “Resettlement Handbook,” p. 5.

Typically, these are cases referred by resettlement partners, such as UNHCR. There is no published information stating how an individual may alert USCIS to such a case. The USCIS website shows no public access point, or criteria for requesting expedited processing of an exigent case. However, some representatives or applicants know how to contact USCIS/RAD leadership directly to seek help, and stakeholders consistently affirm the responsiveness of the USCIS refugee staff, when they do reach out to staff. While this responsiveness is helpful on an *ad hoc* basis, staff contact information is not known to all customers, and unequal access to these resources leaves a lack of transparency in place, as well as challenges for those without direct access. Currently, the only published process is in a UNHCR practitioner publication stating one can alert a UNHCR field office to refer cases to relevant government officials for consideration of accelerated processing.⁴⁹

Stakeholders seeking assistance may try to contact the OPE or officials throughout USCIS. Family members in the United States may seek help from a member of Congress or the Ombudsman. Representatives or refugees themselves may seek help from the Ombudsman.⁵⁰ They may make redundant inquiries of both legislative and executive officials.⁵¹ While they cast this wide net seeking critical guidance about how to obtain expedited review of an emergent case, threats to health or life are often imminent (*see* case problems on page 2).

When the Ombudsman is presented with a case that meets expedite criteria, the Ombudsman liaises with interagency officials to facilitate moving the case forward expeditiously. On July 31, 2009, the Ombudsman provided stakeholders, including major law firms and clinics serving vulnerable clients *pro bono*, with criteria, articulated in discussions with PRM, to request an expedite in such humanitarian case problems. These criteria include when an applicant fears imminent threat to life, health, or family unity or fears/faces deportation from a third country (*see Figure 1*, page 10).

⁴⁹ *Id.* at 6. “All such cases must be referred by UNHCR offices in the field to the UNHCR Resettlement Office in Geneva, which refers the case to the designated USG authorities in Washington. Upon acceptance of the case, the USG will initiate processing on an emergency basis.”

⁵⁰ Case Problem Submission Worksheet, (CIS Ombudsman Form DHS-7001)

http://www.dhs.gov/xlibrary/assets/cisomb_dhsform7001.pdf (accessed Mar. 21, 2010). Humanitarian case expedite requests may be submitted via email to cisombudsman@dhs.gov with a signed paper-application submitted subsequently or solely via mail : U.S Department of Homeland Security, Citizenship & Immigration Services Ombudsman, Mail Stop 1225, Washington, D.C. 20528-1225.

⁵¹ Case problem forwarded to the Ombudsman in August 2009 by the *pro bono* attorney who had already contacted a Congressperson seeking expedited review of a particularly at-risk client awaiting a security clearance for more than nine months. Security clearances are an aspect of the refugee resettlement process beyond USCIS’ control, as they rest with other governmental agencies. Nonetheless, USCIS assisted by communicating with those agencies.

Figure 1: Humanitarian Case Problem Expedite Criteria

1) ACUTE, UNSTABLE MEDICAL CONDITIONS THAT ARE WORSENING DUE TO LACK OF ACCESS TO CARE OR TO ADVANCED/YOUNG AGE OR CHRONIC INFIRMITY.
Please describe as explicitly as possible how the condition has worsened and if there is a grave prognosis.
2) EXTREMELY DANGEROUS LIVING CONDITIONS, INCLUDING WOMEN AND CHILDREN LIVING ALONE, OR ARE LIVING IN AREAS OF HEIGHTENING VIOLENCE AND/OR THEY ARE IN HIDING.
Please send any documentation/news-clips describing the specific dangers, including recent changes or any anticipated escalations of danger.
3) FAMILY SEPARATION.
In certain instances, families are not resettled together. Please state when a portion of the family arrived in the United States and/or how long family members have been separated from the portion awaiting final decision on a pending case.
4) DEPORTATION STATUS – IMMINENT OR CARRIED OUT.
Please state current country of location (or, if in Iraq, having been deported already from a neutral country) and, if available, official correspondence or dates of meetings where officials stated deportation is imminent.

The Ombudsman regularly receives assistance from relevant agencies with requests for expedited processing on humanitarian cases. USCIS could significantly enhance the transparency of refugee processing while also increasing efficient use of resources by publicizing guidance that describes under what circumstances and how any needful applicants may access such relief when meeting defined exigent circumstances.

(2) Clearly state the reason for denying a refugee application:

- (a) Identify with particularity potentially adverse determinations arising during the interview to enable the applicant to address, at that time, any potential grounds for denial.**

Based on the Ombudsman’s review, USCIS policy does not match agency practice in this area. Despite the fact that the current USCIS standard for interviewing officers requires them to notify applicants of the reason for denial, cases consistently lack such identification. Furthermore, the UNHCR Refugee Status Determination Handbook, section 602, states that all persons denied resettlement must be notified of grounds for denial and provided with an opportunity to respond during the interview process. USCIS issued internally a Refugee Officer Manual, during the first quarter of FY 2010, and plans to post redacted portions for the public by the third quarter of FY 2010.⁵² Such developments, if implemented consistently, will foster greater transparency and efficiency for both applicants and USCIS.

- (b) Articulate in the “Notice of Ineligibility for Resettlement” clear and case-specific information regarding the grounds for denial.**

Persons seeking protection can apply both abroad as refugees and domestically as asylees. Asylum-seekers are persons who have already arrived in the United States, but who assert claims similar to those of refugees. In the affirmative asylum context, USCIS conducts interviews; often those applicants receive copies of the officer’s

⁵² Information provided by USCIS to the Ombudsman (Nov. 5, 2009).

interview notes.⁵³ Applicants for asylum at a port-of-entry listen to and sign off on the U.S. Customs and Border Protection officer's comments, and then receive a copy. Conversely, USCIS refugee officers do not release their interview notes. Resource limitations abroad may challenge USCIS' capacity to extend asylee procedures to refugee applicants. However, without accurate reference to the contents of the interview that may have served to undermine their case, refugee applicants cannot meaningfully address the grounds for an adverse decision.

The exact number of approvals of RFRs is unclear. USCIS reports that RFRs are frequently determined in favor of the applicant.⁵⁴ However, the information sheet from the IOM Baghdad Info Center tells stakeholders, "[t]he RFR overturn rate is extremely low."⁵⁵ Without specific information on how to prepare RFRs, attorneys and individuals spend hours discussing and compiling overly-inclusive requests in an effort to address what they infer the problem to have been.⁵⁶ Lengthy filings burden USCIS adjudicative resources, further taxing already limited resources abroad.

(3) Issue guidance on how to file a "Request for Reconsideration" of a denied refugee application:

(a) Provide a tip sheet on relevant supporting documents with the "Notice of Ineligibility for Resettlement" outlining the information applicants could include.

General guidance on RFR filing is located at the bottom of the Notice. It states the grounds discussed in Recommendation 2(a), and notes that USCIS will accept one request within 90 days of receipt of the Notice. The Notice fails to specify the information USCIS requires to make its decision. As detailed above, the IOM sheet on RFRs has information that is at odds with stated USCIS practices. A standard tip sheet could list the types of documentary evidence USCIS considers pertinent to RFR decision-making. If the applicant must establish relationship, credibility, or associations, the tip sheet could present examples of what USCIS considers relevant to each determination (*See Figure 2, page 12*).

⁵³ USCIS RAIO Asylum Division, "Affirmative Asylum Procedures Manual" (Nov. 2007), p. 30. The Ombudsman recognizes that, like asylum applicants, refugee applicants can experience emotional intensity, even distress, when recounting to the interviewer the story that forms their claim of persecution. Stakeholders report that asylum interview notes help representatives and applicants formulate meaningful responses in defensive asylum applications referred to the courts when USCIS denies their affirmative request. Similarly, interview notes could help refugees formulate a meaningful and concise RFR.

⁵⁴ Information provided by USCIS to the Ombudsman (Mar. 24, 2010).

⁵⁵ "What do I do if DHS denies my application for refugee status?" Information received by the Ombudsman (Oct. 11, 2009).

⁵⁶ For example, a handbook prepared by one law school clinic to train its *pro bono* affiliates to represent denied refugees directs extensive questioning of the client about interviewer focus and demeanor, and states that a request made pursuant to the Freedom of Information Act is the only way to discern the cause of denial. FOIA request processing averages 63 days for "expedited requests," 231 days for "simple requests," and 339 for "complex requests." Of the expedited requests in FY 2008, 13 were granted and 1,687 denied. "Freedom of Information Act, Fiscal Year 2008 Annual Report: USCIS," p. 3.

Figure 2: Examples of Information to Include in a Tip Sheet

TO ESTABLISH OR SUPPORT	PROVIDE
BONA FIDES OF RELATIONSHIPS	BIRTH CERTIFICATES, BAPTISMAL RECORDS, AFFIDAVITS, MARRIAGE OR DEATH CERTIFICATES, ETC.
CREDIBILITY	AFFIDAVITS, COURT RECORDS, MEDICAL RECORDS, OR TRAVEL RECORDS
CLAIMED ASSOCIATIONS	PROOF OF MEMBERSHIP IN CLUBS OR SOCIAL ORGANIZATIONS

This is not a new concept, as USCIS already provides such specific guidance to filers for other immigration benefits whose submissions are incomplete; the agency sends them a detailed “Request for Evidence.” Doing so in the RFR process could add a level of transparency for the applicants allowing them to focus on documentation that actually is critical to the review. As importantly, this could build greater efficiency into the system by reducing the amount of unnecessary documentation that USCIS must sift through to make a final determination.

(b) Publish mailing address(es) for “Requests for Reconsideration.”

Currently, USCIS provides on the Notice no mailing address for RFR submissions, nor is information on where to file an RFR available on its website. This omission generates uncertainty leading stakeholders to adopt a “shotgun approach” filing strategy. The Ombudsman observed that they regularly send duplicate RFRs not only to the Washington, D.C. address from which the Notice was sent, but also to known overseas locations: the embassy in the country of the applicant’s interview, the OPE where the refugee was interviewed, or the USCIS office in Athens, Greece, whose Director signed the Notice. The IOM sheet on RFRs provides a submission address distinctive from other addresses provided by USCIS. Such multiple or misdirected filings not only increase costs for certified or airmail deliveries; they also impose burdens on USCIS by requiring redundant administrative functions. The Ombudsman presents in *Figure 3* (page 13) the RFR filing addresses provided by USCIS and urges the agency to make this information available via its website and for inclusion in RFR instructions.

Figure 3: RFR Filing Location by Country of Interview

SUBMIT AN RFR FOR A REFUGEE CASE INTERVIEWED IN 	ALGERIA, BAHRAIN, EGYPT, IRAQ, JORDAN, LIBYA, MOROCCO, OMAN, SAUDI ARABIA, SYRIA, TUNISIA & QATAR	KUWAIT, LEBANON, PAKISTAN, UNITED ARAB EMIRATES & YEMEN
VIA EMAIL	USCIS.Amman@dhs.gov	USCIS.Athens@dhs.gov
VIA MAIL FROM THE US	FIELD OFFICE DIRECTOR, USCIS/DHS AMERICAN EMBASSY, DOS 6050 AMMAN PLACE WASHINGTON, D.C. 20521-6050	FIELD OFFICE DIRECTOR, USCIS/DHS PSC 12008 BOX 25 DPO, AE 2009842
VIA MAIL FROM OUTSIDE THE US	FIELD OFFICE DIRECTOR, USCIS/DHS C/O AMERICAN EMBASSY, DOS P.O. BOX 354 AMMAN, 11118 JORDAN	FIELD OFFICE DIRECTOR, USCIS/DHS C/O AMERICAN EMBASSY, DOS VASILISSIS SOFIAS 91, 10160 ATHENS, GREECE
VIA EXPRESS MAIL	FIELD OFFICE DIRECTOR, USCIS/DHS C/O AMERICAN EMBASSY, DOS AL UMAWYEEEN STREET, ABDOUN AMMAN, JORDAN	(SAME AS ABOVE)

(4) Acknowledge receipt of each “Request for Reconsideration” submitted.

Applicants and petitioners for the majority of USCIS immigration benefits may check their case status online by inputting a receipt number. Currently, however, there is no mechanism for applicants or their representatives to even verify receipt of an RFR. Much less, they are not assigned a receipt number, perhaps because there is no receipt of funds by USCIS, to facilitate case tracking. Providing acknowledgement of receipt is, therefore, consistent with USCIS case handling practice in general, and particularly appropriate to assure refugee applicants that denials of their cases are under consideration.