

INTERIM MEMO FOR COMMENT

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Comment Period Ends: 02-22-2011
This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



**U.S. Citizenship
and Immigration
Services**

February 4, 2011

PM-602-0029

Policy Memorandum

SUBJECT: Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator's Field Manual (AFM) New Chapter 10.3(i): AFM Update AD 11-16

Purpose

This policy memorandum provides guidance for coordination with U.S. Immigration and Customs Enforcement (ICE) on the adjudication of applications and petitions involving individuals in removal proceedings before the Executive Office of Immigration Review (EOIR). This memorandum concerns only applications and petitions over which USCIS has jurisdiction.¹

Scope

This policy memorandum applies to and is binding on all USCIS employees unless specifically exempt.

Authority

Title 8, Code of Federal Regulations (8 CFR) sections 103 and 204; Adjudicator's Field Manual Chapter 10.11(a).

Background

EOIR has identified a significant number of removal proceedings involving individuals with applications or petitions pending before USCIS. While awaiting the full and proper adjudication of the applications and petitions, EOIR's immigration judges have repeatedly continued many of the removal proceedings. Action by USCIS on the applications and petitions is needed for EOIR and ICE to resolve and take appropriate action on the removal cases.

Efficient processing of EOIR's removal docket therefore requires that ICE and USCIS have effective procedures for identifying the relevant cases, referring the associated applications and petitions from ICE to USCIS, transmitting the necessary files between ICE and USCIS, and communicating about the cases while they remain pending. This memorandum establishes those procedures within USCIS, takes effect immediately, and supersedes any previously issued guidance on the subject.

¹ For example, under current law, USCIS does not have jurisdiction to adjudicate a Form N-400, Application for Naturalization, if the applicant is in removal proceedings. In addition, this memorandum does not apply to the following forms: I-90, I-131, I-290B, I-694, I-765, and I-824.

Policy

As described in policy guidance issued by ICE,² ICE will affirmatively notify USCIS when an application or petition filed by or on behalf of the individual subject to removal proceedings must be adjudicated for the removal case to move forward. ICE will promptly transfer all necessary A-files to USCIS.

If the individual in removal proceedings is detained, USCIS will endeavor to complete action on the relevant petition or application within 30 calendar days of receiving the A-file(s). If the individual in removal proceedings is not detained, USCIS will endeavor to complete action on the relevant petition or application within 45 calendar days of receiving the A-file(s). If the next hearing in the removal case is scheduled within the 30- or 45-day time frame, USCIS will work with ICE, to the extent possible, to complete action on the petition or application before the hearing date. USCIS will maintain communication with ICE regarding the progress and status of the case.

USCIS will adjudicate all applications and petitions subject to this memorandum according to existing laws, regulations, and USCIS policy, including as they pertain to USCIS's fraud detection and national security responsibilities.³ If acting on ICE's request to adjudicate a particular application or petition might compromise those responsibilities or adherence to any law, regulation, or policy, USCIS will notify ICE that the adjudication will not be completed within the 30- or 45-day time frame and will keep ICE further apprised about the status of the case.

To the extent ICE currently coordinates directly with USCIS Service Centers with respect to applications and petitions pending at the Service Centers, this guidance does not supersede or amend those arrangements. Specifically, ICE currently works directly with the Vermont Service Center (VSC) Victims and Crime Unit to expedite processing of self-petitions under the Violence Against Women Act (VAWA), T nonimmigrant applications for victims of trafficking, and U nonimmigrant petitions for victims of certain crimes.

Implementation

All District Directors must immediately contact their local counterparts in ICE Detention and Removal Operations and the ICE Office of the Principal Legal Advisor to begin drafting a local standard operating procedure (SOP) for coordinating the adjudication of applications and petitions necessary to facilitate removal proceedings as described in this memorandum.

² "Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions" (Assistant Secretary John Morton, U.S. Immigration and Customs Enforcement, August 20, 2010).

³ See, e.g., *Policy for Vetting and Adjudicating Cases with National Security Concerns* (April 11, 2008), *Implementation of USCIS Anti-Fraud Initiatives* (September 10, 2004), and *Criteria for Referring Benefit Fraud Cases* (December 14, 2004).

The SOP must establish effective mechanisms for:

- ICE to notify USCIS that an application or petition pending with USCIS for an individual in removal proceedings must be adjudicated for the removal case to move forward;
- ICE and USCIS to route A-files as appropriate to achieve the necessary adjudication; and
- USCIS to communicate its adjudication actions to ICE, as well as to keep ICE otherwise informed about the status of applications and petitions referred to USCIS under this memorandum (including whether there are fraud, national security, or other pertinent issues that may preclude adjudication within the targeted time frames).

For an application or petition pending at a Service Center, the SOP will require that:

- The District Director inform the appropriate Service Center Point of Contact (POC) of cases identified by ICE within 2 business days of receiving notification;
- The Service Center endeavor to adjudicate the application or petition as described in this policy; and
- The Service Center POC notify the District Director when the application or petition has been adjudicated.

District Offices and Service Centers must ensure that all incoming applications and petitions and the adjudicative decisions associated with them are recorded in the appropriate national system of record (e.g., CLAIMS3).

Within 45 days from the date of this memorandum, District Directors must submit informational copies of their final SOPs to Headquarters. District Directors should implement the SOP as soon as it is finalized. The SOP will be considered finalized upon submission of the informational copy to HQ. District Directors should review the results of their local SOPs 90 days after their execution, and periodically after that, to ensure that the SOP is achieving the objectives of this memorandum and to make any necessary adjustments.

Accordingly, the AFM is revised as follows:

1. Chapter 10.3 of the AFM is revised by adding a new section (i) to read:

10.3 General Adjudication Procedures

* * *

(i) Coordinating with ICE on the adjudication of applications and petitions involving individuals in removal proceedings.

Upon notification from ICE that an application or petition pending with USCIS for an individual in removal proceedings must be adjudicated to allow the removal case to move forward, each USCIS field office will endeavor to complete action on the relevant

petition or application within 30 calendar days of receiving the necessary A-file(s) if the individual is detained and within 45 calendar days of receiving the A-file(s) if the individual is not detained. If the next hearing in the removal case is scheduled within the 30- or 45-day time frame, USCIS will work with ICE, to the extent possible, to complete action on the petition or application before the hearing date. Field offices will maintain communication with ICE regarding the progress and status of the case.

USCIS will adjudicate all applications and petitions subject to this memorandum according to existing laws, regulations, and USCIS policy, including as they pertain to USCIS's fraud detection and national security responsibilities. If acting on ICE's request to adjudicate a particular application or petition might compromise those responsibilities or adherence to any law, regulation, or policy, USCIS will notify ICE that the adjudication will not be completed within the 30- or 45-day time frame and will keep ICE further apprised about the status of the case.

To the extent ICE currently coordinates directly with USCIS Service Centers with respect to applications and petitions pending at the Service Centers, this guidance does not supersede or amend those arrangements. For example, ICE currently works directly with the Vermont Service Center (VSC) Victims and Crime Unit to expedite processing of self-petitions under the Violence Against Women Act (VAWA), T nonimmigrant applications for victims of trafficking, and U nonimmigrant petitions for victims of certain crimes.

- ☞ 2. The AFM Transmittal Memoranda button is revised by adding, in numerical order, a new entry to read:

AD 11-16 02/04/2011 Chapter 10.3 Adds guidance on coordinating with ICE on the adjudication of applications or petitions involving individuals in removal proceedings

Use

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

Contact Information

Questions regarding the guidance contained in this memorandum should be forwarded to the Field Operations Directorate or Service Center Directorate, through appropriate channels.