

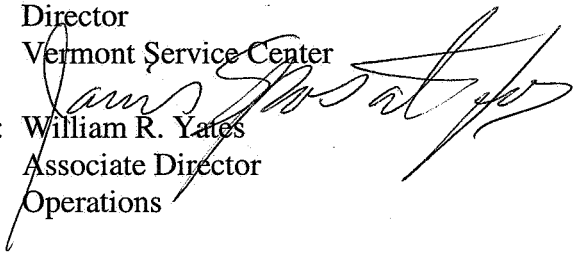


U.S. Citizenship
and Immigration
Services

HQOPRD 70/6.2

Interoffice Memorandum

To: Paul E. Novak
Director
Vermont Service Center

From: 
William R. Yates
Associate Director
Operations

Date: MAY - 6 2004

Re: Assessment of Deferred Action in Requests for Interim Relief from U Nonimmigrant Status
Eligible Aliens in Removal Proceedings

Purpose

Through a memorandum entitled, "Centralization of Interim Relief For U Nonimmigrant Status Applicants," issued on October 8, 2003 (Centralization memo), the U nonimmigrant status interim relief process was centralized at the Vermont Service Center (VSC). That memorandum established guidance for adjudicators in determining eligibility for interim relief, and gave VSC jurisdiction to assess deferred action as part of interim relief in early-filed U nonimmigrant status cases. The memorandum stated, however, that VSC did not have jurisdiction to assess deferred action if the alien making the request is in removal proceedings at the time the request for interim relief is made. The purpose of this memorandum is to clarify that pursuant to an agreement with the Bureau of Immigration and Customs Enforcement (ICE) VSC will now have jurisdiction to assess deferred action in cases where an alien requesting interim relief is in removal proceedings, and to establish the procedure to be followed in such circumstances.

New Procedure

Effective immediately, VSC shall have jurisdiction to assess deferred action for aliens seeking interim relief while in removal proceedings. VSC personnel must continue to first determine whether the alien has adequately demonstrated his/her eligibility to apply for U nonimmigrant status according to the guidelines established in the Centralization memo before determining whether to assess deferred action. Once an individual is determined to have submitted *prima facie* evidence of his/her eligibility to apply for U nonimmigrant status, VSC personnel must then decide whether to exercise discretion and assess deferred action. Prior to making an assessment

of deferred action in a case where the alien is in removal proceedings, VSC personnel must contact through electronic mail the ICE Office of Chief Counsel (OCC) with jurisdiction over the area in which the removal proceedings are being conducted. The ICE Director of Field Legal Operations will provide a list of the points of contact for notification purposes for each Chief Counsel office. These contact lists will be updated on a quarterly basis. The contact shall be made to determine whether there is any adverse information in the alien's file that should be factored into the decision of whether to assess deferred action. The ICE OCC shall review the A-file for any adverse information and respond to VSC within 10 business days. If the ICE OCC determines that the file does not contain information that would factor negatively into a decision whether to assess deferred action and VSC decides to approve interim relief, VSC shall notify the ICE OCC and the Assistant Chief Counsel handling the case of its decision through electronic mail. VSC shall send written notice to the alien, which the alien should present to the appropriate ICE OCC. The ICE OCC shall then terminate removal proceedings on the basis of VSC's approval of interim relief.

If the ICE OCC determines the alien's A-file contains adverse information, the ICE OCC shall FedEx the file or copies of relevant documents to VSC to allow the adjudicating officer to examine that information when determining whether to exercise discretion in an alien's case and assess deferred action. If, after evaluating adverse information, VSC decides deferred action should nevertheless be assessed in the alien's case, VSC shall notify the ICE OCC and the Assistant Chief Counsel handling the case of its decision through electronic mail. The VSC shall notify the alien in writing of its decision. If VSC approves interim relief, the alien should present the written notice to the appropriate ICE OCC. The ICE OCC shall terminate removal proceedings on the basis of VSC's approval of interim relief.

The Office of the Principal Legal Advisor within ICE concurs with this procedure, and will issue written guidance to communicate it to the Offices of Chief Counsel throughout ICE.

Further Information

Personnel with questions regarding this memorandum or other U nonimmigrant status related issues, please contact Laura Dawkins, Office of Program and Regulations Development, by electronic mail.