



U.S. Citizenship
and Immigration
Services

120/9.3

Interoffice Memorandum

To: Prakash Khatri
USCIS Ombudsman

From: Robert C. Divine *Robert C. Divine*
Acting Deputy Director

Date: March 16, 2006

Re: Recommendation to Issue Notices of Action (Form I-797) for Asylum Approvals
Summary

On December 7, 2005, your office recommended that USCIS replace its asylum approval notification and documentation process with a proposed new process in order to enhance security, customer service, uniformity, and efficiency. Your proposed new process requires USCIS to: (1) replace the standard asylum approval letter and stamped Arrival/Departure Record (Form I-94) with the version of the Notice of Action (Form I-797) that includes a detachable Form I-94 and (2) automate generation of this Form I-797.

We accept your recommendation to institute automatically generated Form I-797s for asylum approval notification and will seek to incorporate this new process into our workflow.

Potential Benefits of Recommendation

Currently, an Asylum Officer enters a decision for a final approval in RAPS and uses the Forms Generation Module (FGM) within RAPS to automatically integrate the asylee's biographical and case information into the standard approval letter, which is sent automatically to the officer's personal printer. In a separate process, the officer either prints a Form I-94 using a document-merging program or handwrites the required information on the Form I-94, and then stamps the Form I-94 with a secure asylum approval stamp. We acknowledge that replacing the approval letter and Form I-94 with a Form I-797 that combines both is more efficient.

We also recognize that the Form I-797 is printed on special paper stock and contains security features that are lacking in the current asylum approval letter, which is a form letter signed by the Director of the Asylum Office on plain paper and on USCIS letterhead. With respect to security, the I-797 would therefore be an improvement over the asylum approval letter.

In addition, we agree that replacing the current asylum approval documents with the Form I-797 would promote uniformity across USCIS at least for the short term. It is important to note, however, that in conjunction with the ongoing transformation efforts at USCIS, all USCIS I-series forms, possibly including Form I-797, are scheduled to be replaced beginning later this year. If USCIS implements this recommendation, it will again have to replace the I-797 with its substitute in the near future, if our goal continues to be to promote uniformity throughout the agency in the use of forms.

Finally, we recognize the benefits of increased automation with respect to forms production and will be taking the actions necessary to automate the Form I-797. As explained in the next section, we prefer to rely on our asylum case management system, RAPS, to automatically generate the Form I-797 or I-94. Please note, however, that in the next year to several years, under the banner of transformation, USCIS is aiming to develop a single database for all USCIS benefit applications for the purpose of improving agency-wide case management. This systems overhaul may provide an excellent opportunity to increase automation in ways that were not contemplated in your office's recommendation and may, in fact, render the recommendation obsolete.

Implementation

USCIS must pursue implementation of the recommendation in a way that is viable from both a technical and procedural standpoint. USCIS has considered your office's suggestions to implement this recommendation by generating the I-797 centrally at a Service Center, and, for the reasons set forth below, will seek instead to generate the I-797 through RAPS at the local Asylum Offices.

(1) Preserving a Procedural Safeguard. Currently, as a matter of procedure, asylum decisions -- both asylum approvals and referrals -- are served in person to the applicant.¹ On the interview date, applicants are specifically told by Asylum Officers to return to the office in two weeks to pick up the decision so that in-person service of the decision could be achieved. Between the interview date and the date of decision pick-up, the Asylum Officer conducts the necessary research, applies the relevant law and country conditions to the facts of the case, writes a decision to grant asylum status or refer the case to Immigration Court, and prepares the appropriate documents for decision service. When the applicant returns to the office in two weeks, he or she is served the decision in person.

The mailing out of all asylum approvals, as recommended by your office, is not a viable course of action in this procedural context. First, Asylum Officers would be unable to notify applicants on the interview date whether to return to the office in two weeks to pick up their referrals or await their

¹ Decisions are mailed only to asylum applicants who are in lawful status -- a small percentage of overall asylum applicants.

approvals in the mail, because Asylum Officers would not know in advance what the decision would be without the necessary research and analysis, which they perform in the days following the interview. Second, even if Asylum Officers could decide cases on the interview date and were able to notify applicants to either return to the office to pick up their referral documents or await an approval letter in the mail, there would be very little incentive for applicants to return to the office to pick up their referral notices and the accompanying Notice To Appear (NTA) for removal proceedings. As a result, individuals who are told to return to the office to pick up their referral documents would not likely return, thereby putting the government at risk in the following areas:

- The failure to personally serve NTAs on ineligible asylum applicants would severely impede the government's efforts to remove them. Section 239 of the Immigration and Nationality Act (INA), provides that the written notice of initiation of removal proceedings using Form I-862, NTA, "shall be given in person."² As we asserted in our response to your office's previous recommendation concerning the service of asylum decisions, it is a legal certainty that obtaining proof of personal service places ICE in a stronger position if sufficiency of service of an NTA is contested in removal proceedings. The simple service of referral documents would become an ordeal in many sensitive cases if individuals did not appear at Asylum Offices to pick up their referral notices and NTAs.
- If individuals do not appear at Asylum Offices to pick up their referral documents, Asylum Offices would lose the opportunity to take appropriate security-related actions, including coordination with U.S. Immigration and Customs Enforcement and other law enforcement agencies, on applicants who warrant apprehension based on the results of one or more security checks. Especially with regard to cases in which the Asylum Office does not learn of an adverse national security or law enforcement issue until after the interview, the decision pick-up appointment provides the Asylum Office with the time to gather and consider the greatest range of available information and to coordinate with law enforcement agencies if decisive action must be taken at the time of the in-person decision service.
- The mailing of all approvals may also have an adverse impact on genuine asylum seekers who are vulnerable to exploitation by unscrupulous preparers. These preparers file asylum applications under postal addresses that only they control, allowing them to leverage approval notices to extort additional fees from the asylum seekers or otherwise mistreat asylum seekers and misuse approval notices.

To preserve the integrity of the affirmative asylum process and the key procedural safeguards established by the 1995 reforms, USCIS will seek to implement automation of the Form I-797 locally at the Asylum Offices to enable in-person service of decisions.

(2) Preserving Important Asylee Benefit Information. Currently, the asylum approval letter describes in three pages the benefits that will furnish asylees with the information needed to obtain economic and social self-sufficiency. For example, the approval letter describes the programs offered by the Office of

² INA § 239(a)(1).

Refugee Resettlement (ORR) and the process for obtaining employment. We provide this detailed information on the premise that applicants have a higher probability of obtaining employment if the information about it is included as part of their decision packets. If applicants never learn of these benefits, they are much more likely to seek public assistance. In fact, the relatively low cost of including this detailed information in the approval packet pales in comparison to the likely public economic burden that would accompany the failure to acquire employment benefits.

The approval packet is the principal source of information regarding other important asylee benefits as well. The current asylum approval letter describes the applicant's ability to petition for immediate relatives who may continue to be at risk of persecution. The omission of this information from the approval letter may delay dependant processing and could unintentionally endanger immediate family members remaining in the country of persecution. The approval letter also informs applicants of the steps for receiving state-issued identification, which is important to law enforcement and rudimentary to establishing a life in a new community. Other essential benefits described in the approval letter include instructions on adjusting to legal permanent resident status and the duration of stay. Feedback from advocacy community and non-governmental organizations confirms that the provision of this information in the approval letter is a critical service to asylees.

USCIS believes that it can add the automated, secure I-797 to the asylum approval packet without eliminating the important service of providing detailed asylee benefit information. USCIS will seek to modify RAPS FGM so that it will generate a standard, one-page approval notification on Form I-797, which will be produced on secure Form I-797 paper at the Asylum Offices. At the same time, USCIS will retain its RAPS FGM-generated three-page approval letter describing the asylee benefits outlined above. While the one-page standard Form I-797 will convey, in only the essential terms, the fact that the individual has been approved for asylum status and will have a detachable I-94 on the bottom right hand corner, the complementary approval letter will provide the details of the asylum decision and information to lead the applicant through a successful transition in the United States. This implementation strategy will also eliminate the need to build a new interface between RAPS and CLAIMS 4 or re-engineer USCIS Service Center processes.

Conclusion

We agree that adoption of automatically generated I-797s for asylum approval notifications will enhance processing by adding security, efficiency, customer service, and uniformity to the current system. We will pursue automation of Form I-797 through RAPS FGM, which will allow I-797s to be produced on dedicated printers at each Asylum Office location. This approach would allow USCIS to preserve important asylee benefits information in the approval notification as well as to retain the critical in-person service of decisions, as established by the 1995 asylum reforms.

cc: Michael Jackson, Deputy Secretary