



U.S. Citizenship
and Immigration
Services

HQ 70/11, 70/12
AFM Update AD07-05

Interoffice Memorandum

TO: Service Center Directors
National Benefits Center Director
Office of Refugee, Asylum and International Operations Director
Regional Directors
District Directors
Field Office Directors

FROM: Donald Neufeld /s/
Acting Associate Director
Domestic Operations

DATE: June 1, 2007

RE: Removal of the Standardized Request for Evidence Processing Timeframe
Final Rule, 8 CFR 103.2(b)

Significant Revision to *Adjudicator's Field Manual (AFM)*
Chapters 10.5(a), (b); New Appendix 10-9 (AFM Update AD07-05)

On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) published "Removal of the Standardized Request for Evidence Processing Timeframe" in the *Federal Register* (FR) as a final rule. 72 FR 19100. This rule will become effective 60 days after publication in the *Federal Register*, on June 18, 2007.

1. Summary

In a significant change, the final rule clearly requires applicants and petitioners to file complete applications with all supporting initial evidence. In addition, USCIS will have the option to deny incomplete applications, though it will exercise this option judiciously.

The final rule permits USCIS to assign flexible times for applicants and petitioners to respond to a Request for Evidence (RFE) or to a Notice of Intent to Deny (NOID). The rule removes the fixed time of 12 weeks to respond to an RFE.

The maximum response time for an RFE continues to be 12 weeks and 30 days for a NOID. The rule precludes extensions of time to submit evidence beyond the 12-week maximum limit for

RFEs or the 30-day maximum limit for NOIDs, or beyond a shorter response time set by USCIS. The rule modifies when USCIS must issue an RFE or NOID before denying an application or petition. Nonetheless, the rule does not eliminate the general requirement that a petitioner or applicant be provided with the opportunity to review and rebut derogatory information of which he or she is unaware.

The significant amendments to the RFE process appear in 8 CFR 103.2(b)(8), (b)(11), and (b)(13), revised Chapters 10.5(a), (b), and new Appendix 10-9 of the *Adjudicator's Field Manual (AFM)*.

2. Contact

This guidance is effective as of June 18, 2007. USCIS personnel with questions regarding this memorandum should raise them through appropriate channels to Rodger Pitcairn in the Office of Regulation and Product Management.

3. Adjudicator's Field Manual (AFM) Updates

Chapter 10.1(c) is revised as follows:

Chapter 10.1(c) Receipting and Acceptance Processing. [[Chapter 10.1\(c\) update effective June 18, 2007.](#)]

(c) Initial Evidence Requirements. Certain requirements must be met before USCIS may consider an application or petition for possible approval. The instruction sheet for an application or petition includes requirements for proper filing of each type of application or petition. Every application or petition, regardless of the benefit sought, must include complete information in all required blocks, be signed, and – unless the fee is waived – include the correct fee.

If an application or petition lacks the required initial evidence, USCIS may deny the incomplete application or petition, though adjudicators are urged to exercise this option judiciously, or issue a request for evidence (RFE). USCIS may assign flexible times for applicants or petitioners to submit a response to an RFE. See Appendix 10-9. However, the maximum time to respond cannot exceed 12 weeks. 8 CFR 103.2(b)(8)(iv).

If an applicant or petitioner does not respond to an RFE by the required date, USCIS may:

- Deny the application or petition as abandoned; or
- Deny the application or petition on the record; or
- Deny the application or petition for both reasons.

8 CFR 103.2(b)(13)(ii).

Note: See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

Chapter 10.3(f) is revised as follows:

10.3 General Adjudication Procedures.

* * *

(f) Inspection of Evidence. [Chapter 10.3(f) update effective June 18, 2007.] The adjudicator can give a petitioner or applicant an opportunity to inspect and rebut adverse evidence used in making a decision. Prior to denying any application or petition based on such evidence, USCIS routinely issues a notice of intent to deny (NOID) letter, explaining the nature of the adverse information. The applicant or petitioner may choose to respond in writing or may ask to inspect the record of proceedings prior to submission of a rebuttal.

A NOID must specify the date by which a response must be received and instruct the applicant or petitioner that a failure to respond may result in a denial. The maximum time to submit a response to a NOID is 30 days. There are no extensions of time beyond the 30 day limit. 8 CFR 103.2(b)(8), (16).

Note: See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

Chapter 10.5 is revised as follows:

10.5 Requesting Additional Information. [Chapter 10.5 update effective June 18, 2007.]

(a) General.

(1) Reasons for Requesting Additional Information. USCIS issues written notices in the form of a request for evidence (RFE) to request missing initial or additional evidence from applicants or petitioners who filed for immigration benefits.

(2) Considerations Prior to Issuing RFEs. RFEs should, if possible, be avoided. Requesting additional evidence or returning a case for additional information may unnecessarily burden USCIS resources, duplicate other adjudication officers' efforts, and delay case completion.

Initial case review should be thorough. Evidence or information not submitted with the application, but contained in other USCIS records or readily available from external sources should be obtained from those sources first rather than going back to the applicant for information or evidence.

In particular, requests for “discretionary” evidence should be carefully considered. For example, a request for tax returns or other financial information as evidence of the viability of the petitioner’s job offer for an “H” petition might be reasonable if the petitioner is a small start-up company, but would be unreasonable if the petitioner is a Fortune 500 company. *AFM* Chapters 32.3(d)(bullet #2), 32.3(g), 32.6(c), and 32.6(d) discuss the types of evidence that may indicate whether an entity is a start-up or an established company.

In short, an adjudicator should strive to request the evidence needed for thorough, correct decision-making. An adjudicator should not “fish” for evidence.

If an RFE is needed, the adjudicator must: (1) determine what evidence is lacking and (2) request that evidence.

Occasionally, the additional evidence may raise unforeseen new questions that the adjudicator could not have identified during initial case review. As noted above, adjudicators can generally avoid this situation by conducting a careful initial case review and then issuing a clearly drawn RFE.

USCIS uses discrete timeframes to manage cases once an RFE response is received, rather than starting the case over or in an effort to make up time lost as a result of initial or additional evidence being missing.

(3) Options in Cases Where Insufficient Evidence Is Submitted. Whenever a case is received with all required initial evidence and the adjudicator cannot decide the case based on the information submitted, there are five options. Each option requires varying degrees of USCIS resources. Thus, adjudicators should carefully evaluate each option. The available options are:

- Perform research using such internal sources as those described in Chapter 14 of this manual;
- Request that the applicant or petitioner submit additional documentary evidence;
- Interview the petitioner, beneficiary, applicant, or other witnesses;
- Conduct – if local office policy allows a field examination (see Chapter 17); and
- Execute an investigation.

(b) Flexible Response Times Permitted When Requesting Additional Evidence.

(1) New RFE Regulations. On April 17, 2007, USCIS published “Removal of the Standardized Request for Evidence Processing Timeframe” in the *Federal Register*. The rule became effective on June 18, 2007.

(2) Flexible Response Times. The new regulations permit USCIS to assign flexible times for applicants and petitioners to respond to a Request for Evidence (RFE). RFE response times will depend on factors such as the type of evidence requested, whether it is easily available, and whether it is initial or additional evidence.

The significant amendments to the RFE process appear in 8 CFR 103.2(b)(8), (b)(11), and (b)(13), revised *AFM* Chapters 10.5(a), (b), and new *AFM* Appendix 10-9. Appendix 10-9 sets forth general timeframes for applicants or petitioners to respond to RFEs.

(3) Maximum Response Times. The maximum response time continues to be 12 weeks for an RFE. Responses are timely filed if they are received by mail no more than three days after the due date, as provided for at 8 CFR 103.5(b). Extensions of time to submit evidence beyond the 12-week limit for RFEs or the 30-day period for NOIDs are not permitted.

(4) Notice of Intent to Deny (NOID). A NOID may be based on evidence of ineligibility or on derogatory information known to USCIS, but not known to the applicant or petitioner. A NOID provides an applicant or petitioner with the opportunity to review and rebut derogatory information of which he or she is unaware.

When a preliminary decision has been made to deny an application or petition based on such derogatory evidence, USCIS must issue a written notice of a NOID to the applicant or petitioner. As noted above, the regulations provide an applicant or petitioner with a maximum of 30 days to respond to evidence upon which a NOID is based.

(5) Eligibility and Ineligibility Procedures.

(i) General.

- If evidence establishes eligibility, USCIS can approve the application or petition.
- If the Immigration and Nationality Act or regulations require an exercise of discretion, USCIS can approve the application or petition only if the evidence establishes eligibility and warrants favorable discretion.
- If the evidence establishes ineligibility, USCIS must deny the application or petition.

(ii) Initial Evidence Submitted But Does Not Establish Eligibility. In this situation, USCIS can deny the application or petition for ineligibility. Alternatively, in its sole

discretion, USCIS may request more evidence to be submitted in the established timeframe, which can be no more than 12 weeks. *AFM* Appendix 10-9 sets general timeframes for applicants or petitioners to respond RFEs.

(iii) Initial Evidence Not Submitted. USCIS can deny the application or petition. Alternatively, in its sole discretion, USCIS may request that the missing evidence be submitted within the established timeframe, which can be no more than 12 weeks. *AFM* Appendix 10-9 sets general timeframes for applicants or petitioners to respond to RFEs.

(6) Applicant or Petitioner Responses to RFEs or NOIDs.

(i) Options. Within the time specified, applicants and petitioners may respond to an RFE or a NOID in one of three ways:

- Submit a complete response containing all requested evidence; or
- Submit a partial response; or
- Withdraw the application or petition.

(ii) Requested Materials Must Be Submitted Together. Applicants or petitioners must submit all requested materials together at one time, along with the original RFE or NOID. However, if an applicant or petitioner submits only some of the requested evidence, USCIS will treat such submissions as a request for a decision on the record.

(iii) Failure to Respond to an RFE or NOID. If an applicant or petitioner does not respond to an RFE or a NOID by the required date, USCIS may:

- Deny the application or petition as abandoned; or
- Deny the application or petition on the record; or
- Deny the application or petition for both reasons.

(iv) Failure to Appear for In-Person Processes. If an applicant or petitioner does not appear for any required in-person process such as an interview or biometrics capture, USCIS shall summarily deny the application as abandoned.

However, USCIS will not deny the application or petition if, by the appointment time, the applicant or petitioner has submitted an address change notification or a rescheduling request, provided that USCIS concludes that the reason for the request justifies the failure to appear.

Chapter 10.11(b) is revised as follows:

10.11 Order of Processing

* * *

(b) Cases Held for Submission of Additional Information. [Chapter 10.11(b) update effective June 18, 2007.] When an application or petition provides insufficient information to make a decision, USCIS may request additional evidence. The request for evidence or notice of intent to deny must be in writing and must specify the type of evidence required. The request must state whether initial evidence or additional evidence is required. Alternatively, the basis for the proposed denial must give the applicant or petitioner adequate notice and sufficient information to respond. The request for evidence or notice of intent to deny must indicate the deadline for response. See 8 CFR 103.2(b)(8).

USCIS may hold the case in abeyance while waiting for the applicant or petitioner to respond. However, the maximum response time for a request for evidence cannot exceed 12 weeks, and for a notice of intent to deny cannot exceed 30 days. Additional time to respond to a request for evidence or notice of intent to deny may not be granted. See 8 CFR 103.2(b)(8).

If USCIS receives a response, or the time to submit a response elapses, the case shall be returned to its original processing place. Returning the file to the original processing place will normally make the case ready for immediate adjudication.

Note: See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

Chapter 11.1(m) is revised as follows:

11.1 Submission of Supporting Documents and Consideration of Evidence.

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(m) Submitting copies of documents. [Chapter 11.1(m) update effective June 18, 2007.]

1. When Originals Required and Photocopies Permitted. Originals of application and petition forms as well as documents issued to support applications or petitions must be submitted unless previously filed with USCIS. Documents typically submitted as originals include: labor certifications, Form DS 2019, medical examinations, affidavits, formal consultations, letters of current employment and other statements.

Official documents issued by USCIS or by the Immigration and Naturalization Service need not be submitted as originals unless required by USCIS.

For other forms of evidence, unless otherwise required by applicable regulations or form instructions, a legible photocopy of any other supporting document may be submitted.

Applicants and petitioners need only submit those original documents necessary to support the benefit sought. However, original documents submitted when not required will remain a part of the record.

2. When USCIS Keeps Originals or Requests Originals. As a general rule, applicants and petitioners should be allowed to keep originals unless the originals are required by regulation to be submitted. If there is reason to question the authenticity of the original document for which a photocopy has been submitted, USCIS may then request the original document.

3. Unsolicited Originals Not Returned Unless Requested. When applicants or petitioners submit original documents that were not required, USCIS will retain the documents and make them part of the record. USCIS retains the originals due to the cost of returning them. However, if an applicant or petitioner submits a written request, USCIS will return the original records.

4. Requested Original or Copy of Document Not Submitted. If an applicant or petitioner does not submit the requested original or copy of the document by the deadline, USCIS may deny or revoke the application or petition. 8 CFR 103.2(b)(4), (5).

Chapter 25.2(d)(3) is revised as follows:

25.2(d)(3) [[Chapter 25.2\(d\)\(3\) update effective June 18, 2007.](#)]

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(3) Request for Evidence. In situations where required initial evidence is submitted but does not establish eligibility, USCIS may deny the petition for ineligibility. 8 CFR 103.2(b)(8)(iii).

Alternatively, USCIS may request more evidence. USCIS may assign flexible times for petitioners to submit a response to a request for evidence (RFE). *AFM* Appendix 10-9 sets general timeframes for applicants or petitioners to respond RFEs. However, the maximum time to respond cannot exceed 12 weeks. 8 CFR 103.2(b)(8)(iv). See *AFM* Chapter 25.2 for instructions regarding receipt of a conditional resident's response to an RFE.

- If an applicant or petitioner does not respond to an RFE by the required date, USCIS may summarily deny the application or petition as abandoned or deny the application or petition on the record. However, it is a better practice for USCIS to deny the application or petition for both reasons.

8 CFR 103.2(b)(13)(ii).

If the questions on the RFE cannot be answered in writing, the petition must be referred for an interview.

Note: See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

Chapter 38.1(e) is revised as follows:

38.1(e) Adjudication Procedures Relating to Initial Applications for TPS Classification.

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(6) Request for Evidence. [Chapter 38.1(e)(6) update effective June 18, 2007.] If the evidence submitted with the initial application was insufficient and did not support an approval, USCIS has decided as a matter of policy that it should send a Request for Evidence (RFE) to the applicant or petitioner. If the petitioner or applicant has a representative, USCIS will send the RFE to the representative. However, the representative must have submitted a G-28, Notice of Appearance of Attorney or Legal Representative; otherwise, USCIS will be unable to send the RFE to the representative.

The request for evidence or notice of intent to deny must indicate the deadline for response. See 8 CFR 103.2(b)(8). The response time may be shorter than 12 weeks for an RFE or 30 days for an NOID, depending on factors such as the type of evidence requested, whether it is easily available, and whether it is initial or additional evidence. However, the maximum response time for a request for evidence cannot exceed 12 weeks, and for a notice of intent to deny cannot exceed 30 days. Additional time to respond to a request for evidence may not be granted. See 8 CFR 103.2(b)(8).

Note: See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

(7) Insufficient Evidence [Chapter 38.1(e)(7) update effective June 18, 2007.] If the applicant or petitioner responds to a request for evidence, but the evidence is insufficient, USCIS will treat the application or petition as a request for a decision on the record. 8 CFR 103.2(b)(11).

Note: See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

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(9) Failure to Respond to RFE. [Chapter 38.1(e)(9) update effective June 18, 2007.]

In some instances, USCIS may issue an RFE that requires various types of evidence including proof of identity. An applicant might, however, fail to respond to the RFE, including the request for proof of identity, by the required date. Consequently, after receiving the background check results of the applicant's fingerprints, USCIS may deny the Form I-821 as abandoned or on the record. However, it is a better practice for USCIS to deny the application or petition for both reasons.

8 CFR 103.2(b)(13)(i).

Note: See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

Appendix 10-9 is added as follows:

Appendix 10-9 Standard Timeframes for Applicants or Petitioners to Respond for Requests for Evidence (RFE) [Appendix effective June 18, 2007]

In compliance with 8 CFR 103.2(b)(8), (11), and (13) the guidelines below provide general timeframes for applicants or petitioners to respond to RFEs. The maximum response time for an RFE remains 12 weeks. These guidelines set forth examples of the circumstances when USCIS will, in the exercise of its discretion, issue an RFE for a period of *fewer than 84 days*. In any case where the RFE is issued by mail, the applicant or petitioner will receive three additional days, as provided at 8 CFR 103.5(b).

The first column establishes categories of circumstances and the second gives the standard timeframe for an RFE response.

USCIS has determined that it is inconsistent with the purpose of Form I-539, Request to Extend/Change Nonimmigrant Status, to permit lengthy response times for RFEs. Therefore, a response time of only 30 days will apply to RFEs related to Form I-539 filings.

Exceptionally unusual applications or petitions may require atypical response times. In all circumstances, adjudicators should try to choose an RFE response timeframe that is appropriate under the facts of the case.

Circumstance	Standard Timeframe (calendar days)
To submit initial evidence that the form requires the applicant or petitioner to file.	30
To submit evidence that Form I-539 (extension of stay or change in status) requires.	30
To submit evidence available in the United States regardless of form type.	42
To submit evidence available from overseas sources regardless of form type.	84

4. **AFM Transmittal Memoranda Revisions.** The *AFM* Transmittal Memoranda button is revised by adding new entries, in numerical order, to read:

<p>AD07-05 [update effective 06-18-2007]</p>	<p>Chapters:</p> <ul style="list-style-type: none"> • 10.1(c) • 10.3(f) • 10.5(a), (b) • 10.11(b) • 11.1(m) • 25.2(d)(3) • 38.1(e)(6), (7), (9) • Appendix 10-9 	<p>This memorandum revises <i>Adjudicator's Field Manual (AFM)</i> Chapters 10.1(c); 10.3(f); 10.5(a), (b); 10.11(b); 25.2(d)(3); and 38.1(e)(6), (7), (9) and adds Appendix 10-9 to reflect the revised request for evidence notice of intention to deny procedures as published in the <i>Federal Register</i> on April 17, 2007. 72 FR 19100.</p> <p>Also, this memorandum revises <i>AFM</i> Chapter 11.1(m) to clarify when applicants or petitioners must submit documents as originals or as photocopies. 72 FR 19100.</p>
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