



U.S. Citizenship
and Immigration
Services

HQOPRD 70/1

Interoffice Memorandum

To: SERVICE CENTER DIRECTORS
REGIONAL DIRECTORS
DISTRICT DIRECTORS
OFFICERS-IN-CHARGE

From: Michael Aytes /s/
Acting Director of Domestic Operations

Date: November 23, 2005

Re: Guidance on Evaluating a Request for the Rescheduling of an Interview and Handling the Failure of an Applicant, a Petitioner, a Sponsor, a Beneficiary, or other Individual to Appear for a Scheduled Interview (AFM Update AD06-01)

1. Purpose

This memorandum provides United States Citizenship and Immigration Services (USCIS) field offices with instructions on evaluating a request for the rescheduling of an interview and handling the failure of an individual to appear for a scheduled interview. This memorandum supersedes any previous guidance addressing these aforementioned issues.

If an individual requests an interview to be rescheduled or fails to appear for a scheduled interview, USCIS field offices are directed to implement immediately the procedures outlined in the "Field Guidance" section of this memorandum and either reschedule the interview or deny the related application or petition accordingly.

2. Background

8 CFR 103.2(b)(9) stipulates that an applicant, a petitioner, a sponsor, a beneficiary, or other individual residing in the United States at the time of filing an application or petition may be required to appear for an interview. With limited exceptions, failure to appear for a scheduled interview results in denial of the related application or petition for abandonment. (See 8 CFR 103.2(b)(13))

USCIS recognizes that an applicant, petitioner, sponsor, beneficiary, or other individual may reasonably fail to appear for his or her scheduled interview, because USCIS receives a

change of address notification after the scheduled interview notice has already been generated and mailed or because USCIS errs in processing a change of address notification.

In addition, an applicant or petitioner may demonstrate good cause for requesting that an interview be rescheduled.

3. Field Guidance

Effectively immediately, USCIS field offices are directed to comply with the following instructions, as set forth in revisions to the *Adjudicator's Field Manual (AFM)*.

1. A new first paragraph is added to subsection (a) of Chapter 15.1, "Interview Policies," of the AFM and reads as follows:

(a) General. In accordance with 8 CFR 103.2(b)(9), an applicant, a petitioner, a sponsor, a beneficiary, or other individual residing in the United States at the time of filing an application or petition may be required to appear for an interview.

2. Subsection (b), entitled "Scheduling Interviews," of Chapter 15.1 is re-designated as subsection (b)(1) and a new subsection (b)(2), entitled "Evaluating Requests for the Rescheduling of Interviews," of Chapter 15.1 reads as follows:

(b)(2) Evaluating Requests for the Rescheduling of Interviews (See 103.2(b)(9))

Prior to the date and time of the interview, an applicant or petitioner may:

(A) withdraw the application or petition; or

(B) request, for good cause, that the interview be rescheduled.

An attorney or representative authorized to act on behalf of the applicant or petitioner may also submit such good cause request for rescheduling the interview.

In order to reschedule the interview, the adjudicator, in his or her discretion, must determine that the applicant, petitioner, beneficiary, or other individual is unable to appear at the scheduled date and time because of circumstances beyond the individual's control. If the adjudicator determines that good cause exists, the adjudicator will reschedule the interview and mail a new interview notice. If the adjudicator determines that no good cause exists, the adjudicator will adjudicate the application or petition as instructed in section (d)(2) of this chapter.

3. A new section is added to Chapter 15.1, “Interview Policies,” of the *AFM*. Chapter 15.1(d) is entitled, “An Alien’s Failure to Appear for a Scheduled Interview,” and reads as follows:

(d) The Failure of an Applicant, a Petitioner, a Sponsor, a Beneficiary, or Other Individual to Appear for a Scheduled Interview

If an applicant, a petitioner, a sponsor, a beneficiary, or other individual fails to appear for a scheduled interview, the adjudicator is directed to comply immediately with the following instructions and either reschedule the interview or deny the related application or petition for abandonment.

(1) Evidence of Request for Rescheduling of the Interview or Notification of Change of Address

(A) Request to Reschedule the Interview. The adjudicator must verify whether the individual required to appear for an interview has requested rescheduling of the interview. If the adjudicator finds a request to reschedule the interview that was submitted prior to the date and time of the interview, the adjudicator should evaluate the request in accordance with the instructions listed in section (b)(2) of this chapter.

(B) Notification of Change of Address. The adjudicator must confirm whether the individual required to appear for an interview has submitted notification of a change of address. The adjudicator is required to:

(1) Check local pertinent electronic systems, such as CLAIMS, and pertinent physical records, particularly the file of the application or petition under consideration and any AR-11 (Change of Address) notices, to verify whether any change of address notification was received before or after the interview notice was sent.

(2) Query the USCIS National Systems AR-11 (Change of Address) database by name and date of birth, A-number, and/or I-94 admission number, if necessary, to confirm whether any changes of address have occurred after the interview notice was generated and mailed.

(3) Contact the National Benefits Center (NBC) by email at NBC Failure to Appear Review, if necessary, to determine if the Service Request Management Tool (SRMT) contains a pending change of address notification.

(4) Reschedule the interview and mail a new interview notice to the new address, if a change of address notification is confirmed.

In contacting NBC, the adjudicator is required to use the SRMT Search Request Form, as found in Appendix 15-3. Where feasible, each office should submit a consolidated list of queries using one SRMT Search Request Form.

(2) Effect of Failure to Appear for an Interview or to Respond to a Request for Appearance. (See 8 CFR 103.2(b)(13))

(A) Adjudication. Except as provided in subsection (B) below, a related application or petition under consideration is abandoned and the adjudicator will deny the related petition or application accordingly if:

(1) an individual fails to appear for a scheduled interview; and

(2) USCIS does not receive the individual's request for rescheduling by the date of the interview, USCIS does not find notification of a change of address, or the applicant or petitioner has not withdrawn the application or petition.

(B) Applicants for Naturalization (See 8 CFR 335.6)

8 CFR 335.6 governs the denial of applications for naturalization when an individual fails to appear for his or her naturalization examination, as required. 8 CFR 335.6 provides that:

(1) An applicant for naturalization is deemed to have abandoned his or her application if he or she fails to appear for the examination pursuant to 8 CFR 335.3 and fails to notify USCIS of the reason for non-appearance within 30 days of the scheduled examination. Such notification must be in writing and contain a request for rescheduling of the examination. In the absence of a timely notification, USCIS may administratively close the application without making a decision on the merits of the application.

(2) An applicant may reopen an administratively closed application by submitting a written request to USCIS within one (1) year from the date the application was closed. Such reopening shall be without additional fee. The date of the request for reopening will be the date of filing of the application for purposes of determining eligibility for naturalization.

(3) If the applicant does not request reopening of an administratively closed application within one year from the date the application was closed, the USCIS will consider that application abandoned and will dismiss the application without further notice to the applicant.

(3) Effect of Withdrawal or Denial Due to Abandonment

(A) General. USCIS acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 CFR 103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new petition or application with a new fee. The priority or processing date of a withdrawn or abandoned application or petition, however, may not be applied to a later application or petition. (See 8 CFR 103.2(b)(15))

(B) Rescheduling of Interviews. When an application or petition was denied based on an individual's failure to appear for a scheduled interview, the adjudicator may reopen the application or petition without charging an additional fee to the applicant or petitioner if the adjudicator confirms that:

(1) a request demonstrating good cause for rescheduling the interview was postmarked, faxed, or received telephonically before the date and time of the scheduled interview but not processed and evaluated by USCIS prior to adjudication of the application or petition; or

(2) a notification of a change of address was received prior to adjudication of the application or petition.

In these instances, the adjudicator should reschedule the interview and mail a new interview notice.

4. The attached SRMT Search Request Form is designated as Appendix 15-3.

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

AD 06-01
[November 23, 2005]

Chapter 15.1
Appendix 15-3

This memorandum revises sections (a) and (b) of and adds section (d) to **Chapter 15.1** of the *Adjudicator's Field Manual (AFM)*. This memorandum also adds **Appendix 15-3** to the *AFM*.

4. Use

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

5. Contact Information

Questions related to this memorandum should be directed to Mark Phillips, Office of Program and Regulations Development, through appropriate supervisory channels.

cc: USCIS Headquarters Directors
U.S. Immigration and Customs Enforcement
U.S. Customs and Border Protection

Attachment

