U.S. Citizenship and Immigration Services

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Memorandum

TO: Asylum Office Directors
                Asylum Office Deputy Directors
                Supervisory Asylum Officers
                Quality Assurance/Training Asylum Officers
                Asylum Officers

FROM: Joseph E. Langlois
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DATE: December 23, 2008

SUBJECT: Revised Credible Fear Quality Assurance Review Categories and Procedures

The purpose of this memorandum is to modify the categories of credible fear determinations that must be sent to the Asylum Division Training, Research, and Quality (TRAQ) Branch for quality assurance (QA) review prior to the issuance of a final determination. In addition, the memorandum announces new procedural requirements for all determinations. These changes will be effective as of December 23, 2008.[1]

These modifications result from a review of the revised QA framework that was implemented in response to the 2005 Report on Asylum Seekers in Expedited Removal by the U.S. Commission on International Religious Freedom (USCIRF Report).[2] More than three years of increased review of credible fear cases has indicated that QA review of both positive and negative determinations has contributed to the quality of the reviewed cases, as well as the overall work product of the offices. The level of quality in decision-making indicates that most positive credible fear determinations do not require QA review by TRAQ before issuance of a final decision. Instead, certain categories of positive determinations will be identified for TRAQ QA review, but will not require holding service of a decision pending a TRAQ response. This post-decision review will inform training efforts by

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[1] . This memorandum supersedes the guidance set forth in Section I of the memorandum entitled "Increase of Quality Assurance Review for Positive Credible Fear Determinations and Release of Updated Asylum Officer Basic Training Course Lesson Plan, *Credible Fear of Persecution and* Torture Determinations," dated April 17, 2006.
[2] http://www.uscirf.gov/countries/global/asylum_refugees/ 2005/february/index.html.

providing information and guidance on common issues, trends, and areas for improvement. The procedural changes announced in section II of this memorandum are designed to remove the potential for procedural bias in favor positive determinations noted by the USCIRF Report.

I.   Quality Assurance Review of Credible Fear Determinations

Background

During initial implementation of the expedited removal process, mandatory Headquarters Asylum Division (HQASM) QA review of positive credible fear determinations was limited to a few categories of cases (e.g., claims involving domestic violence, high profile cases, and cases involving a possible mandatory bar). Upon expansion of expedited removal to certain individuals apprehended between ports of entry ("inland" cases), HQASM initially required QA review of all inland positive credible fear determinations. Following further expansion of the expedited removal process to all border patrol sections and issuance of revised credible fear guidance in the AOBTC lesson plan, HQASM reduced the mandated QA review to half of all positive inland cases (i.e., positive inland determinations with an odd-numbered A-number). HQASM later required review of positive credible fear determinations from ZAR, ZCH, and ZMI with an odd-numbered A-number.

The USCIRF Report noted that the QA and other procedures for negative determinations were more onerous than the procedures for positive determinations, creating a potential bias toward positive determinations. Accordingly, USCIRF recommended applying similar QA procedures to both positive and negative determinations. The Asylum Division implemented this recommendation by increasing QA review of positive determinations. After two years of increased QA review of determinations based on the revised lesson plan, HQASM notes a high level of quality of the credible fear work product in all categories of cases.

Under the new QA review framework, HQASM will continue to review certain key positive determination categories and a sampling of *post-decisional* positive determinations, as discussed below. However, most positive credible fear determinations will not require HQASM review before service of the decision. HQASM will continue to review all negative credible fear determinations to ensure that bona fide asylum seekers are not returned to countries where they may face persecution or torture.

Cases that Require TRAQ Quality Assurance Review Prior to Issuance of a Determination

TRAQ will continue to review all negative credible fear of persecution and torture determinations prior to the service of a determination. Pre-decision review will also continue for high-profile cases (e.g., high-ranking foreign government officials or their family members, or any person whose case has been or is likely to be publicized) and claims involving novel legal issues (as identified by the local office or meeting fact patterns provided by HQASM). Also, the Supervisory Asylum Pre-Screening Officer (SAPSO), Deputy Director, or Director, in his or her discretion, may request TRAQ review of any other cases.

The following is a comprehensive list of credible fear cases that require TRAQ QA review and concurrence **prior** to issuance of a decision:

- Negative credible fear of persecution and torture determinations;
- High-profile cases (e.g., high-ranking foreign government officials or their family members, or any person whose case has been or is likely to be publicized);
- Claims involving novel legal issues (as identified by the local office or meeting fact patterns provided by HQASM); and
- Any case a SAPSO, Deputy Director, or Director believes should be reviewed by TRAQ.

Cases that No Longer Require TRAQ Quality Assurance Review Prior to Issuance of a Determination

Mandatory pre-decision TRAQ QA review is no longer required for other categories of cases. For instance, positive determinations based upon domestic violence, positive determinations based on a credible fear of torture only (negative for persecution), and positive determinations with possible mandatory bars will not require TRAQ review and concurrence before issuance of a decision. In the last two years of QA review of these categories, HQASM has observed closely the asylum office determinations and is confident that all offices appropriately apply existing law and policy.

The following is a list of credible fear cases that no longer require TRAQ QA review and concurrence prior to issuance of a decision:

- Positive inland credible fear of persecution determinations with odd-numbered A-numbers;
- Positive credible fear of persecution determinations with odd-numbered A-numbers within the jurisdiction of ZAR, ZCH, and ZMI;
- Claims based upon domestic violence (e.g., spousal abuse, child abuse, or violence between family members not in a spousal relationship);
- Positive torture claims;
- Positive credible fear determinations that involve a possible mandatory bar.

Procedures for Post-Decision TRAQ Quality Assurance Review of a Sampling of Cases

In addition to negative credible fear of persecution and torture determinations, high-profile applicants, and requested reviews, HQASM will require *post-decisional* review of a sampling of positive credible fear determinations in order to gain an overview of the interviews and to ensure quality and consistency among the offices. For example, the HQASM Credible Fear Quality Assurance Program Manager may request all, or a specific subset, of the credible fear determinations made by a given office during the previous month. The Quality Assurance Program Manager may also request a random sampling of cases generated by APSS, or may request that all offices submit a number of cases falling into a certain category (i.e., all cases with possible mandatory bars).

The selected asylum office(s) and case categories will be announced at the monthly SAPSO conference call and emailed to all SAPSOs. The information will be reflected in the conference call minutes, which will be distributed to the Directors, Deputy Directors, and SAPSOs of each asylum office. After the post-decision review, the Quality Assurance Program Manager will provide feedback to the local asylum office(s) regarding any trends, issues on which follow-up training is

needed, or any HQASM comments or concerns. The asylum office should use this feedback to discuss issues with staff and to inform training programs.

Contact Information

Credible fear determinations requiring TRAQ review should be scanned and sent to the Asylum QA - Credible Fear e-mail address, consistent with current procedures. Please contact the Credible Fear Quality Assurance Program Manager in the TRAQ Branch[3] by telephone prior to submitting any case documentation by fax. Questions concerning quality assurance review of credible fear cases should be submitted to the Asylum QA – Credible Fear inbox.

II.   Procedural Requirements for Credible Fear Determinations

As discussed above, the USCIRF report on expedited removal expressed a concern that the Asylum Division QA requirements and procedures for negative determinations may create an unintended bias toward positive determinations. Through our extensive review of positive credible fear determinations, HQASM has identified certain procedural issues that may contribute to this real or perceived bias. In response to this concern, and in an effort to remove any possible bias toward positive determinations, this memorandum implements two procedural changes, which include identical note-taking formats for positive and negative cases, as well as brief written analyses for both positive and negative cases. These new procedures will assist in minimizing any potential bias in the future. Additionally, these new procedures will provide the best record of the case to assist with meaningful supervisory review.

Credible Fear Notes

Previously, the Credible Fear Procedures Manual required Question & Answer (Q&A) notes for negative credible fear of persecution and torture determinations, but did not require a specific format for positive determinations. This memorandum requires that Q&A notes accompany all credible fear interviews. Interview notes must accurately reflect what transpired during the interview so that a reviewer can reconstruct the interview by reading the interview notes. In addition, the interview notes should substantiate the asylum officer's decision.

Although Q&A notes are not required to be a verbatim record of everything said at the interview, they must provide an accurate record of the specific questions asked and the applicant's specific answers to demonstrate that the APSO gave the applicant every opportunity to establish a credible fear. In doing so, the Q&A notes must reflect that the APSO asked the applicant to explain any inconsistencies as well as to provide more detail concerning material issues. This type of record will provide the SAPSO with a clear record of the issues that may require follow-up questions or analysis, as well as assist the asylum officer in the identification of issues related to credibility and analysis of the claim after the interview. This memorandum does not require that the Q&A notes be reviewed with the applicant as a sworn statement; however, the APSO still must provide to the

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[3] The Asylum Division Contact List is on the AVL at http://z02rsccow12:8080/docushare/dsweb/View/Collection-9872.

applicant a summary of the applicant's claim. This summary may be documented in the Q&A notes with a statement such as the following:

"APSO summarized the case to the applicant as required by Section 3.3 of Form I-870."

Any corrections or clarifications made by the applicant at that point must be documented in the notes.

Brief Assessment

Previously, the Credible Fear Procedures Manual required summaries of the decision for both positive and negative credible fear of persecution and torture determinations, but only required a written analysis for negative credible fear of persecution and torture determinations. This memorandum requires a brief written analysis of the case under the applicable standard for all credible fear determinations. The analysis should not be as thorough as an affirmative asylum assessment, but should include a short summary of the facts relevant to the credible fear determination, as well as a discussion of the reasons supporting the determination. This written analysis will allow the reviewer to determine that the decision was based on neutral, objective factors, and that the law was properly applied.

A sample of the required Q&A notes for a positive credible fear determination, as well as a sample analysis, are attached. The Credible Fear Procedures Manual soon will be updated and posted to the AVL to reflect the changes discussed in this memo.

Contact Information

Questions concerning credible fear procedures should be submitted to the Credible Fear Procedures Program Manager in the Operations Branch.[4]

III. Implementation Date

The new submission categories and procedural requirements set forth in this memorandum will be effective December 23, 2008. The first request for post-decision review will be issued at the end of January, 2009.

Attachment

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[4] The Asylum Division Contact List is on the AVL at http://z02rsccow12:8080/docushare/dsweb/View/Collection-9872.