

Roman, Jacqueline

From: Pecinovsky, Steven <Steven.Pecinovsky@dhs.gov>
Sent: Thursday, January 13, 2011 1:31 PM
To: Ramos, Michelle O; Muttuswamy, Sivaloganathan L
Cc: Roman, Jacqueline; Hopkins, Linda; Cavanaugh, Daniel M
Subject: RE: interview seating issue with AILA attorney, Scott Devore
Attachments: RE: seating for counsel during interviews

Here is the guidance we received last year in March from Field Ops concerning attorney seating during interviews (see attached email from SER and HQ OFO):

Please advise all ISO's under your direction that it is essential to afford attorneys and accredited representatives the option of sitting next to their client whenever possible. The proximity of an attorney or accredited representative to his or her client is to be determined within that relationship, and not by us.

It has also come to my attention that in some USCIS offices, attorneys or accredited representatives are asked to sit in the back of the interview room based on the belief that such seating affords the ISO better control of the interview. This practice must cease immediately. Please talk to your ISO's about proper seating during adjudicative interviews, and the critical importance of USCIS not engaging in behavior that could be perceived as, or have the effect of, undermining the integrity of the attorney/client relationship.

Steven J. Pecinovsky
Chief of Staff
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Approved for release in 2011
by [redacted]

From: Ramos, Michelle O [mailto:michelle.ramos@dhs.gov]
Sent: Thursday, January 13, 2011 1:26 PM
To: Pecinovsky, Steven; Ramos, Michelle O; Muttuswamy, Sivaloganathan L
Cc: Roman, Jacqueline; Hopkins, Linda; Cavanaugh, Daniel M
Subject: RE: interview seating issue with AILA attorney, Scott Devore
Importance: High

Steve, Siva and I will speak to you about this shortly. Siva is with the D10 staff that is visiting our office today.

Michelle Ramos
Supervisory Immigration Services Officer
West Palm Beach, FL
Phone Num. (561) 904-4152

District 10, The Sunshine District

From: Pecinovsky, Steven [mailto:Steven.Pecinovsky@dhs.gov]

Sent: Thursday, January 13, 2011 12:19 PM

To: Ramos, Michelle O; Muttuswamy, Sivaloganathan L

Cc: Roman, Jacqueline; Hopkins, Linda

(b)(6) Subject: interview seating issue with AILA attorney [REDACTED]

[REDACTED] one of our friendly AILA counsel, just raised the issue of seating for counsel during interviews at WPB. He suggested that I contact you to get more information about the interview this morning which he attended.....seated behind his client, even though there were seats available next to his client.

[REDACTED] also has raised concerns about one of the WPB ISOs. Please call at your convenience.

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Busenkell, Kathleen R

From: Duehning, Kelli <kduehnin@fins3.dhs.gov>
Sent: Thursday, December 23, 2010 8:27 AM
To: Busenkell, Kathleen R
Subject: RE: Just an idea...
Attachments: Interaction with Private Attorneys - FINAL 10-14-08.ppt; AFM 15.2 - 15.4 Interview Environment, Officer Conduct, Procedures.doc; AFM - Interviewing - Appendix 15 re Non-Adversarial Techniques.doc

See attached

There is also a video that accompanies the training. I am trying to track that down as well.

Kelli J. Duehning
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From: Busenkell, Kathleen R [<mailto:Kathleen.R.Busenkell@uscis.dhs.gov>]
Sent: Thursday, December 23, 2010 10:12 AM
To: Duehning, Kelli
Subject: RE: Just an idea...

Wonderful. I'll let Justin know.

From: Duehning, Kelli [<mailto:kduehnin@fins3.dhs.gov>]
Sent: Thursday, December 23, 2010 8:11 AM
To: Busenkell, Kathleen R
Subject: Re: Just an idea...

Great suggestion... I will add it to the agenda. :)

Kelli J Duehning
Chief, Western Law Division
US Citizenship & Immigration Serv

----- Original Message -----

From: Busenkell, Kathleen R <Kathleen.R.Busenkell@uscis.dhs.gov>
To: Duehning, Kelli
Cc: Rojas, Kathleen M
Sent: Thu Dec 23 13:01:27 2010
Subject: FW: Just an idea...

Hi Kelli,

Do you think we could include tack on some training about the role of attorneys during interviews?

Thanks,

Katie

From: Geer, Justin S
Sent: Thursday, December 23, 2010 7:54 AM
To: Busenkell, Kathleen R
Subject: Just an idea...

A training idea just popped in my mind and I thought I would communicate...

(b)(5)



Justin S. Geer

Immigration Services Officer

US Citizenship & Immigration Services

US Department of Homeland Security

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Appendix 15-2 Non-Adversarial Interview Techniques.

Editor's Note: Interviews conducted by adjudication officers are non-adversarial in nature (as opposed to a court proceeding involving two attorneys, each representing a particular side before a judge). The following text contains information which has proven to be most useful in conducting non-adversarial interviews, regardless of the type of benefit being sought.

INTERVIEWING PART I: OVERVIEW OF THE NON-ADVERSARIAL INTERVIEW

I. OVERVIEW

An immigration officer will conduct an interview for each applicant, petitioner or beneficiary where required by law or regulation, or if it is determined that such interview is appropriate. The interview will be conducted in a non-adversarial manner, separate and apart from the general public. The officer must always keep in mind his or her responsibility to uphold the integrity of the adjudication process. As representatives of the United States Government, officers must conduct the interview in a professional manner.

The results of the interview hold enormous consequences for the interviewee:

1. The interview may be the only, and frequently is the best, opportunity for the officer to elicit and clarify information upon which a decision is based;
2. The officer's decision, whether an approval or denial, will have a significant impact on the interviewee's life;
3. An applicant or beneficiary wrongly found ineligible for the benefit sought may suffer significant economic or personal consequences.

Due to the potential consequences of incorrect determinations, it is incumbent upon officers to conduct organized, focused, and well-planned, non-adversarial interviews to elicit sufficient facts to make intelligent and well-informed decisions.

II. PURPOSE OF THE INTERVIEW

One of the main tasks of the immigration officer is to interview applicants, petitioners and beneficiaries. The interview is often crucial in the adjudication process and serves the main purpose of gathering information. The officer cannot be passive during the interview; rather, the

officer must elicit all relevant and useful information bearing on the interviewee's eligibility for the benefit sought. "Eliciting" information often means more than simply asking questions and receiving responses. The officer may need to draw forth from the interviewee information that has a bearing on his or her eligibility for the benefit. The officer must gather information in order to:

- Establish the identity of those present at the interview;
- Evaluate the credibility of the interviewee; and
- Make a determination of the applicant or beneficiary's eligibility for the benefit sought.

III. NON-ADVERSARIAL NATURE OF THE INTERVIEW

A. Concept of the Non-adversarial Interview

A non-adversarial proceeding is one in which the parties are not in opposition to each other. This is in contrast to adversarial proceedings, such as civil and criminal court proceedings, where two sides oppose each other by advocating their mutually exclusive positions before a neutral arbiter until one side prevails and the other side loses. A removal proceeding before an immigration judge is an example of an adversarial proceeding, where the Service trial attorney is seeking to remove a person from the United States, while the alien is seeking to remain.

The interview is part of a non-adversarial proceeding. The principal intent of the Service is not to oppose the interviewee's goal of obtaining a benefit, but to determine whether he or she qualifies for such benefit. If the interviewee qualifies for the benefit, it is in the Service's interest to accommodate that goal. On the other hand, if he or she does not qualify for the benefit, it is in the Service's interest to deny the application or petition. Therefore, unlike an adversarial proceeding, the interests of the Service and the applicants are not mutually exclusive. In this determination, the officer is a neutral decision-maker, not an advocate for either side.

The non-adversarial nature of the interview allows the interviewee to present a claim in as unrestricted a manner as possible, within the inherent constraints of an interview before a government official. An interview before a government official may be intimidating for various reasons, including:

- Prior negative experiences with authority figures;
- The differences between the interviewee's culture and the culture of the person conducting the interview; and

- Fear of exposing information of a highly personal or sensitive nature.

B. Points to Keep in Mind When Conducting a Non-adversarial Interview

The officer's role in the non-adversarial interview is to ask questions formulated to elicit and clarify the information needed to make a determination on the petitioner or applicant's request. This questioning must be done in a professional manner that is non-threatening and non-accusatory.

1. The officer must:

a. Treat the interviewee with respect. Even if someone is not eligible for the benefit sought based on the facts of the claim, the officer must treat him or her with respect. The officer may hear similar claims from many interviewees, but must not show impatience towards any individual. Even the most non-confrontational officer may begin to feel annoyance or frustration if he or she believes that the interviewee is lying; however, it is important that the officer keep these emotions from being expressed during the interview.

b. Be non-judgmental and non-moralistic. Interviewees may have reacted to situations differently than the officer might have reacted. The interviewee may have left family members behind to fend for themselves, or may be a member of a group or organization for which the officer has little respect. Although officers may feel personally offended by some interviewee's actions or beliefs, officers must set their personal feelings aside in their work, and avoid passing moral judgments in order to make neutral determinations.

c. Create an atmosphere in which the interviewee can freely express his or her claim. The officer must make an attempt to put the interviewee at ease at the beginning of the interview and continue to do so throughout the interview. If the interviewee is a survivor of severe trauma (such as a battered spouse), he or she may feel especially threatened during the interview. As it is not always easy to determine who is a survivor, officers should be sensitive to the fact that every interviewee is potentially a survivor of trauma.

Treating the interviewee with respect and being non-judgmental and non-moralistic can help put him or her at ease. There are a number of other ways an officer can help put an interviewee at ease, such as:

- Greet him or her (and others) pleasantly;
- Introduce himself or herself by name and explain the officer's role;

- Explain the process of the interview to the interviewee so he or she will know what to expect during the interview;
- Avoid speech that appears to be evaluative or that indicates that the officer thinks he or she knows the answer to the question;
- Be patient with the interviewee; and
- Keep language as simple as possible.

d. Treat each interviewee as an individual. Although many claims may be similar, each claim must be treated on a case-by-case basis and each interviewee must be treated as an individual. Officers must be open to each interviewee as a potential approval.

e. Set aside personal biases. Everyone has individual preferences, biases, and prejudices formed during life experiences that may cause them to view others either positively or negatively. Officers should be aware of their personal biases and recognize that they can potentially interfere with the interview process. Officers must strive to prevent such biases from interfering with their ability to conduct interviews in a non-adversarial and neutral manner.

f. Probe into all material elements of the interviewee's claim. The officer must elicit all relevant and useful information bearing on the applicant or beneficiary's eligibility. The officer must ask questions to expand upon and clarify the interviewee's statements and information contained on the form. The response to one question may lead to additional questions about a particular topic or event that is material to the claim.

g. Provide the interviewee an opportunity to clarify inconsistencies. The officer must provide the interviewee with an opportunity during the interview to explain any discrepancy or inconsistency that is material to the determination of eligibility. He or she may have a legitimate reason for having related testimony that outwardly appears to contain an inconsistency, or there may have been a misunderstanding between the officer and the interviewee. Similarly, there may be a legitimate explanation for a discrepancy or inconsistency between information on the form and the interviewee's testimony.

On the other hand, the interviewee may be fabricating a claim. If the officer believes that an interviewee is fabricating a claim, he or she must be able to clearly articulate why he or she believes that the interviewee is not credible.

h. Maintain a neutral tone throughout the interview. Interviews can be frustrating at times for the officer. The interviewee may be long-winded, may discuss issues that are not relevant to the

claim, may be confused by the questioning, may appear to be or may be fabricating a claim, etc. It is important that the officer maintain a neutral tone even when frustrated.

2. The officer must not:

- Argue in opposition to the applicant or petitioner's claim (if the officer engages in argument, he or she has lost control of the interview);
- Question the applicant in a hostile or abusive manner;
- Take sides in the applicant or petitioner's claim;
- Attempt to be overly friendly with the interviewee; or
- Allow personal biases to influence him or her during the interview, either in favor of or against the interviewee.

IV. COMPONENTS OF AN INTERVIEW

There are several components of an interview. Unless the interview is discontinued, the officer must include each of the components, which are:

1. Pre-interview preparation;
2. Introduction;
3. Oath;
4. Verification of basic biographic information;
5. Testimony;
6. Conclusion.

A. Pre-Interview Preparation

Upon receiving the case file, the officer should prepare for the interview before the interviewee is present. The officer should perform the following tasks:

1. Review the file to:

- Ascertain if the application is complete--if the application is not complete, the discrepancies must be resolved during the interview or through submission of additional documentation after the interview;
- Become familiar with the interviewee's background and claim;
- Identify issues to cover during the interview;

2. Review the background information. If the officer has a need to obtain information about a specific issue that is apparent in the case file, the officer should do so, if time allows and resources exist.

B. Introduction

Each officer will develop his or her own style and technique for handling the introduction component of the interview. The interviewee will probably be feeling anxious about the interview that is about to take place. As soon as the officer meets the interviewee, the officer should attempt to establish a rapport with him or her. This can help to place the other person at ease during the interview so that he will be more comfortable explaining his or her claim. The officer can help alleviate some of the interviewee's nervousness by explaining the process of the interview so that he or she will know what to expect. Whatever the officer's individual style is, the following should be covered in a non-adversarial manner.

1. Greet the parties. The officer should greet the interviewee and others and introduce himself or herself. The officer must verify the identity of the interviewee and all others, checking any identification documents, where appropriate. The officer should determine who may remain at the interview, taking into consideration that some interviewees may be reluctant to provide testimony either in the presence of others due to the sensitive nature of the testimony, or in their absence due to the anxiety of being alone.

2. Explain the purpose of the interview. The officer should explain that the purpose of the interview is to give the interviewee an opportunity to present his or her claim and to allow the officer to gather the information that is necessary to make the correct determination.

3. Explain confidentiality. The officer should explain that the information that the interviewee provides remains within the United States government and is not shared with those outside of the United States government. Interviewees may be hesitant to disclose information if they believe it is not confidential for a variety of reasons. For example, descriptions of past events may be of a highly personal nature.

4. Explain the interview process. The officer should explain that, during the interview, the officer will be asking questions about the applicant or beneficiary's eligibility for the benefit being sought, and that the answers will be written into the file. The interviewee should be told that he or she will be given an opportunity to speak at the end of the interview on matters that he or she believes the officer should know.

5. Explain the interviewee's responsibilities. The officer should explain that the interviewee must:

- Answer questions truthfully and to the best of his or her knowledge;
- Tell the officer if he or she does not know the answer to a question, rather than guess at an answer or supply an answer that he or she thinks the officer wants;
- Advise the officer if he or she does not understand a question; and,
- Ask questions at any time during the interview.

C. Oath

Interviewees must be placed under oath prior to giving testimony. Some persons may have religious objections to using the term "swear" or "so help me God." The officer should adapt the oath to accommodate such objections, ensuring that the interviewee understands that he or she is promising, under the law, to tell the truth. In addition, the interpreter must also be placed under oath. If the same interpreter is used for more than one interview, the interpreter only needs to be placed under oath prior to the first interview.

D. Verification of Basic Biographic and Entry Information

The officer must verify the biographic information that is contained on the application.

1. Information on the application must be verified and updated or corrected if necessary. Information about the applicant, petitioner or beneficiary may have changed between the time

that the application was prepared and the interview, and the changes should be made on the application forms. Any corrections should be done in red ink (and numbered) to differentiate the correction from the original information.

2. Officers must be sure to compare information between the application documents and other documents that the interviewee may have, such as birth certificates, passports, marriage certificates, etc.

E. Testimony

The officer has the affirmative duty to elicit information from the interviewee in a non-adversarial manner.

1. Although the officer must cover all of the information requested in the application or petition, the officer should not simply ask the same questions that are on the form. Instead, the officer must ask questions that give the interviewee a full opportunity to explain in his or her own words the reasons he or she is seeking the benefit.

2. If any information in the form conflicts with the interviewee's oral testimony, or if there are any inconsistencies within the interviewee's testimony, the officer must give him or her an opportunity to explain the discrepancies. The officer must make corrections on the form when necessary, advising the interviewee of the corrections.

3. The officer must pursue all relevant lines of questioning until he or she is certain that all pertinent information has been gathered in order to make a determination on the application or petition.

4. The officer must also allow the interviewee to ask questions as appropriate.

5. The officer must accept any additional relevant and material documents provided by the interviewee in support of his or her claim, although once the claim has been established, he or she may choose not to retain those which amount to "overkill."

6. The officer should close the interview by asking the interviewee if he or she has any additional information that he or she believes is important for the officer to know, anything else he or she would like to state, or any questions he or she would like to ask.

V. TIME CONSTRAINTS

Officers must work under time constraints. Officers may interview as many as 20 or more persons per day, which allows for an average time of as little as 20 minutes per case. The tasks and time involved in completing a particular case may increase due to factors such as a complicated story that takes additional time to fully elicit and difficult issues that may arise during the course of the interview. To be able to successfully accomplish all of the tasks required, officers need to be able to work expeditiously under the time constraints. This includes developing interviewing skills that will enable officer to quickly and efficiently gather all of the information needed to adjudicate the request.

VI. SUMMARY

A. Interview

Interviews should be conducted in a non-adversarial manner by an immigration officer, separate and apart from the public.

B. The Purpose of the Interview

1. Establish the identity of those present at the interview;
2. Evaluate credibility of the interviewee; and
3. Determine the applicant or beneficiary's eligibility for the benefit sought.

C. Points to Keep in Mind When Conducting a Non-adversarial Interview

The officer must:

1. Treat the applicant with respect;
2. Be non-judgmental and non-moralistic;
3. Create an atmosphere in which the interviewee can freely express his or her own claim;
4. Treat each person as an individual;

5. Set aside personal biases;
6. Probe into all material elements of the claim;
7. Provide the interviewee with an opportunity to clarify inconsistencies;
8. Maintain a professional and neutral tone throughout the interview.

The officer must not:

1. Argue in opposition to the claim;
2. Question the interviewee in an adversarial or abusive manner;
3. Take a side in the interviewee's claim;
4. Act in an overly friendly manner with the interviewee;
5. Allow personal biases to interfere with the interview.

D. The Components of an Interview

1. Pre-interview preparation—review the file and perform any necessary research;
2. Introduction—make introductions, explain the purpose and process of the interview, explain roles;
3. Oath—administer the oath to the interviewee(s);
4. Verification of basic biographic and identity information; and,
5. Testimony—elicit testimony, in a non-adversarial manner, regarding the facts that form the basis for the claim; pursue all lines of questioning that have a bearing on the claim; accept additional documents; allow interviewee to ask questions when appropriate.

E. Time Constraints

Officers must work under time constraints and must develop interviewing skills that will enable them to expeditiously and efficiently gather all of the information needed to adjudicate the application or petition.

INTERVIEWING PART II: ELICITING TESTIMONY

I. INTRODUCTION

This segment discusses:

- how to elicit information from an interviewee in a non-adversarial manner;
- how to appropriately elicit necessary information;
- the types of questions to ask; and
- the questioning techniques to use.

When interviewing, the officer controls the interview. However, the officer only has control over his or her own actions, and not those of the interviewee. Therefore, when the interview is not going smoothly, the officer should change his or her own approach, not the interviewee's behavior, to remedy the situation. (However, if the interviewee's behavior is so unacceptable as to preclude an effective interview, an officer may—with supervisory approval—terminate the interview.) Each interview is different and each interviewee is different. The officer must be aware at all times of the direction in which the interview is proceeding, and change the direction by adjusting questioning techniques when necessary in order to obtain all necessary information about the claim. This discussion will help officers identify their own style of interviewing, learn new interviewing techniques, and adapt interviewing techniques to fit each interview.

II. OVERVIEW

A. Goals

Using the application or petition and the supporting documents for background information, the officer must conduct the interview with the following goals in mind:

1. To give the interviewee an opportunity to relate the information contained in the application or petition in his or her own words;

2. To give the interviewee an opportunity to provide additional information that is not in the form in order to provide the officer with a complete understanding of the events that form the basis of the claim;

3. To have the interviewee address any inconsistencies:

- within the application or petition and the supporting documentation,
- between the form and the oral testimony,
- between the claim and known information (or logic), and
- within the interviewee's testimony; and

4. To find out if the applicant, petitioner or beneficiary participated in any activities that would result in a denial of application or petition (e.g., if an I-130 petitioner had previously engaged in marriage fraud or if an adjustment applicant is inadmissible to the United States).

15.2 Interview Environment.

It is essential that the person being interviewed appreciate the importance and seriousness of the proceedings. To ensure this, the setting in which the interview takes place must be orderly and official in appearance. Desk tops should be uncluttered and files should be housed in cabinets. Flags, USCIS and DHS seals and other official displays can enhance the official appearance. Excessive amounts of personal items should not be displayed in view of applicants as these may be distracting or detract from the serious nature of the proceedings.

Because Adjudications units in local USCIS offices are generally very busy with a high volume of applicants appearing for adjustment, naturalization, marriage fraud and conditional resident removal interviews, it is essential that adequate office space be provided for each district adjudications officer. Ideally, individual offices or high-walled, acoustically insulated, modular offices with doors should be provided to ensure a reasonable level of privacy. Offices should be equipped with video or audio taping devices. If the district lacks sufficient recording equipment, arrangements should be made to provide such equipment for, at least, the most difficult cases. Each work station should be provided with sufficient storage space for files, supplies, research materials and personal items, so that the office remains uncluttered. Sufficient seating for the officer and applicant, attorney and family members should be provided. Acoustical ceiling tiles or other sound dampening material should be installed to minimize noise from other interviews and protect the privacy of each applicant. Lighting and ventilation should be adequate for a pleasant, comfortable and efficient working environment. Handicapped access should be available in at least some work stations. A public waiting area should be reasonably proximate to the interview area to minimize lost time between interviews.

15.3 Officer Conduct and Appearance.

(a) Appearance. It is imperative that the officer conducting the interview dress in a professional manner. Both males and females should wear appropriate business attire, although some offices may permit "business casual" attire on certain days.

(b) Conduct and Attitude. All interviews should be conducted in a courteous and businesslike manner. The following guidelines will ensure that the interview is conducted professionally:

- Maintain control of the interview at all times. "Maintaining control" does not mean being overbearing or abusive; on the contrary, it requires that the officer maintain a professional demeanor at all times. The exact nature of that professional demeanor will sometimes vary, according to the interview techniques being employed (see below). The ability of the officer to maintain control of him/herself is instrumental in maintaining control of the interview.
- Speak clearly, distinctly and not too rapidly, using plain and simple language when questioning an applicant, petitioner or witness. Avoid complex and lengthy questions, and always obtain a responsive answer before proceeding to the next questions. Avoid USCIS jargon.

- At all times maintain due regard for the rights of the person being questioned.
- Avoid arguments with the person being interviewed, as well as remarks of personal nature that may be taken as a reflection of a judgment of a personal lifestyle.
- Refrain from making any extraneous comments, as they are irrelevant to the purpose of the interview and detract from the professional demeanor the officer should maintain. Do not make any comments which might be taken as a negative reflection upon any other person, race, religion, or country.
- Maintain professional conduct even if the interviewee becomes abusive or if derogatory information is developed.
- Be fair, courteous, and patient without diminishing in any degree full and complete development of the material facts, whether they be favorable or adverse to the person being interviewed or any other person.
- When questioning persons concerning sexual relations, always avoid questions which can be construed solely as prurient or prying.
- Ensure that your demeanor is unprejudiced, impartial, and creates no foundation for complaints that you have been unfair or have used any mistreatment or duress.

15.4 Interview Procedures.

(a) Basic Interview Procedures and Techniques. Conducting successful interviews and interrogations is a skill which requires knowledge and experience. Successful approaches will vary widely depending on the interviewer, the interviewee, and subject and purpose of the interview. Certain standards (such as those relating to the rights of the individual and the need for professionalism) remain constant, others change according to the circumstances. The following observations apply to all interviews:

- The successful interview process begins when USCIS issues a call-in notice. In addition to accurately explaining the purpose of the interview, the notice should instruct the attorney (or in an unrepresented case, the interviewee(s) themselves) on what to bring to the interview. In all cases, the notice should at least instruct the attorney / interviewee(s) to bring the originals of all

documents previously submitted as photocopies. (Whether the interviewing officer chooses to examine them during the interview or not, the original documents should be available.)

- Do not commence an interview, even though time may be limited, until you have reviewed the application or petition and relating material. Depending upon the case, this may range from a rapid scanning of the file to an intensive study of all available material. However, it is essential that the review of the material be made before commencing the questioning in order that the adjudicator will have the requisite knowledge and understanding of all the facts and circumstances involved in the case. Otherwise, the questioning may not cover all pertinent points. The review should be sufficiently thorough to enable the adjudicator to cover all issues necessary for an adjudication, thereby avoiding any need for recalling the applicant, petitioner, or witness for further questioning on an issue which could have been covered during the initial interview. Review of the applicable provisions of the law and precedent decisions also should be made, if necessary, to insure thorough familiarity with any legal issue involved which is to be developed by questioning. The more complete the preliminary preparation of the case prior to beginning the interview, the better equipped you will be to conduct an efficient interview, without time-wasting repetition, needless questions, or illogical rambling.

- If complex issues are involved, prepare an outline of the logical sequence of questioning to be followed, the information to be developed, and the evidence to be utilized. Such outlines are most conducive to eliciting all essential facts. Additionally, it may be advisable to select certain material from the file or relating files and arrange such material in the sequence of the plan of questioning. The extent of preliminary preparation necessary depends upon the issues involved in the individual case.

- In "marriage fraud" interviews or certain other types of cases where more than one individual is to be questioned, it is generally best to question each party separately, asking each party several of the same questions in order to identify discrepant answers. It may be necessary to recall the first party for further questioning after the second party provides discrepant answers. In other types of interviews, an entire family group may be interviewed collectively.

- Interview proceedings are not to be adversarial in nature. The purpose of the interview is to obtain the correct information in order to make the correct adjudication of the case, not to prove a particular point or to find a reason to deny the benefit sought. The purpose is to cover (and discover) all the pertinent information, both favorable and unfavorable to the applicant.

- Greet the interviewee in a polite, dignified manner to put him or her at ease.

- Identify yourself, giving name and title.

- Begin the interview with an explanation in non-technical terms of the purpose of the interview.
- Obtain identification from all parties to the interview including interpreters and attorneys, unless identity has been previously established.
- Administer the following oath: "Do you solemnly swear (or affirm) that the statements you are about to make will be the truth, the whole truth, and nothing but the truth?"

The oath or affirmation should always be administered in such a manner as to impress upon the person being interviewed the solemnity of the occasion and the importance of the testimony which he is about to give. The adjudicator and the person(s) to be sworn or affirmed should stand and raise their right hands during the administration of the oath or affirmation. The fact that the interview is being conducted under oath or affirmation should be noted in the transcript or in the file. If a verbatim question and answer statement is taken, the exact wording of the oath or affirmation should be included in the transcript. If such statement is not taken, the memorandum record of the interview should show that the person was under oath or affirmation.

- In a case where there is reason to believe that a witness under oath has given or may give false testimony, it may be advisable to inform the subject that willfully giving false testimony on a material matter under oath constitutes the crime of perjury, and that a person convicted of perjury is subject to a penalty of a fine, imprisonment or both. (However, see the comment below about challenging every false statement immediately.)
- It should be kept in mind that all questions are either "closed-ended" or "open-ended". Closed-ended questions (such as "Have you ever been arrested?") call for specific, factual and usually brief responses. Open-ended questions ("Tell me about any arrest you have had.") solicit views, opinions, thoughts and feelings and generally call for longer, narrative-type responses. They are normally of much greater usefulness in assessing an individual's credibility and for eliciting statements which may later be supported and contradicted. Generally, leading questions (such as "You have never been arrested?") which assume a controversial fact or suggest the answer (usually "yes" or "no") should be avoided except to expedite obtaining preliminary identifying material.
- Persons being questioned should be permitted to give a full explanation of any issue involved in the case. Fairness requires consideration of all relevant evidence. In some instances, detailed questioning may be desirable in order to make it more difficult for the subject to disavow his statements at a later time or to fabricate a new story. In this connection, however, remember that an adjudicator is duty-bound to develop the facts, favorable as well as unfavorable, with equal fairness to the subject and to the interests of the Government.

- Should the interviewing officer be required to leave the office for any reason during the interview, the relating file(s) should be removed to avoid unauthorized review during the officer's absence.
- An alien, or attorney with a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28), may request a personal review and/or copy of the record of proceedings, including any written record of an interview conducted before a USCIS officer. The requesting party may file a Freedom of Information/Privacy Act Request (Form G-639) with USCIS to gain access to other record material.

[See also Appendix 15-2, Techniques for Interviewing and Preparing Sworn Statements.]

(b) Terminating the Interview. An adjudicator should not unnecessarily prolong an interview, but should terminate it when all necessary information has been elicited. The subject(s) should be thanked for cooperating and providing information.

On some occasions it may be necessary to terminate an interview even though all essential information has not been elicited. The most common reasons for such a termination are:

- The interviewee is unable to communicate without an interpreter and one is not available.
- An interpreter clearly has difficulty in translating effectively.
- The officer has reasonable doubts about either the ability or impartiality of an interpreter supplied by the interviewee, and a USCIS or DHS interpreter is not immediately available.
- An attorney insists on responding to questions or coaching the person being interviewed.
- The subject refuses to respond to questions essential to the successful completion of the interview.

The interviewing officer should explain the reason(s) for the termination. When appropriate, the interview should be rescheduled and (if needed) arrangements made for a competent interpreter. If the subject(s) or representative insists on continuing, a supervisor should be informed of the reason for the termination. It is the responsibility of the supervisor to determine if termination is warranted and to deal with the subject(s) and/or representative if they refuse to accept an unfavorable determination.

(b)(5)

Busenkell, Kathleen R

From: Busenkell, Kathleen R
Sent: Thursday, April 14, 2011 7:13 AM
To: Gulick, David
Subject: RE: Field Interaction with Attorneys and Representatives

Mr. Gulick,


-Katie

From: Gulick, David
Sent: Thursday, April 14, 2011 6:16 AM
To: Haith, Walter L; Gee, Charlotte; Miyasato, Dianne; Materne, Rose G
Cc: Busenkell, Kathleen R; Brehm, Kelly; Chow, Rori; McCain, Patrick H
Subject: Fw: Field Interaction with Attorneys and Representatives

For your information and compliance.

David G. Gulick
District Director
District 26
Hawaii, Guam, Northern Mariana Islands

Sent from my BlackBerry Wireless Handheld

From: Muzyka, Carolyn L
Sent: Thursday, April 14, 2011 10:49 AM
To: Arellano, Jane; Booe, Jim C; Corsano, Anne Arries; Crider, Larry; Curda, Susan M; Gulick, David; Kentfield, Lynn; Kramar, John; Pierre, Paul M; Rust, Maureen; Woo, Ellen Y; Young, Korie A
Subject: FW: Field Interaction with Attorneys and Representatives

DDs,

Please ensure that your field offices are aware of and in compliance with the guidance below.

Carolyn

From: Monica, Donald J [mailto:djmonica@fins3.dhs.gov]
Sent: Thursday, April 14, 2011 5:27 AM
To: Renaud, Tracy L; Upchurch, Evelyn M; Muzyka, Carolyn L; Redman, Kathy A; Goodwin, Shelley M; Garman, Gary G; Booe, Jim C; Tierney, Terry
Cc: Pietropaoli, Lori; Dominguez, Kathy; Harrison, Julia L; Cowan, Robert M; Robinson, Terri A
Subject: Field Interaction with Attorneys and Representatives

Field Leadership:

Please disseminate the following to all personnel who interact with attorneys and representatives.

We have received reports that several offices appear not to be in compliance with current USCIS practice when dealing with attorneys and representatives. Although Section 12 of the Adjudications Field Manual (AFM) related to this topic is being revised and is unavailable, several pieces of guidance are available including:

1. Section 15 of the AFM includes the following:

Role of Attorney or Representative in the Interview Process.

Frequently an attorney will be present to represent a subject. The following rules should be followed when the person being interviewed is accompanied by legal counsel:

- Interviewing officers should verify that a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) is part of the record.
- The attorney's role at an interview is to ensure that the subject's legal rights are protected. An attorney may advise his client(s) on points of law but he/she cannot respond to questions the interviewing officer has directed to the subject. The attorney's role is even more restricted with regard to a sworn statement taken from an applicant for admission in conjunction with removal proceedings to determine admissibility, where the alien has not yet legally entered the United States.
- Officers should not engage in personal conversations with attorneys during the course of an interview.

2. Our public website has a summary of a Stakeholder meeting held in May 2010 and includes the following:

Role of the Attorney/Representative

Stakeholders continue to be concerned about how some attorneys are treated by USCIS adjudicators in the context of benefit interviews, particularly with regard to seating arrangements. FO leaders agree that, barring safety or security concerns, attorneys and/or accredited representatives should be able to sit next to their clients during benefit interviews. We are working on guidance to address concerns expressed by stakeholders and will post it once available on the USCIS website.

If an attorney or accredited representative feels that an adjudicator is asking inappropriate questions during the interview, they should ask to speak with a supervisor. USCIS has spent a considerable amount of time training the ISOs on interview techniques; the FO Directorate also has a quality assurance process on test administration to identify and address issues of concern.

The Agency respects the attorney-client relationship and asks that attorneys and accredited representatives likewise respect USCIS staff in the context of benefit and other interviews/interactions. Future guidance will address how ISOs should report instances involving perceived inappropriate conduct by attorneys and/or accredited representatives and also the reverse (i.e., how attorneys and/or accredited representatives should report perceived inappropriate behavior by ISOs).

3. Repeated below (although slightly edited) is an email from then Associate Director for Field Operations Debra Rogers which is still in effect.

Regards,
Donald J. Monica
Acting Associate Director
Field Operations

From: Rogers, Debra A
Sent: Thursday, March 18, 2010 11:04 AM:

Dear Field Operations Leadership Team:

I want to bring to your attention an issue of concern that was raised yesterday. Several in attendance at [the USCIS] stakeholder meeting noted their experience of not being treated properly during client interviews. In particular, stakeholders maintained that attorneys and/or accredited representatives are not allowed to sit beside their clients in some field offices. I found this information troubling and at first doubted its veracity. To my surprise, however, it appears this practice is fairly standard in some USCIS offices.

Further, the practice has been reinforced by an interviewing techniques module delivered at ISO BASIC training. Officers are taught that an attorney or accredited representative accompanying an applicant should be seated "next to or behind" the applicant. In speaking with the training coordinator, I was informed that this directive was designed to address space constraints and the requirement that some interviews be video-taped. The training material advises that the applicant must always sit in front for full visibility, which is why attorney placement depending on the size and shape of the interview room can vary. This guidance will be removed from BASIC training and replaced with a more appropriate message.

Please advise all ISO's under your direction that it is essential to afford attorneys and accredited representatives the option of sitting next to their client whenever possible. The proximity of an attorney or accredited representative to his or her client is to be determined within that relationship, and not by us.

It has also come to my attention that in some USCIS offices, attorneys or accredited representatives are asked to sit in the back of the interview room based on the belief that such seating affords the ISO better control of the interview. This practice must cease immediately. Please talk to your ISO's about proper seating during adjudicative interviews, and the critical importance of USCIS not engaging in behavior that could be perceived as, or have the effect of, undermining the integrity of the attorney/client relationship.

Any concerns regarding disruptive behavior by a particular attorney or accredited representative should be raised through appropriate channels within the Office of the Chief Counsel.

Thank you for your hard work and dedication.

Debbie

Debra Rogers
Associate Director
Field Operations
USCIS

(b)(5)

Busenkell, Kathleen R

From: Busenkell, Kathleen R
Sent: Friday, April 29, 2011 10:39 AM
To: Duehning, Kelli (Kelli.Duehning@uscis.dhs.gov); Rojas, Kathleen M
Subject: How to Interact with Private Attorneys

Ladies,

At yesterday's training on How to Interact with Private Attorneys, a few questions came up. These questions might be better for Rachel McCarthy – but I thought I would start with you.

1.



The USCIS website states:

Bringing Friends or Relatives to Your Interview for Support or Representation

DHS recognizes that you may want the assistance and support of a relative, neighbor, clergyman, business associate or personal friend, when appearing before a DHS official. This individual is called a "reputable individual" in the regulations at 8 CFR 292.1(a)(3). A reputable individual may not file Form G-28. Instead, they must submit a statement to the DHS official with the information required in the regulation. Please note that the DHS official may, or may not, permit the reputable individual to appear at your interview.

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=f3bc9ddf801b3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=f3bc9ddf801b3210VgnVCM100000b92ca60aRCRD>

2.



Thanks,
Katie

Kathleen Busenkell

Associate Counsel, District 26
Western Law Division
500 Ala Moana Blvd., STE 2-413
Honolulu, Hawaii 96813
(808) 687-6316
(808) 687-6372 (fax)

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(b)(5)

Busenkell, Kathleen R

From: Busenkell, Kathleen R
Sent: Monday, May 02, 2011 8:22 AM
To: Gee, Charlotte; Haith, Walter L
Cc: Gulick, David
Subject: FW: How to Interact with Private Attorneys

Dear Charlotte and Walt,

On Thursday of last week, we had training that covered How to Interact with Private Attorneys. The ISOs had a few follow-up questions, which I directed up my chain of command to Rachel McCarthy, our ethics expert. Below are Rachel's answers to the ISOs' questions.

Please feel free to distribute to the ISOs.

Thank you,
Katie

From: McCarthy, Rachel A [mailto:Rachel.Mccarthy@dhs.gov]
Sent: Monday, May 02, 2011 1:34 AM
To: Duehning, Kelli; Busenkell, Kathleen R; Rojas, Kathleen M; 'Rachel.Mccarthy@dhs.gov'
Subject: RE: How to Interact with Private Attorneys

There is finally some movement on clearing chapter 12 of the AFM so that should help, but there is also guidance in chapter 15 on interactions with attorneys that the district can use as a guide.



Rachel

Rachel A. McCarthy
Disciplinary Counsel
U.S. Citizenship and Immigration Services
Department of Homeland Security
70 Kimball Avenue, Room 103
S. Burlington, VT 05403
(802) 660-1779
(802) 660-5067 (FAX)
website: <http://uscis.dhs.gov/bc/>

(b)(5)

From: Busenkell, Kathleen R
Sent: Friday, April 29, 2011 04:39 PM
To: Duehning, Kelli; Rojas, Kathleen M
Subject: How to Interact with Private Attorneys

At yesterday's training on How to Interact with Private Attorneys, a few questions came up. These questions might be better for Rachel McCarthy – but I thought I would start with you.

1.



The USCIS website states:

Bringing Friends or Relatives to Your Interview for Support or Representation

DHS recognizes that you may want the assistance and support of a relative, neighbor, clergyman, business associate or personal friend, when appearing before a DHS official. This individual is called a "reputable individual" in the regulations at 8 CFR 292.1(a)(3). A reputable individual may not file Form G-28. Instead, they must submit a statement to the DHS official with the information required in the regulation. Please note that the DHS official may, or may not, permit the reputable individual to appear at your interview.

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=f3bc9ddf801b3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=f3bc9ddf801b3210VgnVCM100000b92ca60aRCRD>

2.



Thanks,
Katie

Kathleen Busenkell
Associate Counsel, District 26
Western Law Division
500 Ala Moana Blvd., STE 2-413
Honolulu, Hawaii 96813
(808) 687-6316
(808) 687-6372 (fax)

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Busenkell, Kathleen R

From: Busenkell, Kathleen R
Sent: Thursday, May 05, 2011 7:45 AM
To: Geffert, Barbara R
Cc: Haith, Walter L
Subject: RE: power point
Attachments: Interaction with Private Attorneys - FINAL 10-14-08.ppt

Barbara,

Attached is the power point presentation on How to Interact Private Attorneys. With you have any questions, please let me know. You may also direct questions to Rachel McCarthy, whose information is provided in the presentation.

You may read about accredited representatives under 8 CFR 292.1 or visit the BIA website at <http://www.justice.gov/eoir/statspub/raroster.htm>.

Thank you,
Katie

From: Geffert, Barbara R [<mailto:Barbara.Geffert@dhs.gov>]
Sent: Wednesday, May 04, 2011 6:43 PM
To: kathleen.busenkell@dhs.gov
Subject: power point

Kathleen

Could you please send me the power point on how to handle attorneys, particularly the part about not representing unless you are an accredited rep

Thanks

Barbara

(b)(5)

Busenkell, Kathleen R

From: Rojas, Kathleen M
Sent: Friday, April 06, 2012 10:12 AM
To: Busenkell, Kathleen R; District 24 Duty Attorney; Duehning, Kelli; Rosenast, Margaret A; Kim, Carolyn H; Duggan, Patricia A; Katz, Jonathan E; Healy, Theresa M; McCarthy, Rachel A
Cc: Schmalz, Peter N
Subject: RE: Skype at Immigration interview

d.

Kathleen M. Rojas

Deputy Chief, Western Law Division
USCIS/OCC
(213)830-5006

From: Busenkell, Kathleen R
Sent: Friday, April 06, 2012 12:49 PM
To: District 24 Duty Attorney; Rojas, Kathleen M; Duehning, Kelli; Rosenast, Margaret A; Kim, Carolyn H; Duggan, Patricia A; Katz, Jonathan E; Healy, Theresa M
Cc: Schmalz, Peter N
Subject: RE: Skype at Immigration interview

Hi Lucinda,

-Katie

From: Love, Lucinda **On Behalf Of** District 24 Duty Attorney
Sent: Friday, April 06, 2012 9:40 AM
To: Rojas, Kathleen M; Duehning, Kelli; Rosenast, Margaret A; Kim, Carolyn H; Duggan, Patricia A; Katz, Jonathan E; Healy, Theresa M; Busenkell, Kathleen R
Cc: Schmalz, Peter N; District 24 Duty Attorney
Subject: FW: Skype at Immigration interview
Importance: High

Hi,

Thanks for any thoughts and have a great weekend,

Lucinda Love

Associate Counsel
Western Law Division
DHS|USCIS|Office of the Chief Counsel

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From: Adame, Irene E
Sent: Friday, April 06, 2012 7:47 AM
To: District 24 Duty Attorney
Cc: Sagun, Rebecca J; Hughes, Edward P
Subject: FW: Skype at Immigration interview
Importance: High

Good morning Lucinda,

Applicant's attorney of record is inquiring if he can attend his client's interview via skype. Please advise.

Thanks,
Irene

From: Congressional SND
Sent: Friday, April 06, 2012 7:36 AM
To: Adame, Irene E
Cc: Duvall, James
Subject: Skype at Immigration interview
Importance: High

Irene

We received the inquiry below from Mimi Sanford with Senator Grassley's office in Iowa. The applicant resides in San Diego (no A# provided) and the attorney is located in Iowa (see trail of emails below). They would like to know if the applicant provided a laptop, can the attorney attend the immigration interview via skype?

Rebecca

(b)(6)

From: Sanford, Mimi (Grassley) [mailto:Mimi_Sanford@grassley.senate.gov]
Sent: Thursday, April 05, 2012 2:39 PM
To: congressional.snd@dhs.gov
Subject: FW: Skype at Immigration interview

Mr. Edward Hughes
Congressional Liaison
DHS ~ USCIS
San Diego, CA

Mr. Hughes ~

Please see the e-mail below from immigration attorney, [REDACTED] in Des Moines, Iowa. Could you please review his request?

Any information would be appreciated.

Mimi Sanford

Mimi Sanford
Constituent Services Specialist
U.S. Senator Chuck Grassley
210 Walnut Street, Room 721
Des Moines, Iowa 50309
mimi_sanford@grassley.senate.gov
515.288.1145
515.288.5097 ~ fax

From: [REDACTED]
Sent: Thursday, April 05, 2012 2:49 PM
To: Sanford, Mimi (Grassley)
Subject: Skype at Immigration interview

Dear Mimi:

Could you contact USCIS in DC and find out the following:

I have a client in San Diego who will have an adjustment of status interview on the 17th of April. The client wants me to be present, but the cost of airline ticket, food and hourly rate are high. The client suggested that I participate by Skype. I idea in genius. I looked at USCIS rules, regulation and the handbook but could not find anything any regulation or statement regarding whether or not this was allowed. There is really no difference if I appear by skype or in person. By the way, the client would bring his own laptop and use phone lines to connect with me. So no use of USCIS computer network.

Could you find out what the position of the USCIS in this matter is.



(b)(5)

Busenkell, Kathleen R

From: McCarthy, Rachel A
Sent: Wednesday, April 11, 2012 4:27 AM
To: Rojas, Kathleen M; Busenkell, Kathleen R; District 24 Duty Attorney; Duehning, Kelli; Rosenast, Margaret A; Kim, Carolyn H; Duggan, Patricia A; Katz, Jonathan E; Healy, Theresa M
Cc: Schmalz, Peter N
Subject: RE: Skype at Immigration interview

Kathleen



I also have concerns that can be discussed on a landline.
Rachel

Rachel A. McCarthy
Disciplinary Counsel
U.S. Citizenship and Immigration Services
Department of Homeland Security
70 Kimball Avenue, Room 103
S. Burlington, VT 05403
(802) 660-1779
(802) 660-5067 (FAX)
website: <http://connect.uscis.dhs.gov/orq/OCC/disciplinarycounsel/Pages/default.aspx>

From: Rojas, Kathleen M
Sent: Friday, April 06, 2012 4:12 PM
To: Busenkell, Kathleen R; District 24 Duty Attorney; Duehning, Kelli; Rosenast, Margaret A; Kim, Carolyn H; Duggan, Patricia A; Katz, Jonathan E; Healy, Theresa M; McCarthy, Rachel A
Cc: Schmalz, Peter N
Subject: RE: Skype at Immigration interview



Kathleen M. Rojas
Deputy Chief, Western Law Division
USCIS/OCC
(213)830-5006

From: Busenkell, Kathleen R
Sent: Friday, April 06, 2012 12:49 PM
To: District 24 Duty Attorney; Rojas, Kathleen M; Duehning, Kelli; Rosenast, Margaret A; Kim, Carolyn H; Duggan, Patricia A; Katz, Jonathan E; Healy, Theresa M

(b)(5)

Cc: Schmalz, Peter N
Subject: RE: Skype at Immigration interview

Hi Lucinda,

-Katie

From: Love, Lucinda **On Behalf Of** District 24 Duty Attorney
Sent: Friday, April 06, 2012 9:40 AM
To: Rojas, Kathleen M; Duehning, Kelli; Rosenast, Margaret A; Kim, Carolyn H; Duggan, Patricia A; Katz, Jonathan E; Healy, Theresa M; Busenkell, Kathleen R
Cc: Schmalz, Peter N; District 24 Duty Attorney
Subject: FW: Skype at Immigration interview
Importance: High

Hi,

Thanks for any thoughts and have a great weekend,

Lucinda Love

Associate Counsel
Western Law Division
DHS|USCIS|Office of the Chief Counsel

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From: Adame, Irene E
Sent: Friday, April 06, 2012 7:47 AM
To: District 24 Duty Attorney
Cc: Sagun, Rebecca J; Hughes, Edward P

(b)(5)

Busenkell, Kathleen R

From: Duehning, Kelli
Sent: Thursday, October 18, 2012 1:43 PM
To: Busenkell, Kathleen R; Duggan, Patricia A; Goodwin, Deborah K; Healy, Theresa M; Jeffries, Lina T; Katz, Jonathan E; Kim, Carolyn H; Lin, Cathy I; Love, Lucinda; Luna, Pilar P; Lynch, Joseph Q; Neary, Angela C; Peters, David L; Rojas, Kathleen M; Rosenast, Margaret A; Rund, Jordan M; Skillman, David W; Sorocco, Joan T; Vasquez, Virginia A; Vinet, Richard G
Subject: FW: Guidance for OCC attorneys on contact with represented parties
Attachments: Contact with Represented Parties 10-12-12.pdf
Importance: High

See below from John Miles....

Kelli J Duehning
Chief, Western Law Division
DHS/USCIS/Office of the Chief Counsel
630 Sansome Street, 2nd Floor
San Francisco, CA 94111
(415) 248-8637
(415) 248-8682 – fax
kelli.duehning@uscis.dhs.gov

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From: Miles, John D
Sent: Thursday, October 18, 2012 12:57 PM
To: #CIS OCC FIELD CHIEFS; #CIS OCC FIELD DEPUTIES
Subject: FW: Guidance for OCC attorneys on contact with represented parties
Importance: High

John

From: McGregor, Suzanne M
Sent: Thursday, October 18, 2012 2:53 PM
To: Miles, John D
Subject: Fw: Guidance for OCC attorneys on contact with represented parties
Importance: High

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

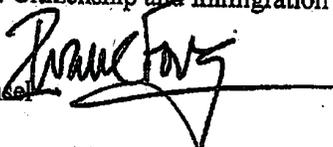
Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

October 12, 2012

MEMORANDUM FOR: Alejandro N. Mayorkas
Director, U.S. Citizenship and Immigration Services

FROM: Ivan K. Fong  (b)(5)
General Counsel

SUBJECT: *Ex parte* Contacts with Represented Parties during USCIS Site
Inspections



(b)(5)

(b)(7)(e)

(b)(7)(e)

(b)(5)

(b)(5)

(b)(7)(e)

(b)(5)

(b)(7)(e)

(b)(5)

(b)(7)(e)

(b)(5)

(b)(7)(e)

(b)(5)

(b)(7)(e)

USCIS Adjudicator Interaction
with
Private Attorneys and Representatives

OCC-009-01-INTR

January 2010



U.S. Citizenship
and Immigration
Services

Training Objectives

- I. Review eligibility rules for private attorneys, accredited representatives and others permitted to represent petitioners/applicants.
- II. Help adjudicators handle situations involving difficult or challenging behavior by an attorney or other representative.
- III. Provide an overview of the process for reporting misconduct by private attorneys and other representatives.



U.S. Citizenship
and Immigration
Services

Introduction

- Emphasize the value of representation by private attorneys
- The basic professional courtesies due members of the bar
- Key points for adjudicators in terms of how to respect/understand the role of private practitioners.



U.S. Citizenship
and Immigration
Services

I. Eligibility Rules for Attorneys and Representatives

Outline of topics for this section:

- Representation before USCIS
- The Rules of Professional Conduct for Practitioners
- Unauthorized Practice of Law
- Future USCIS Operational and regulatory changes



U.S. Citizenship
and Immigration
Services

Representation Before USCIS

What constitutes “representation”?

- 8 C.F.R. § 1.1 (i) Defines representation in terms of

“practice” as follows:

- “[A]n act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board.”



U.S. Citizenship
and Immigration
Services

Representation – cont'd

- 8 C.F.R. § 1.1 (k) – Defines “preparation” as follows:
 - “[t]he study of the facts of a case and applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers.”
 - Representation “does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.”



U.S. Citizenship
and Immigration
Services

Who May Be a Representative?

8 C.F.R. §103.2(a)(3)

An applicant or petitioner may be represented by:

- 1) an attorney in the United States (8 C.F.R. §1.1(f));
- 2) an attorney outside the United States (8 C.F.R. §292.1(a)(6)); or
- 3) an accredited representative of a recognized organization (8 C.F.R. §292.1(a)(4)).



U.S. Citizenship
and Immigration
Services

How do I verify that an attorney is eligible to appear as a representative before USCIS?

- National Organization of Bar Counsel (NOBC)
<http://www.nobc.org/>
- Executive Office for Immigration Review (EOIR)
<http://www.usdoj.gov/eoir/profcond/chart.htm>



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National Organization of Bar Counsel

HOME CONTACT SITE MAP

About us Officers Committees Cases Research Organizations

Bar Association

Welcome to NOBC.org!

NOBC 2008 Annual Meeting!

The 2008 Annual Meeting will be held at the Roosevelt Hotel in New York City from August 6 - 9, 2008. Look for additional details and registration information under the Meetings tab in the Members' Section.

The National Organization of Bar Counsel (NOBC) is a non-profit organization of legal professionals whose members enforce ethics rules that regulate the professional conduct of lawyers who practice law in the United States, Canada and Australia.

This Web site is intended as a resource facility for NOBC members, the legal community, and the general public.

Announcements

NOBC Officers & Committees Last updated:



Bar Associations and Disciplinary Authorities

- Alabama State Bar
- Alaska Bar Association
- State Bar of Arizona
- Arkansas Bar Association
- Office of the Arkansas Supreme Court - Committee on Professional Conduct
- The State Bar of California
- Colorado Bar Association
- Colorado Supreme Court - Offices of Attorney Regulation
- Connecticut Bar Association
- Connecticut Statewide Grievance Committee
- Delaware State Bar Association
- Office of Disciplinary Counsel of the Supreme Court of Delaware
- D.C. Bar
- The Florida Bar
- State Bar of Georgia
- Guam Bar Association
- Hawaii State Bar Association
- Hawaii Office of Disciplinary Counsel
- Idaho State Bar
- Illinois State Bar
- Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois
- Indiana State Bar Association
- Indiana Supreme Court Disciplinary Commission



LIST OF SUSPENDED AND EXPELLED PRACTITIONERS

Page 1 of 18



U.S. Department of Justice
Executive Office for Immigration Review

As Created

2109 Loeborg Ave., Suite 600 of the General Court
P.O. Box 12047

October 31, 2007

LIST OF DISCIPLINED PRACTITIONERS

* - denotes practitioner(s) most recently disciplined

The Executive Office for Immigration Review (EOIR) has recently taken certain disciplinary action against six attorneys after charging them with violations of the Rules of Professional Conduct for immigration practitioners. Disciplinary proceedings against one attorney were set aside. Another attorney's proceedings were terminated. The Rules of Professional Conduct appear in Title 8 of the Code of Federal Regulations (8 CFR Parts 1003 and 1292). In most cases, the disciplinary action is initiated as a result of sanctions imposed by other jurisdictions or a criminal conviction.

Although the disciplinary process may vary according to the specific circumstances of each case, generally it includes the following steps:

Disciplinary proceedings begin with a Notice of Intent to Discipline filed with the Board of Immigration Appeals (BIA) by the Office of the General Counsel of either EOIR or U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS). The BIA requires the attorney to respond to the alleged violations. In some cases, a Petition for Immediate Suspension also is filed and the BIA orders the attorney to be suspended immediately from practice before the immigration courts, the BIA, and the DHS. (DHS joins EOIR in taking the disciplinary action.) Disciplined attorneys are directed to notify promptly, in writing, their clients with pending immigration cases that they may no longer represent them before the BIA, the immigration courts, or the DHS. Disciplined attorneys may petition and be reinstated by the BIA before they can resume the practice of law before the BIA, the immigration courts, and the DHS.

For more information about a practitioner's disciplinary history, click on the date highlighted in blue.

For more information about the Executive Office for Immigration Review's Attorney Discipline Program click on these links: [EOIR for Practitioner Counsel & Disciplinary Counsel for Immigration Practitioners & Judges](#)

<http://www.usdoj.gov/eoir/profcond/chart.html>

11/13/200



U.S. Citizenship and Immigration Services

October 2008

NAME	CITY/STATE	DATE IMMED. SUSPENSION IMPOSED	FINAL DISCIPLINE IMPOSED	EFFECTIVE DATE OF DISCIPLINE	REINSTATED?
Phillip Dennis Abramowitz	Los Angeles, CA		Expelled	2/26/07	No
Mohamed Alamgir	District of Columbia		Expelled	7/9/04	No
Walter Burrier	Connecticut/ Los Angeles, CA	5/13/05	Suspended - 1 year	2/13/05	No
Paul Ira Freedman	New York	2/18/01	Expelled	2/18/01	No
Miguel Gadsby	San Francisco, CA	10/24/01	Expelled	7/8/03	No
Virginia Cago	New York	2/2/06	Expelled	2/2/06	No
Maria L. Gonzalez	New Jersey/New York	3/1/07	Suspended - 3 months	2/24/07	Yes - 6/14/07
Jeffrey Gonzalez-Perez	Virginia	8/4/04	Suspended - 2 years	8/4/04	No
Justin Edward Gould	Florida	2/5/07	Suspended - 90 days	11/12/06	Yes - 3/7/07



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accredited representative is
eligible to appear as a
representative before USCIS?



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United States Department of Justice Executive Office for Immigration Review

Immigration Court Practice Manual

REMINDER: Immigration Court Practice Manual Is Effective July 1

El Centro Immigration Court Temporarily Closed

San Pedro Immigration Court Update

What's New at EOIR

- Immigration Court Practice Manual (02/27/08)
- OPTM 08-03 (06/20/08)
- REMINDER: Immigration Court Practice Manual Is Effective July 1 (06/16/08)
- AG Appoints 5 New Members to the BIA (05/20/08)
- Latest Disciplinary Release (05/23/08)

Responsibilities

Background Information

Organizational Breakdown and Information

EOIR Legal Orientation and Pro Bond Program

Immigration Courts Nationwide

Statistics and Publications

Contact Information

News, Information & FOIA

EOIR Forms

Virtual Law Library

Employment Opportunities



USA.gov

- Immigration Benefits in EOIR Removal Proceedings
- Notice to Individuals Granted Immigration Relief/Benefits by EOIR
- List of Disciplined Practitioners - *updated Jan. 12, 2008*
- *Barahona-Gomez v. Ashcroft* Class Action Settlement - *posted December 31, 2007*
- *NOTICE* of Proposed Settlement Agreement in Asylum Adjustment Class Action *Ngwanya v. Gonzales*, No. 02-502 (RHK) (D. Minn)
- Notice of Proposed Settlement Agreement and Hearing in *Santillan, et al. v. Mukasey, et al.*, No. C-04-2680-MJP and *Padilla, et al. v. Ridge, et al.*, No. C-08-1531-NHP in U.S. District Court for the Northern District of California






Navigation Bar
VLL Home Page
 Law
 Admin
 AG/BIA Decisions
 OCAHO Decisions
 8 C.F.R. 2008
 Federal Register TPS
 Legislation/(INA)
 Attorney Resources
 Disciplined Practitioner
 Decisions
 Streamlining
 OCIJ Practice Manual
 BIA Practice Manual
 Library Information
 FAQs

EOIR Virtual Law Library (VLL)

Welcome. This site serves as a complement to the Law Library and Immigration Research Center (LLIRC) located within the headquarters complex of the Executive Office for Immigration Review (EOIR).

New Additions to the VLL
 Last Update: July 3, 2008 10:46 AM

(To be placed on an emailing list for AG/BIA Precedent Decisions, please visit the sign-up page.)

- **Matter of EAC, INC.,** 24 IBN Dec. 563 (BIA 2008) (Accreditation)
- **Matter of EAC, INC.,** 24 IBN Dec. 556 (BIA 2008) (Recognition)
- **Matter of GONZALEZ-ZOQUIAPAN,** 24 IBN Dec. 549 (BIA 2008)
- **For Federal Register notices regarding the Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act,** please see the 2008 Federal Register page
- **Federal Register: Board of Immigration Appeals: Affirmance Without Opinion, Referral for Panel Review, and Publication of Decisions as Precedents** June 19, 2008
- **Federal Register: Board of Immigration Appeals: Composition of Board and Temporary Board Members** June 16, 2008
- **Federal Register: Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program;** June 9, 2008
- **Matter of HINES,** 24 IBN Dec. 554 (BIA 2008)
- **Federal Register: Submission of Revised Form I-82.. Application for Temporary Protected Status;** May 28, 2008
- **Federal Register: In the Matter of the Amended Designations of Islamic Jihad Group (IJG), as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act and Pursuant to Section 1(b) of Executive Order 13224;** May 27, 2008
- **Federal Register: Safe-Harbor Procedures for Employers Who Receive a No-Match Letter: Clarification; Initial Regulatory Flexibility Analysis;** March 26, 2008
- **Matter of J-S,** 24 IBN Dec. 520 (AG 2008) (request to recognize counsel)
- **Matter of VELAZQUEZ-HERRERA,** 24 IBN Dec. 503 (BIA 2008).
- **Federal Register Notice: Period of Admission and Stay for Canadian and Mexican Citizens Engaged in Professional Business Activities—III** Northwings; May 9, 2008

Related Links

- U. S. Department of State
 - Visa Bulletin
 - 2007 Country Reports
 - Foreign Affairs Manual
 - 2007 Report on International Religious Freedom
- US Commission on Religious Freedom 2007 Report
- Interim Decisions/Headnote Chart
- Board Precedents and Related Court Decisions; June 25, 2008
- Immigration Courts
 - Administrative Control List
 - Local Operating Procedures
- Practitioners
 - Recognition and Accreditation R&A Roster
 - Disciplined Practitioners List

Please send comments or suggestions regarding this site to the VLL Staff



Professional Conduct for Practitioners

— Rules and Procedures



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Office of the Chief Counsel - October 2008

Who Is Subject to Sanction?

- Persons subject to sanction include any practitioner. In application and petition proceedings, a practitioner is:
 - an attorney as defined in 8 CFR §1.1(f) who does not represent the federal government; or
 - an accredited representative.



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Review of Complaints of Professional Misconduct



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Office of the Chief Counsel - October 2008

Grounds of Discipline

- Criminal conduct;
- Unethical conduct;
- Unprofessional conduct; or
- Frivolous behavior



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Practitioner Discipline Proceedings

- Conducted by Bar counsel
- Preliminary inquiry to determine if complaint has merit.
- USCIS can issue private sanction, refer complaint to federal, state or local enforcement authorities, or initiate practitioner disciplinary proceeding before EOIR.



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Complaints of Professional Misconduct by Immigration Practitioners

Contact:

Rachel A. McCarthy, USCIS Bar Counsel
802-660-1779 (phone)
802-660-5067 (facsimile)
rachel.mccarthy@dhs.gov



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Notarios and Immigration Consultants

- USCIS does not have UPL enforcement authority
- USCIS does have authority to regulate those who seek to appear as representatives (8 C.F.R. §103.2(a)(3))
- Review G-28s for eligibility
- Review Internal List of Ineligible Individuals
- Contact USCIS counsel for advice if individual does not appear to be eligible
- Contact Bar Counsel and send copy of G-28



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COMING SOON . . .

- Revised Form G-28
- New Form G-28I
- AFM, Chapter 12
- DOJ Proposed revisions to 8 CFR § 1003.102
- DHS Proposed revisions to 8 CFR § 1 and § 292



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II. Handling Difficult Situations Involving Private Attorneys

Topics covered in this section:

- General Principles
- Explanations for attorney behavior
- Adjudicator tips for handling difficult situations
- Suggested responses for common attorney objections
- Hypothetical examples/scenarios



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General Principles

- (1) Attorneys are permitted and expected to zealously represent their clients, which includes voicing comments or objections. You would expect no less if they were representing you.
- (2) Yet the interview must remain free from undue interference by the attorney, who is not a witness or party to the petition/application.
- (3) USCIS Adjudicators should strive to conduct an effective interview, as well as permit the attorney an opportunity to be heard (suggestions for performing this "balancing act" are provided later in this training).



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Adjudicator's Field Manual (AFM) – Chapter 12

- Currently under revision
- Sets forth eligibility requirements for appearing before USCIS.
- Chapter 12 will include a sample Declaration for use by law students, law graduates and reputable individuals. The Declaration will be reviewed by the DHS official to make the discretionary determination as to whether to permit the request to appear at the interview with the applicant/petitioner.
- The Declaration will be filed in the A file. These individuals do NOT submit a G-28 and USCIS does not communicate with them.



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AFM – cont'd

AFM Ch. 15.8 - Role of Attorney or Representative in the Interview Process.

The attorney's role at an interview is to ensure that the subject's legal rights are protected. An attorney may advise his client(s) on points of law but he/she cannot respond to questions the interviewing officer has directed to the subject. The attorney's role is even more restricted with regard to a sworn statement taken from an applicant for admission in conjunction with removal proceedings to determine admissibility, where the alien has not yet legally entered the United States (i.e. – no right to counsel in inspection or refugee interviews).

- Officers should not engage in personal conversations with attorneys during the course of an interview.



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Attorneys - Professional Duties and Obligations

- Rules of Professional Conduct for Practitioners – 8 C.F.R. §292.3
- Grounds of Professional Misconduct – 8 C.F.R. §1003.102
- Attorneys are also subject to State Bar Ethics Rules



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Misconduct - Enforcement

Adjudicators should report professional misconduct by Practitioners to their supervisors

In consultation with supervisors, adjudicators should report professional misconduct by practitioners to USCIS Bar Counsel.

Adjudicators may remind Practitioners of the Rules of Professional Conduct.



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Explanations for Attorney Conduct

Why attorneys use confrontational or belligerent behavior:

- Misguided understanding of what it means to zealously represent a client;
- To fluster or intimidate adjudicators into giving up a line of questioning;
- To give their clients time to develop an answer to your question;
- To impress clients and justify legal fees.



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Are there limits to zealous representation?

- Yes. You are a professional and so is the practitioner. You should treat each other as professionals.
- Remember that the interview is for USCIS to make a determination on an immigration application.
- The integrity of the adjudicative process must be preserved and the interview must be controlled by USCIS.
- Particularly egregious conduct can be reported to USCIS Bar Counsel.



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Techniques for Handling Difficult Attorneys

- Do not engage in an argument with a practitioner over “objections” to your questions;
- Do not threaten the attorney with reporting him/her to supervisors or attorney licensing authorities;
- Do remind them that there are Rules of Professional Conduct in 8 C.F.R. §292.4 and 1003.102;
- Remember that attorneys have a duty to zealously represent the interests of their clients;



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Techniques – cont'd

- Maintain your composure and professionalism;
- Act as if the attorney has said nothing. Do not address an outburst at all and repeat your question firmly and immediately to the applicant. This is particularly effective if you do it repeatedly. Ignoring the attorney diffuses the reason for the behavior;



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Techniques – cont'd

- After a couple of outbursts, let the attorney know that you will record any objection they may have, but that comments like “You’ve already made up your mind,” or “You already asked that,” are not objections.
- Remind the attorneys that it is their client’s burden to establish eligibility, and that the regulations give you the right to interview the applicant. Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966); 8 C.F.R. §§ 103.2(b)(1); (b)(7); (b)(9);



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Techniques – cont'd

- Inform the attorney that if the client refuses to answer, such failure to respond is grounds for denial. 8 C.F.R. § 103.2(b)(13);
- An adverse inference can be made. INS v. Lopez-Mendoza, 468 U.S. 1032, 1043 (1984) (quoting United States ex rel. Bilokumsky v. Tod, 263 U.S. 149, 153-54 (1923) (Brandeis, J.)); Matter of Guevara, 20 I&N Dec. 238, 241-42 (BIA 1991);



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Techniques – cont'd

- If the attorney continues to interrupt and make it impossible for you to complete the interview, you can:
 - Tell the attorney that further interruptions will result in termination of the interview, risking a conclusion that his client has not met the requisite burden of proof;
 - Call in a supervisor;
 - Call in your section chief;
 - Report it to local USCIS counsel (OCC); or
 - Terminate the interview.



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Suggestions for Avoiding Difficult Situations

- Adjudicators can sometimes diffuse difficult situations at the beginning of the interview by:
 - informing the attorney that they will be permitted 5 minutes at the end of the interview to voice any objections or make any comments on the record; and
 - asking the attorney to submit any supporting documents or paperwork at the beginning of the interview (this prevents surprises and may also reveal issues that can be included in the questioning, like the need for an I-601 waiver, e.g.)



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Responses for Common Attorney Objections

1. Invasion of Privacy – an objection raised in response to questions about marital relations and contraception in spousal or related petitions
 - BIA nonprecedent decisions have repeatedly permitted such questions.
 - Adjudicators should not pursue such questions in a way that can be construed as embarrassing or as harassment. Reserve such questioning for situations that require it.
 - Questions about reproduction and contraception are not prohibited.
 - If attorneys cite Griswold v. Conn. (U.S. Supreme Court case establishing a right to marital privacy), adjudicators should explain that the question relates to proof of a bona fide marriage, which is a central requirement for approval of a spousal petition.



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Common Objections – cont'd

2. “Asked and Answered” (i.e., an objection that implies that the Adjudicator has already asked the question)
 - Adjudicators are permitted to revisit areas previously questioned.
 - USCIS interviews are not a court of law, and the standard rules of evidence or court procedure do not apply (i.e., there is no limitation under the INA or 8 CFR regarding the number of times a question can be asked).



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Common Objections – cont'd

3. Objections relating to a Violation of Religious Freedoms:
 - Adjudicators should be sensitive to religious practices while also performing their adjudicative function.
 - However, if adjudicators are not able to conduct the interview and determine eligibility, the adjudicator should inform the attorney and petitioner/applicant, and seek another way to conduct the interview.
 - Example: If a female is wearing religious head coverings due to her Muslim faith, and the head coverings prevent confirmation of her identity, see if a female adjudicator is available to conduct the interview.



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Post-Interview Options

After the interview – if the behavior was extremely egregious (threatening, physically intimidating, etc.):

- Make notes outlining the practitioner's behavior; and
- Report the behavior to your section chief
- Report the professional misconduct to USCIS Bar Counsel



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Make a Record of the Incident

- Steps to take if you encounter an attorney whose conduct you feel should be reported:
 - Write down the specific conduct during, or right after, the event
 - Report the event to your supervisor
 - Draft a memo or email to USCIS Bar Counsel outlining the conduct
 - Include any prior experiences with that particular attorney
 - Include the purpose of the interview/examination and the outcome of the adjudication
 - Forward relevant documents, including the G-28 to USCIS Bar Counsel
 - Do not contact ALIA or State Disciplinary Authorities on your own.



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Practical Exercises

- The following are some hypothetical scenarios drawn from real cases.
- Think about how would you handle these situations, and then review the recommended course of action.



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Hypothetical Scenario #1

- Petitioner's attorney tells the Adjudicator that the questioning is unfair and that they want to terminate the interview
- Adjudicator objects to the attorney's authority to terminate.
- Adjudicator speaks directly to the petitioner, asking them if they want to terminate the interview or continue without their attorney present.
- Adjudicator informs the petitioner that any rescheduling of the interview will likely be 12-18 months later.
- Did the Adjudicator handle this situation appropriately?



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Hypo #1 – Recommendation

- Adjudicator should probably not have addressed the petitioner directly.
- Most attorneys and their clients have an interest in getting the interview completed and moving forward.
- If the attorney is seeking termination based on your questioning, the likelihood of fraud has increased, and the case would probably be better off referred to FDNS.
- Or alternatively, the Adjudicator can reply that the case will be decided based on the evidence currently in the record, and proceed accordingly.



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Hypothetical Scenario #2

- Adjudicator attempts to conduct interview, but petitioner's attorney keeps interrupting the questioning with long statements about the case.
- Adjudicator decides that the attorney is really attempting to testify on the petitioner's behalf.
- Adjudicator informs the attorney his interruptions are really statements of testimony, and that attorneys are not permitted to testify as a witness.
- Adjudicator informs attorney that he can withdraw as petitioner's representative and testify as a witness if desired, but that he may not continue to interfere with the interview.



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Hypo #2 – Recommendation

- Adjudicator handled the situation appropriately.
- Attorneys are not permitted to testify on behalf of their client.
- Objections should point to a specific legal issue.
- Objections that stretch on into statements could constitute testimony or could be suggesting answers to their clients.
- Attorneys should not be permitted to make statements about the facts of the case during the interview process.
- Remind the attorney that they will have the opportunity at the end of the interview to make their arguments or statements.



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Hypothetical Scenario #3

- The applicant arrives on time for a 9:00 AM interview.
- A G-28 is on file, but attorney absent at 9:00 AM when applicant is called in.
- Applicant is asked if he wishes to sign a waiver of the attorney's presence or get re-scheduled for a time when the attorney can be present.
- Applicant signs waiver, and interview proceeds without attorney.
- Attorney comes 10 minutes later and the DAO is notified.
- DAO asks the applicant if they want to let the attorney in to the interview. Applicant replies "no" since the interview seems to be going well, so why should he let the attorney in and then have to pay his fee?
- Attorney is angry at USCIS. The supervisor explained that the applicant signed the waiver and then declined to let the attorney in.
- Did USCIS handle the situation properly? Thoughts? Comments?



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Hypo #3 – Recommendation:

- Adjudicator should have waited more than 10 minutes.
- Did they try to contact the attorney (or have the client contact the attorney) to see if he or she was delayed in traffic, or in the building security line?
- The DAO probably moved too quickly to seek a waiver - and USCIS has to be extremely careful, because a waiver must be clearly voluntary.
- Controversy is sure to erupt if the case is denied (less likely in an approved case), but the DAO is now a potential witness in a fee dispute between the lawyer and the applicant.
- In addition, a supervisor should be the one to explain the options to the applicant, so that there is a "neutral" individual assessing the voluntariness of the waiver of counsel.



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Last Revised:

November 25, 2008

Authors:

Rachel McCarthy, Bar Counsel

Deborah Goodwin, Associate Counsel, San Francisco

Peter Schmalz, Training and Knowledge Management Division



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Office of the Chief Counsel - October 2008

Greenwood, Tembra A

From: Raymond, Robert R
Sent: Friday, March 08, 2013 1:07 PM
To: Rodriguez, Marcia R
Cc: Smith, Sheldon A; OCC-Clearance; Benton, Shelia G
Subject: FW: CHAP, Volume 7 Part B, 245(a) Adjustment Applicants
Attachments: CHAP Volume 7 Part B 245(a) Applicants (Draft).docx

Hi Marcia,

Sheldon Smith and I will be the leads on this.

Thanks:

*Robert Raymond
Deputy Chief
Adjudications Law Division
Office of the Chief Counsel
United States Citizenship and Immigration Services
20 Massachusetts Avenue NW Room 4210
Washington DC 20529
Telephone +1 202 272 1434
Fax +1 202 272 1478
robert.r.raymond@uscis.dhs.gov*

From: ALD
Sent: Thursday, March 07, 2013 4:52 PM
To: Raymond, Robert R
Subject: FW: CHAP, Volume 7 Part B, 245(a) Adjustment Applicants

*Robert Raymond
Deputy Chief
Adjudications Law Division
Office of the Chief Counsel
United States Citizenship and Immigration Services
20 Massachusetts Avenue NW Room 4210
Washington DC 20529
Telephone +1 202 272 1434
Fax +1 202 272 1478
robert.r.raymond@uscis.dhs.gov*

From: Muhletaler, Catherine **On Behalf Of** OCC-Clearance
Sent: Thursday, March 07, 2013 11:26 AM
To: ALD
Subject: FW: CHAP, Volume 7 Part B, 245(a) Adjustment Applicants

ALD,

Per the OCC clearance process, ALD has the lead on review and clearance of this item. Please have the assigned ALD attorney provide their contact information to the operational client within two business days. Please copy the Box on your response to the client.

Thanks so much, Cathy

From: Rodriguez, Marcia R
Sent: Thursday, March 07, 2013 11:25 AM
To: OCC-Clearance
Subject: CHAP, Volume 7 Part B, 245(a) Adjustment Applicants

Good morning,

Can your office please review the attached document, CHAP Volume 7 Part B (245(a) Adjustment Applicants) and provide comments/edits back to me by COB March 21, 2013?

Let me know if you have any questions.

Thanks,

Marcia R. Rodriguez
Adjudications Officer
USCIS, Field Operations Directorate
Adjustment of Status Branch
111 Massachusetts Ave, NW Suite 2100
Washington, D.C. 20529
O: 202-272-9044
BB: 202-695-9491

WARNING: This document is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator. This email, along with any attachments, is intended solely for the use of the addressee(s) and may contain information that is sensitive or protected by applicable law. Unauthorized use or dissemination of this email and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender and delete or destroy all copies.

(b)(5)

VOLUME 7:

Adjustment of Status

PART B – 245(a) Applicants



(b)(5)

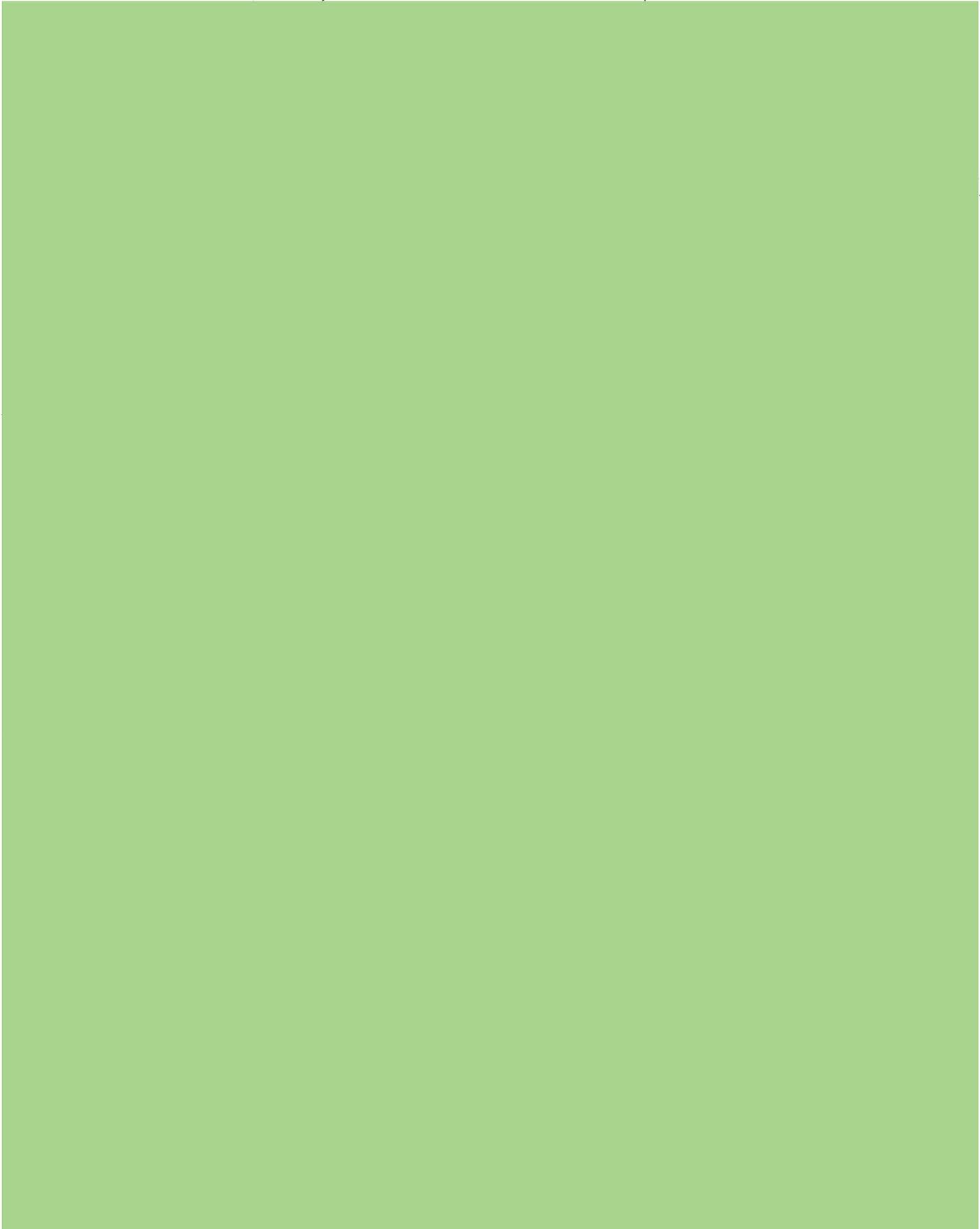
Consolidated Handbook of Adjudication Procedures (CHAP)
Part A: Adjustment of Status Policies, Goals, and Procedures

The following table lists the policies, goals, and procedures that apply to the adjustment of status process.



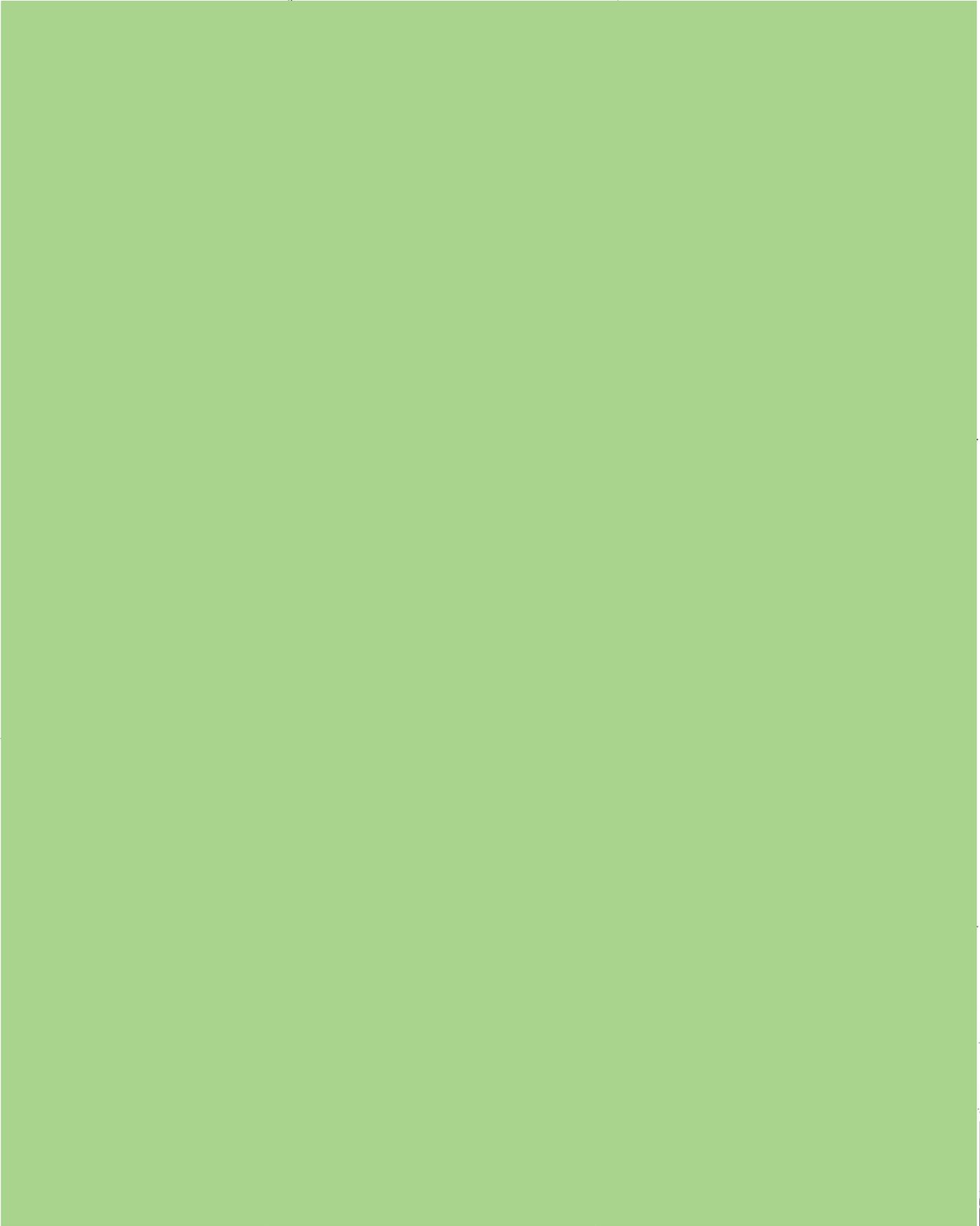
(b)(5)

Consolidated Handbook of Adjudication Procedures (CHAP)
Part A: Adjustment of Status Policies, Goals, and Procedures



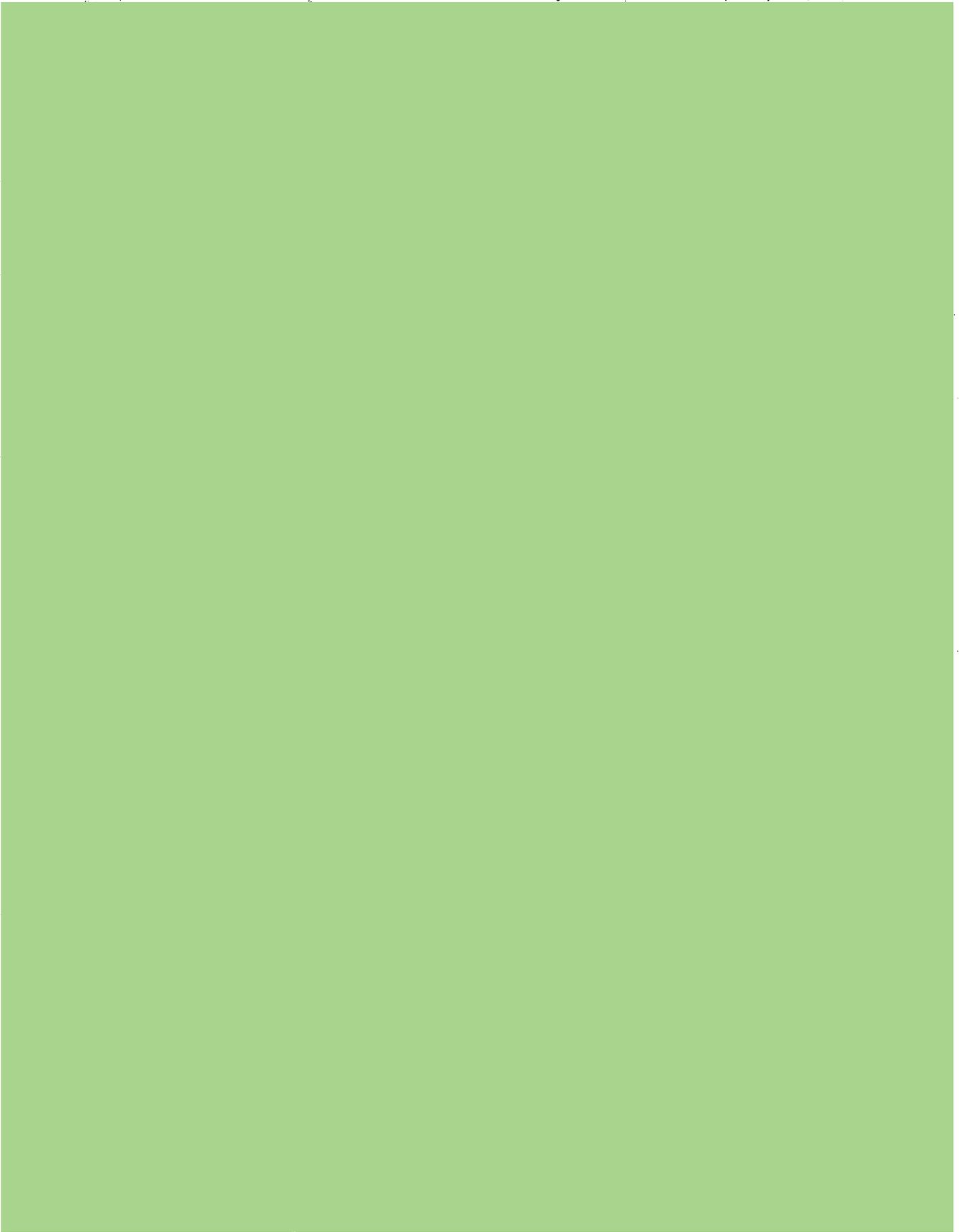
(b)(5)

Consolidated Handbook of Adjudication Procedures (CHAP)
Part A: Adjustment of Status Policies, Goals, and Procedures



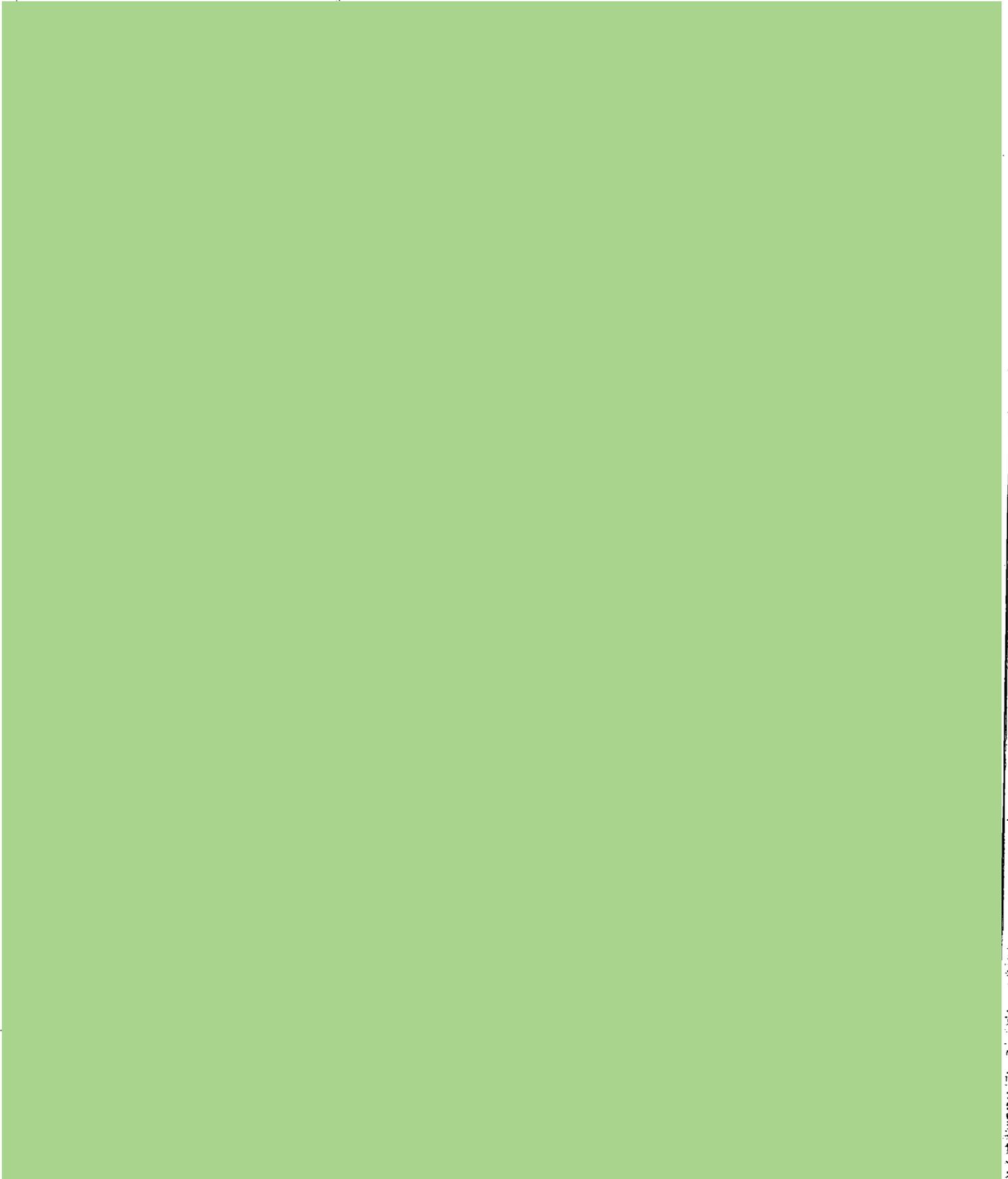
(b)(5)

Consolidated Handbook of Adjudication Procedures (CHAP)
Part A: Adjustment of Status Policies, Goals, and Procedures



(b)(5)

Consolidated Handbook of Adjudication Procedures (CHAP)
Part A: Adjustment of Status Policies, Goals, and Procedures



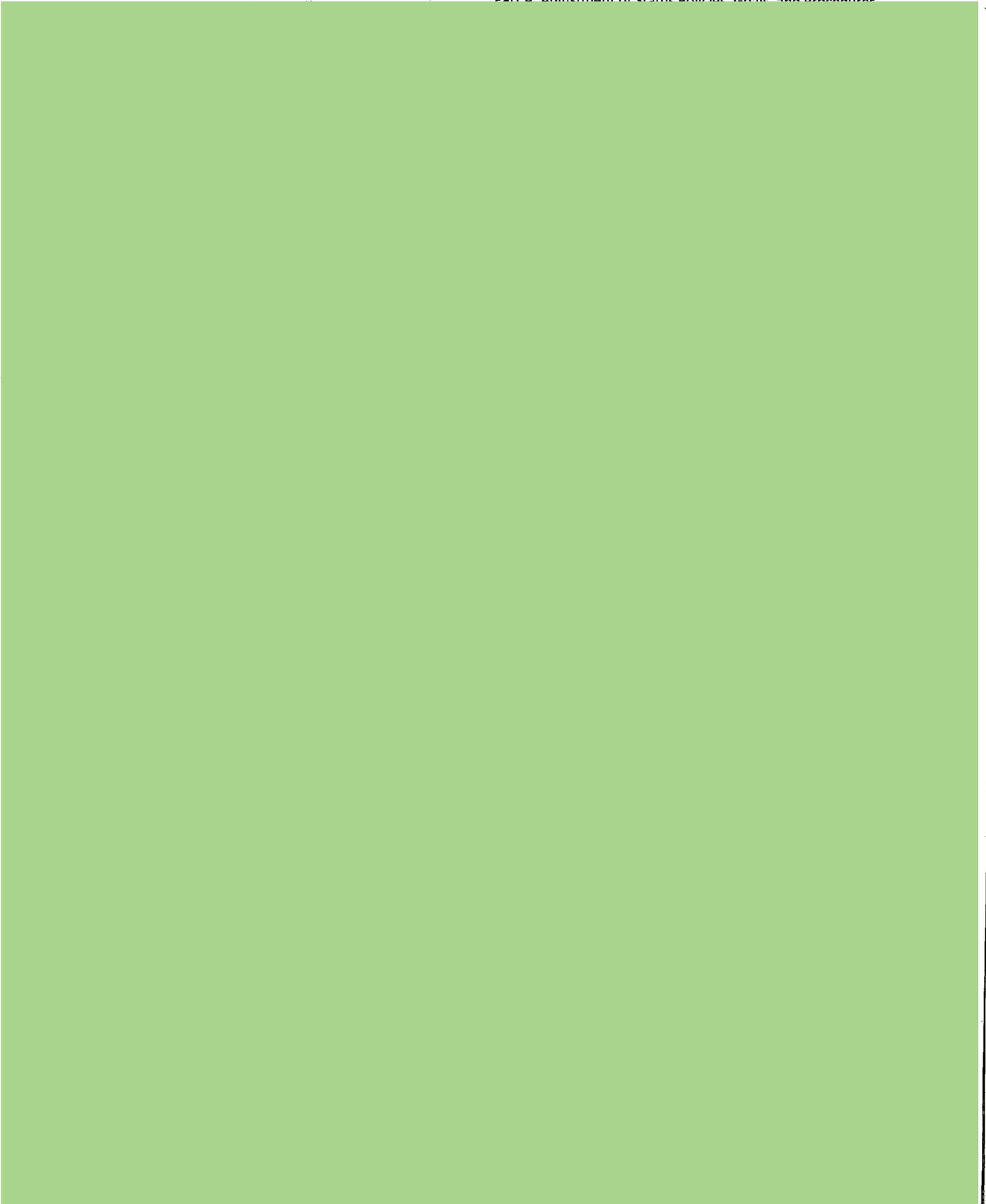
(b)(5)

Consolidated Handbook of Adjudication Procedures (CHAP)
Part A: Adjustment of Status Policies, Goals, and Procedures



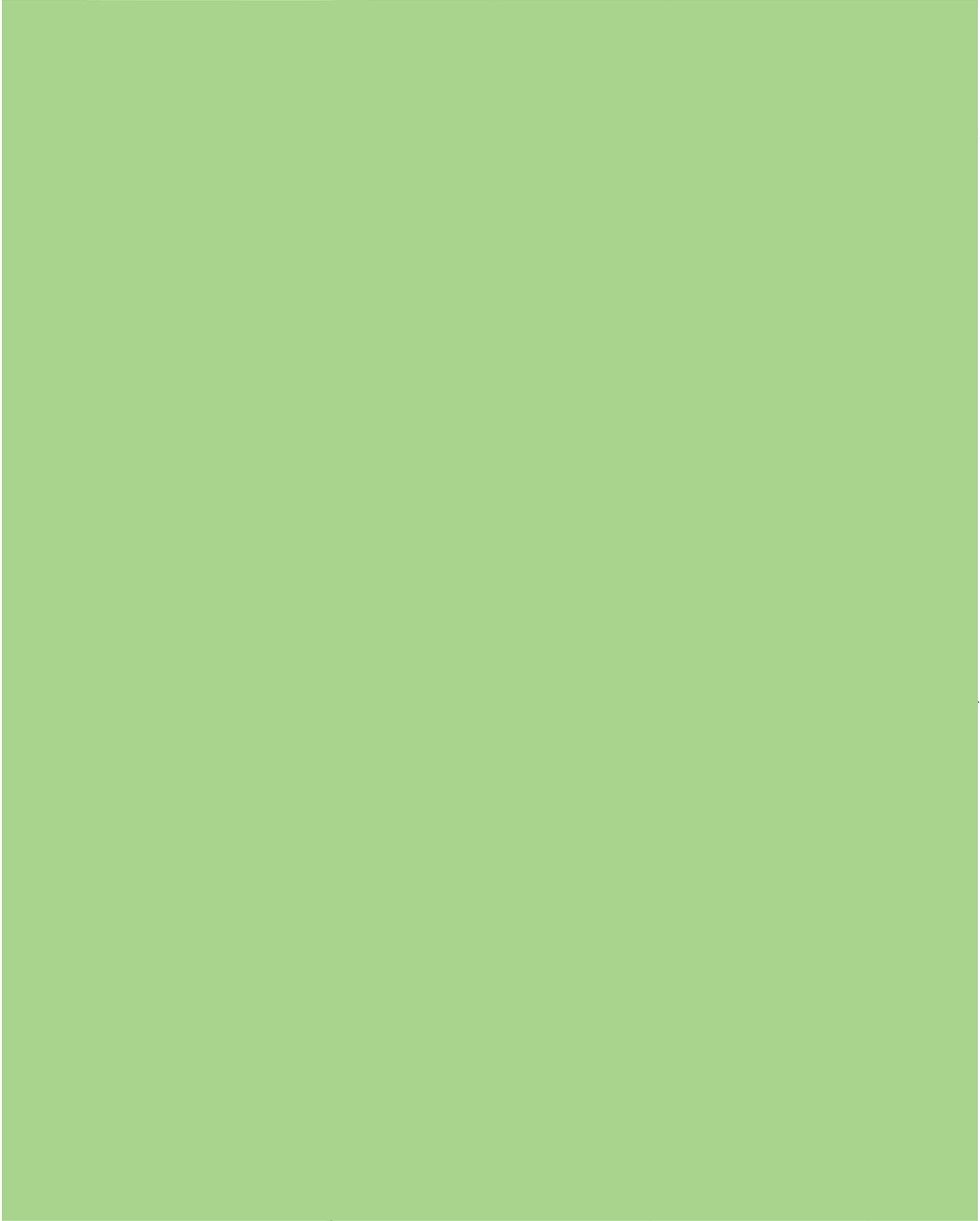
(b)(5)

Consolidated Handbook of Adjudication Procedures (CHAP)
Part A: Adjustment of Status Policies, Goals, and Procedures



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Consolidated Handbook of Adjudication Procedures (CHAP)
Part A: Adjustment of Status Policies, Goals, and Procedures



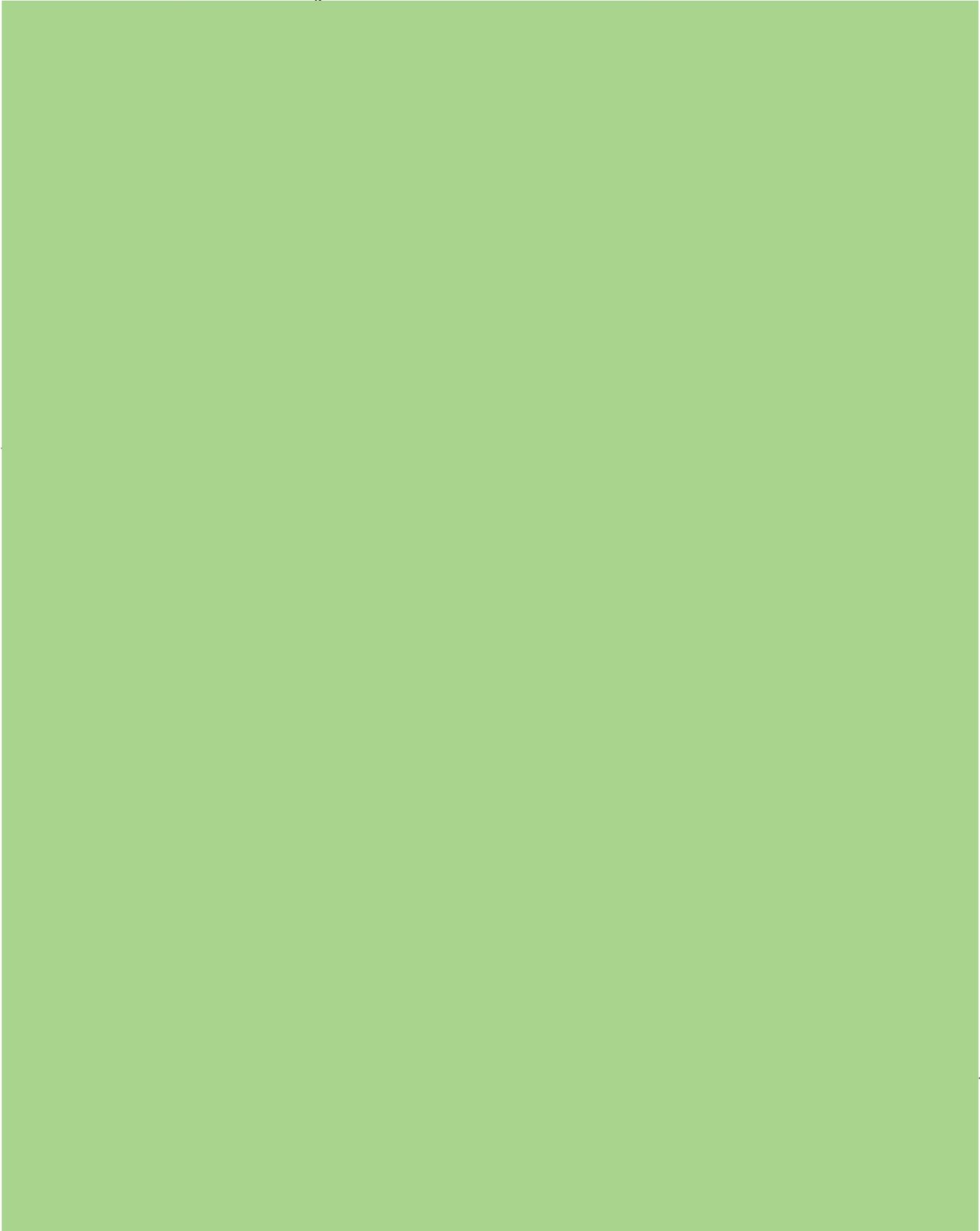
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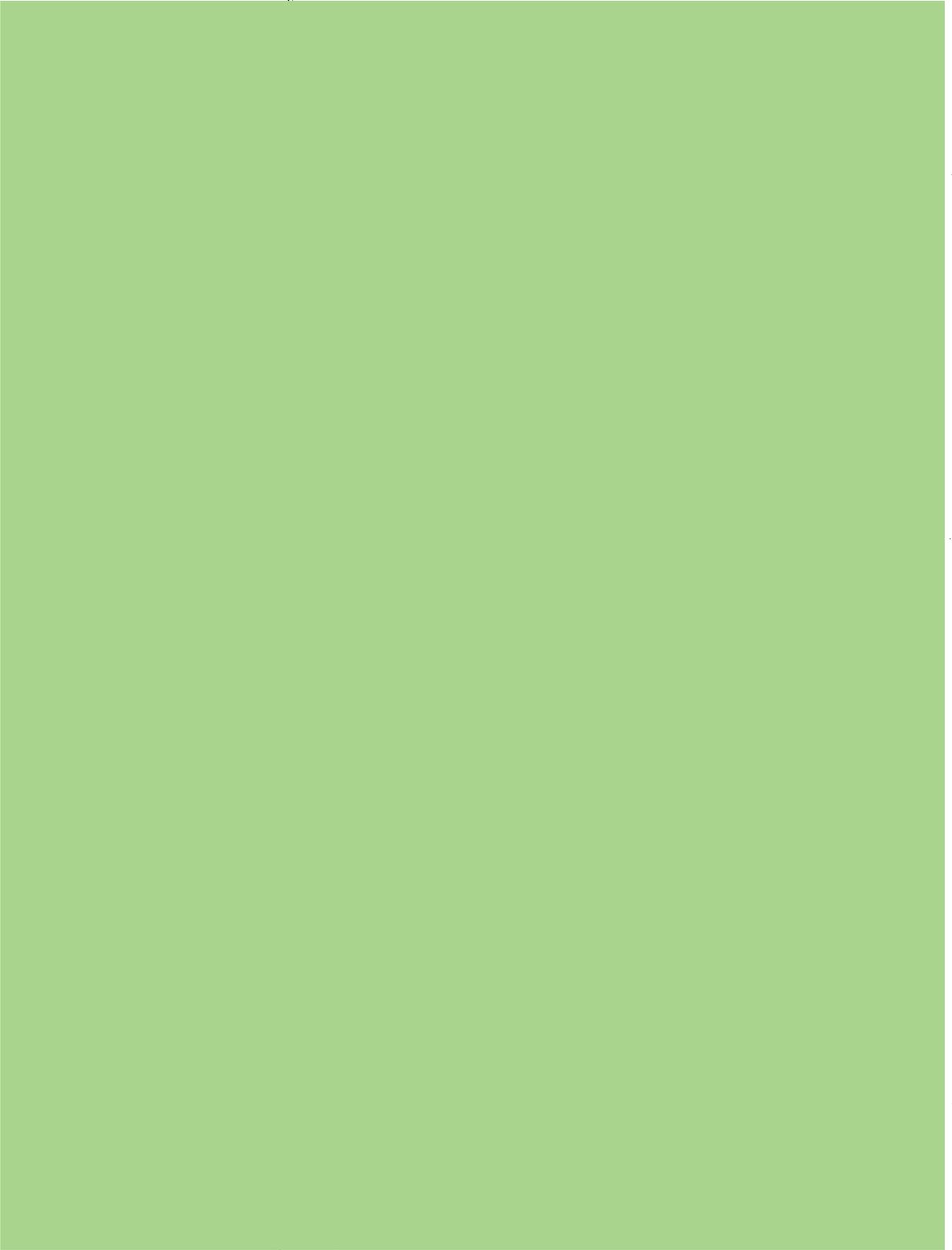
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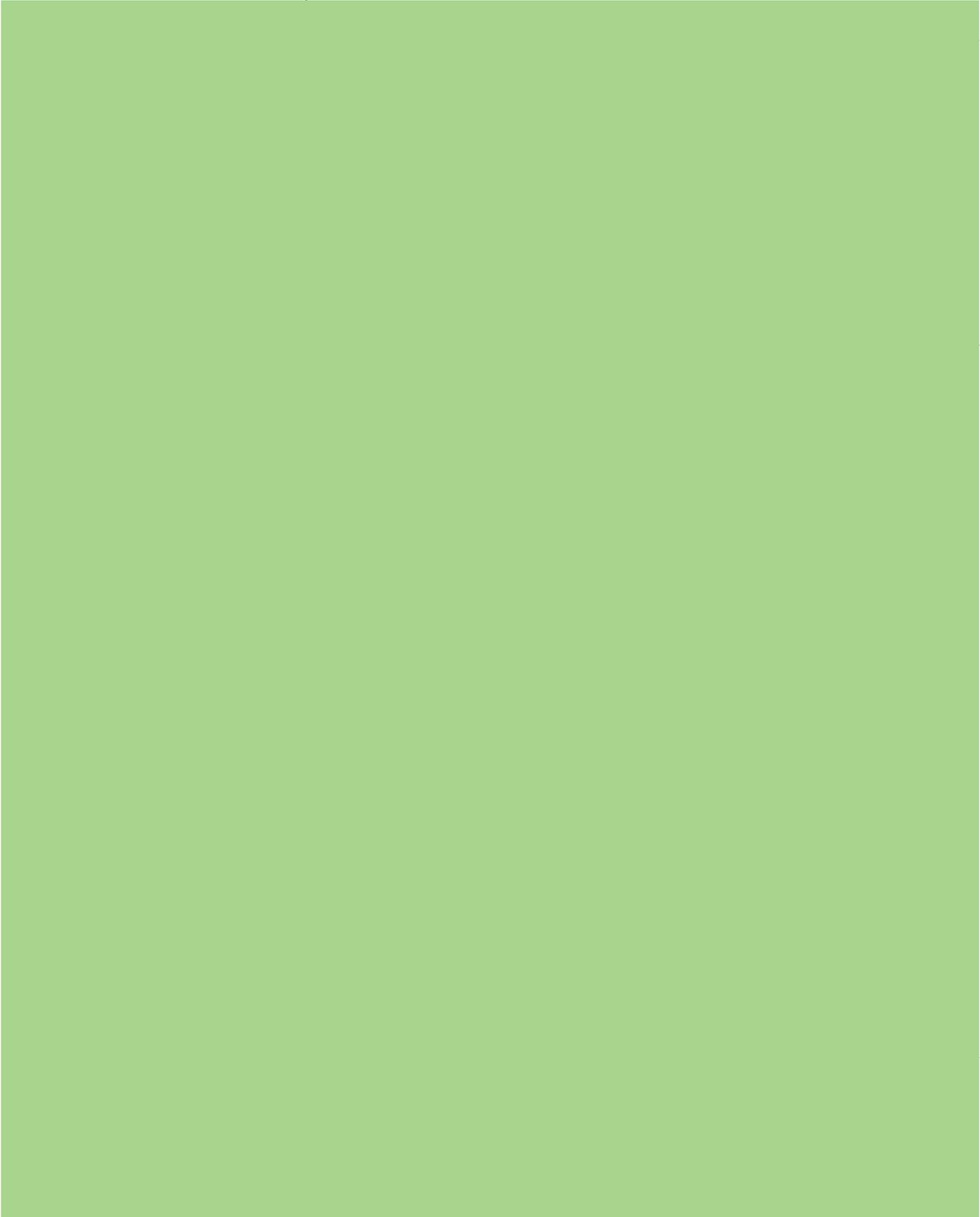
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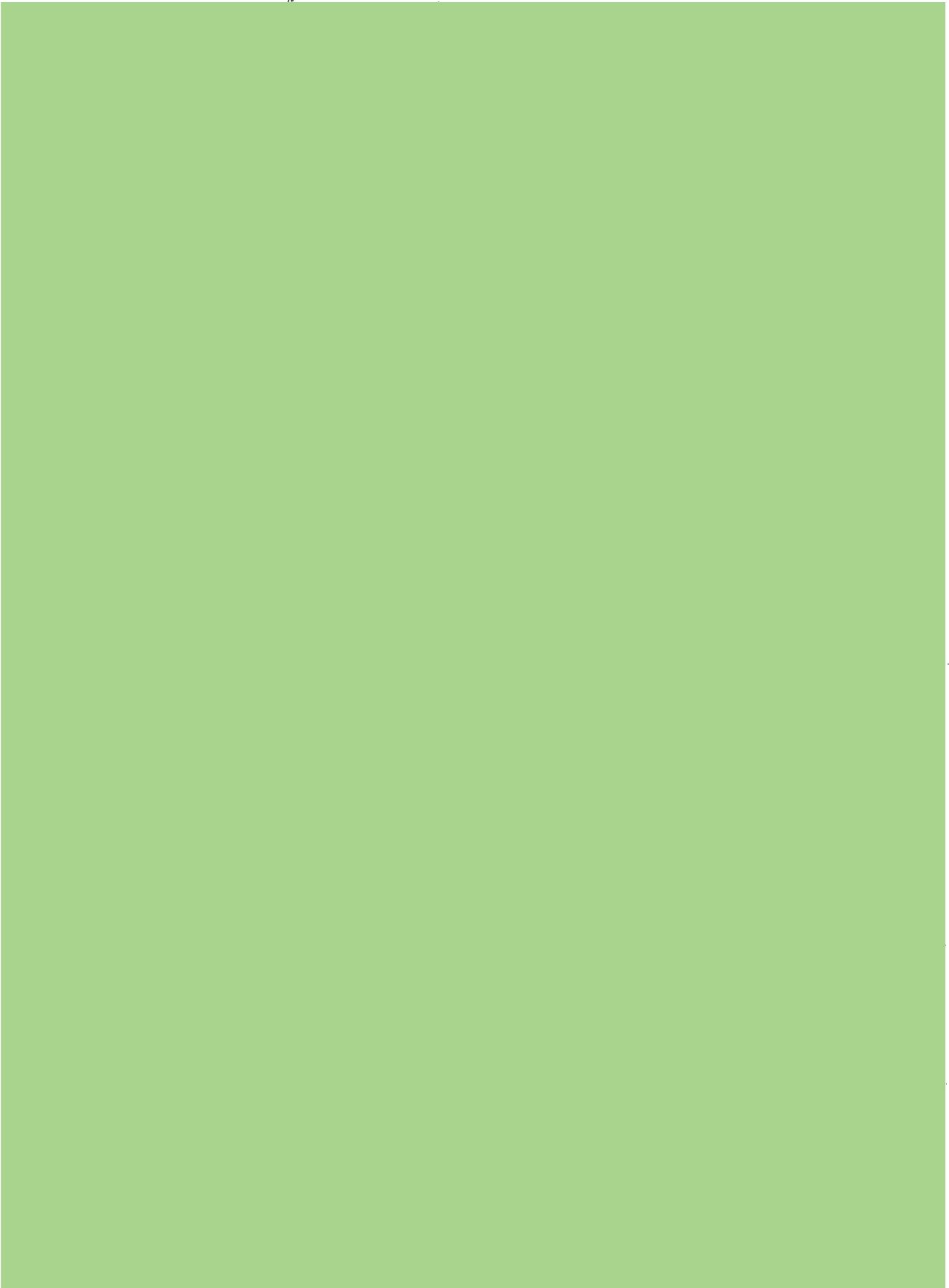
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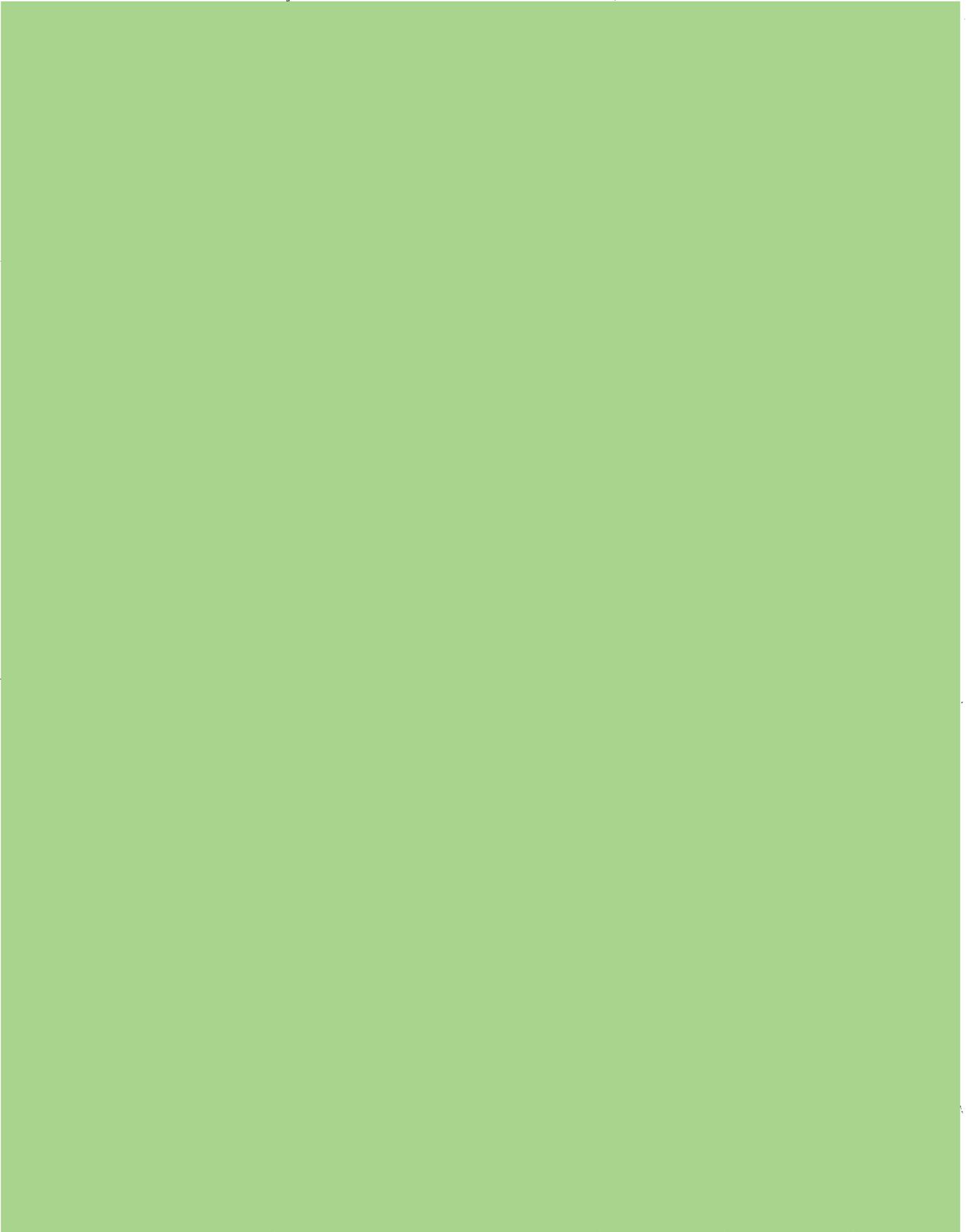
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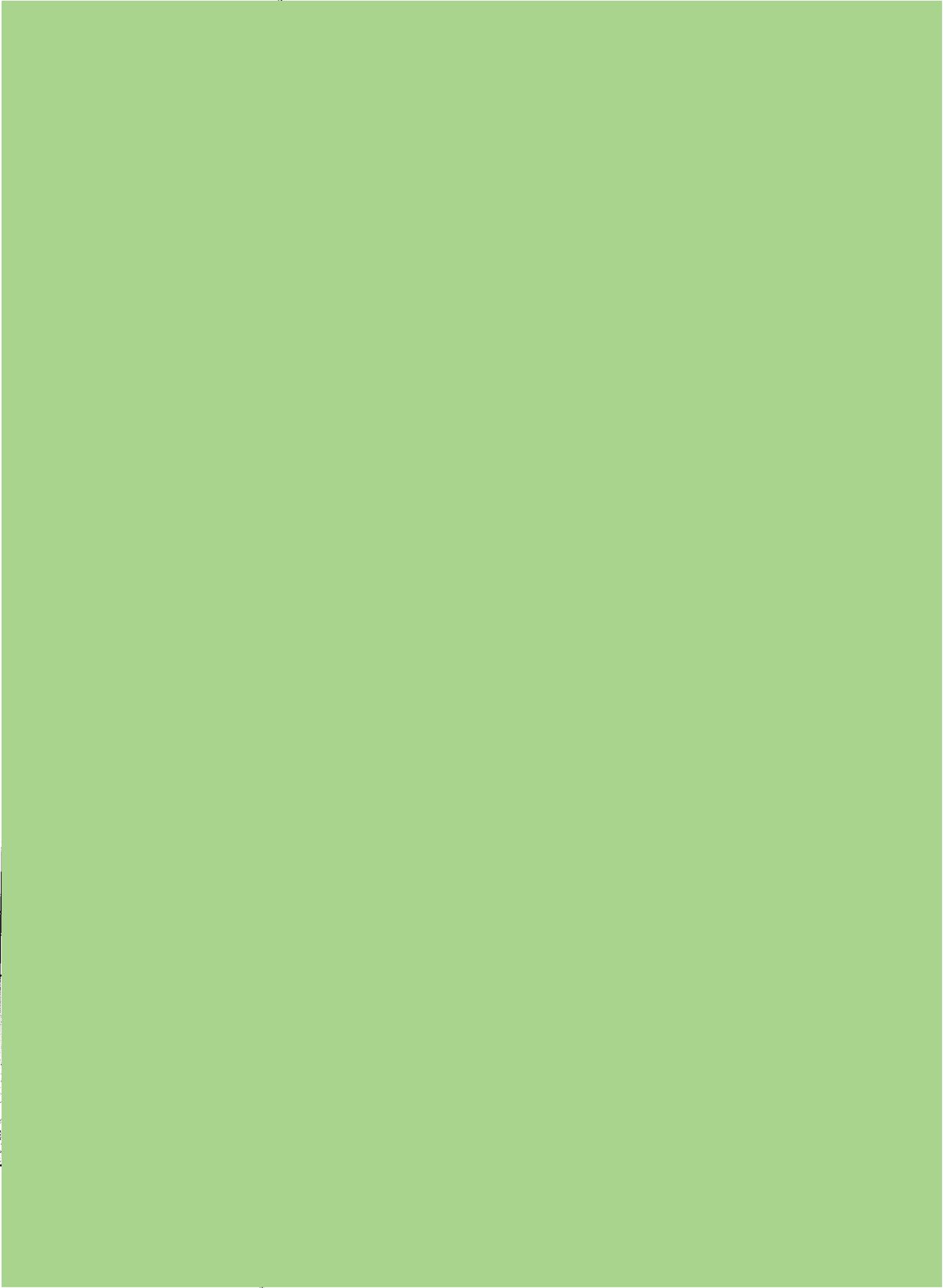
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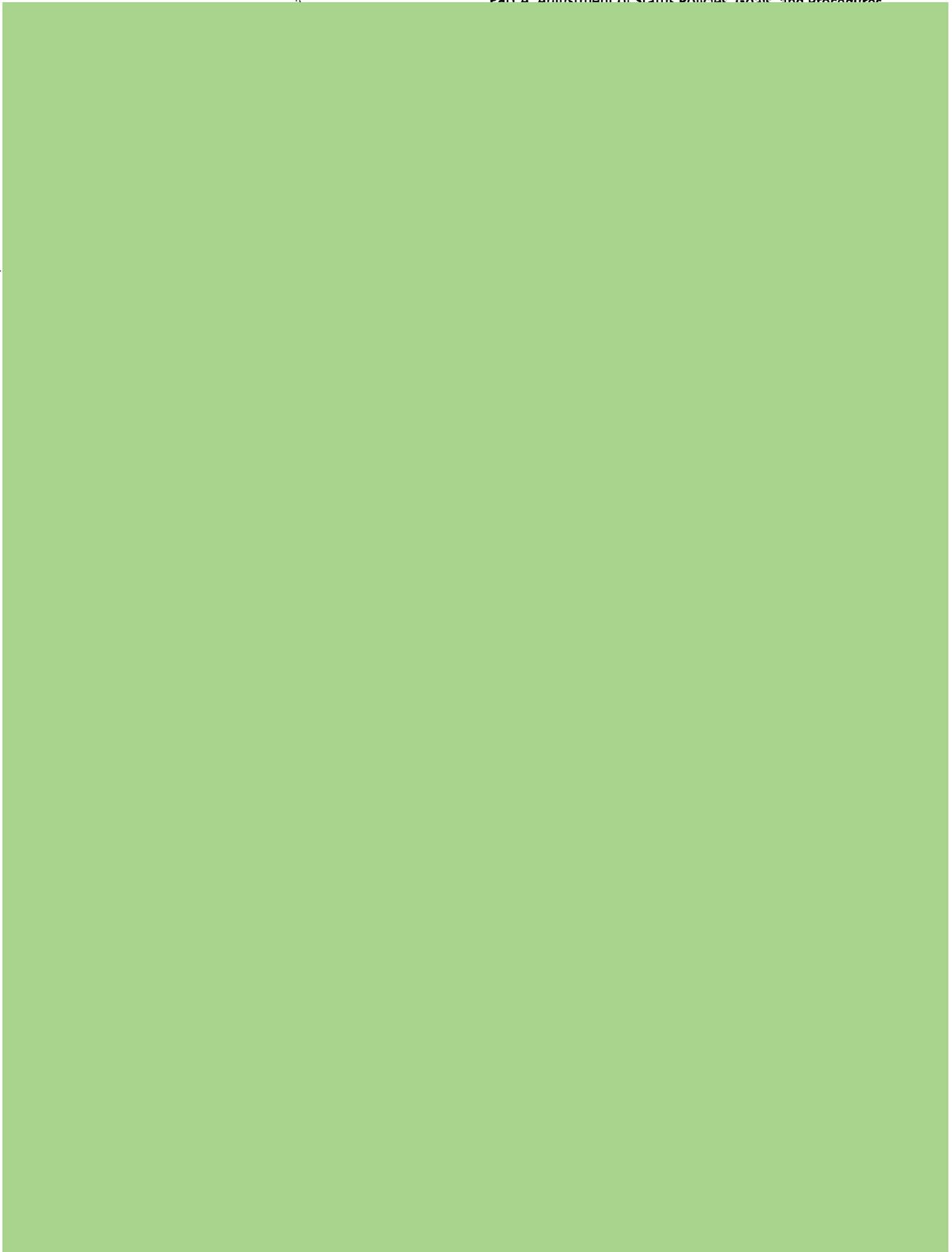


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Consolidated Handbook of Adjudication Procedures (CHAP)
Part A: Adjustment of Status Policies, Goals, and Procedures



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Greenwood, Tembora A

From: INTERNAL COMMUNICATIONS, USCIS
Sent: Friday, January 13, 2012 2:07 PM
Subject: USCIS Leadership Guidance#09-12

Interim Policy Memorandum: PM-602-0055 (Dec. 21, 2011) The Role of Private Attorneys and Other Representatives



**U.S. Citizenship
and Immigration
Services**
Office of Communications

Leadership Guidance

January 13, 2012
#09-12

Interim Policy Memorandum

USCIS has cleared the following interim policy memorandum for distribution (**Final date for comments: Feb. 14, 2012**)

- PM-602-0055 (Dec. 21, 2011) The Role of Private Attorneys and Other Representatives; Revisions to Adjudicator's Field Manual (AFM) Chapters 12 and 15; AFM Update AD11-42

There will be opportunities for field leadership to provide their input. Details on an internal USCIS engagement will come next week.

Draft and interim policy memos will be posted on www.uscis.gov/outreach for stakeholder review and comment. Interim and final policy memos are official USCIS policy documents and effective the date the memos are approved.

Visit the [Feedback Opportunities Web page](#) on Connect for additional information.

The USCIS Leadership Guidance is a product of the USCIS Office of Communications. To submit questions or cleared items, or to access previous Leadership Guidance, email [USCIS Internal Communications](#).



December 21, 2011

PM-602-0055

Policy Memorandum

SUBJECT: The Role of Private Attorneys and Other Representatives; Revisions to
Adjudicator's Field Manual (AFM) Chapters 12 and 15; AFM Update AD11-42

Purpose

This policy memorandum (PM) provides guidance regarding the role of private attorneys and other representatives who appear before USCIS.

Scope

This PM applies to and is binding on all USCIS employees. This PM replaces *AFM* Chapter 12, parts 1-5 and Chapter 15, part 1(b)(2), parts 2-4, and adds new Appendix 12-1.

Authority

Section 292 of the Immigration & Nationality Act
8 CFR 103; 292

Introduction

U.S. Citizenship and Immigration Services (USCIS) is committed to ensuring the integrity of the immigration system. This goal is furthered when USCIS adjudicators recognize the range of individuals who may represent applicants and petitioners, respect the relationship between client and representative, and conduct interviews professionally. The Department of Homeland Security has rules of professional conduct for employees and practitioners who practice before the Department. This policy memorandum provides guidance to adjudicators and balances the meaningful role of attorneys and representatives in the interview process with the important responsibility of adjudicators to conduct fair, orderly interviews.

Background

An applicant or petitioner for immigration benefits may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.¹ In addition, whenever an examination is required, the person involved has the right to be represented by an attorney or representative.² This does not provide any applicant for admission to the United States with the right to representation, in either primary or secondary

¹ 8 CFR 103.2(a)(3) (2011)

² 8 CFR 292.5(b) (2011)

inspection at a port of entry or in an interview regarding a request for classification as a refugee, unless the applicant is the focus of a criminal investigation and has been taken into custody.

Prior to 1994, the regulations governing the adjudication of applications and petitions (8 CFR 103.2) did not include provisions specifically addressing the representation of applicants and petitioners during such proceedings. In 1991, the Immigration and Naturalization Service (“Service”) proposed amending the regulations at 8 CFR 103.2 to provide that an applicant or petitioner may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.³ The Service proposed limiting the categories of eligible representatives in application and petition proceedings from the “broad range” of representatives listed in 8 CFR 292.1. Moreover, in order to properly document representation, the Service proposed revising 8 CFR 292.4(a)(4) to require that an applicant or petitioner sign the notice of appearance in order to authorize representation before the Service.⁴ In adopting these changes in a final rule in 1994, the Service determined that the reasons cited in the supplemental information in the proposed rule supported requiring the signature of the applicant or petitioner on the G-28 and that this was also a way to help combat the unauthorized practice of law by ineligible individuals.⁵ This final rule included the language in 8 CFR 103.2(a)(3) that exists today⁶ and added to 8 CFR 292.4 the requirement that the notice of appearance form be signed by the applicant or petitioner in order to authorize representation before the Service.⁷

In 2010, the regulations at 8 CFR 292.1 were revised to specifically reference the limited categories of eligible representatives in application and petition proceedings set forth in 8 CFR 103.2(a)(3).⁸ The change reinforced the determination that the other categories of representatives listed in 8 CFR 292.1 (law students, law graduates, reputable individuals and accredited officials) may not submit a notice of appearance form in application and petition proceedings before DHS, and notification regulations do not apply to them.⁹ These other categories of individuals may appear as “other representatives” at interviews or other in-person meetings with USCIS officials. However, the appearance of these “other representatives” is subject to the approval of the USCIS official after the individual submits a statement addressing the requirements specified in 8 CFR 292.1(a)(2) and (3).

³ Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits, 56 Fed. Reg. 6120161202 (proposed Dec. 2, 1991) (to be codified at 8 CFR 103, 214, 223, 223a, 248, 264 and 292)

⁴ Id.

⁵ Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits, 59 Fed. Reg. 1455 (Jan. 11, 1994) (amending 8 CFR 103, 214, 223, 223a, 248, 264 and 292)

⁶ Id. at 1460.

⁷ Id. at 1466.

⁸ Professional Conduct for Practitioners: Rules, Procedures, Representation, and Appearances, 75 Fed. Reg. 5225, 5227 (Interim rule with request for comments Feb. 2, 2010) (amending 8 CFR 1 and 292)

⁹ Law students and law graduates are permitted to provide their name and sign the Form G-28 filed by the supervising attorney or accredited representative. Instructions to Form G-28.

Policy

Effective immediately, USCIS Officers will follow the instructions contained in Chapter 12 of the *AFM* as amended by this PM.

Implementation

The *AFM* is revised as follows.

- ☞ 1. Revise the Table of Contents for Chapter 12 to read:

Chapter 12 Private Attorneys and Other Representatives

- 12.1 Representation in Immigration Proceedings
- 12.2 Notice of Entry of Appearance
- 12.3 Proper Service of Documents & Notices
- 12.4 Interviews
- 12.5 Conduct of Attorneys & Representatives
- 12.6 Role of USCIS District Directors in the Board of Immigration Appeals Recognition and Accreditation Process.

References

Section 292 of the INA
8 CFR 103 and 292

- ☞ 2. Revise Chapter 12 to read:

Chapter 12: Private Attorneys and Representatives

Chapter 12.1 Representation before USCIS

(A) General

An applicant or petitioner may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.¹⁰ In addition, whenever an examination is required, the person involved has the right to be represented by an attorney or representative.¹¹ This does not provide any applicant for admission the right to representation, in either primary or secondary inspection or in an interview regarding a request for classification as a refugee, unless the applicant is the focus of a criminal investigation and has been taken into custody.

¹⁰ 8 CFR 103.2(a)(3) (2011)

¹¹ 8 CFR 292.5(b) (2011)

Title 8 CFR 292.1 lists the types of individuals who may represent an individual before USCIS. Attorneys in the United States, attorneys outside the United States, and accredited representatives may provide legal representation after filing a Notice of Entry of Appearance on Form G-28 or G-28I. See below for specific details.

Title 8 CFR 292.1 also lists other categories of representatives – reputable individuals, law students, law school graduates, and accredited officials – who may assist an individual before USCIS. These individuals must provide additional information to the DHS official before whom they seek to appear, and that official must permit their appearance. These representatives are not eligible to file a notice of appearance (Form G-28) in application and petition proceedings, and USCIS does not communicate with them in writing regarding application or petition proceedings.¹² Each of these representatives must file a statement or declaration described in greater detail below. The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

These individuals may not engage in the practice of law, but may apply to appear in-person before a DHS official at an interview or other meeting or appointment at a USCIS office in order to support an applicant or petitioner and provide non-legal assistance. However, these guidelines do not preclude any individual (such as a family member, friend, colleague, etc.) from helping an applicant or petitioner with the completion of forms, so long as the assistance does not constitute practice or preparation, as that term is defined in 8 CFR 1.1(k).

(B) Attorneys in the United States

An “attorney” is any person who is eligible to practice law in and is a member in good standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.¹³

- An attorney need not be admitted to practice in the state in which his or her office is located or where the applicant or petitioner resides, and may have an office outside the United States, as long as he or she is an attorney as defined in the regulations.
- USCIS employees must routinely consult the DHS Disciplinary Counsel website for information on how to verify the eligibility of an attorney.
- An attorney must submit a “Notice of Entry of Appearance as Attorney or Accredited Representative” (Form G-28) in each case in which he or she seeks to appear. The form must be properly completed and signed by the petitioner or applicant in order for the appearance to be recognized by USCIS.¹⁴

¹² Id.

¹³ 8 CFR 1.1(f) (2011)

¹⁴ 8 CFR 292.4(a) (2011); Instructions for Form G-28 (Rev. 04/22/09)N

(C) Attorneys outside the United States

An **"attorney outside the United States"** is an attorney (other than one who fulfills the requirements of an "attorney" in the United States) "who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he or she resides and who is engaged in such practice."¹⁵

- An attorney outside the United States may only represent applicants or petitioners in matters outside the geographical confines of the United States at a USCIS overseas office. He or she must receive permission to appear from the USCIS official before whom he or she wishes to appear.
- In order to establish eligibility, such an attorney must establish that he or she resides outside the United States in the country in which he or she was admitted to the practice of law, and that he or she is engaged in practice in that country.
- An attorney outside the United States must submit a "Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States" (Form G-28I) in each case in which he or she seeks to appear.
- The form must be properly completed and signed by the petitioner or applicant for the appearance to be recognized by USCIS.¹⁶

(D) Accredited Representatives

An **"accredited representative"** is a person who represents an organization that has been recognized by the Board of Immigration Appeals (BIA) to practice before the Executive Office for Immigration Review (EOIR), including the immigration courts, the BIA and DHS.¹⁷

- EOIR maintains a list of Recognized Organizations and accredited representatives who have authority to represent individuals before EOIR and DHS at www.justice.gov/eoir/legalrepresentation.htm.
- Accredited representatives must submit a "Notice of Entry of Appearance as Attorney or Accredited Representative" (Form G-28) in each case in which they seek to appear.
- The form must be properly completed and signed by the petitioner or applicant for the appearance to be recognized by USCIS.¹⁸

(E) Reputable Individuals

A **reputable individual** is an individual of good moral character who appears on an individual case basis at the request of the person entitled to representation. The reputable individual must have a pre-existing relationship with the applicant or petitioner (e.g., relative, neighbor, clergyman, business associate or personal friend), and must

¹⁵ 8 CFR 292.1(a)(6) (2011)

¹⁶ 8 CFR 292.4(a) (2011); Instructions for Form G-28I (04/22/09)

¹⁷ 8 CFR 292.1(a)(4) & 8 CFR 292.2

¹⁸ 8 CFR 292.4(a) (2011); Instructions for Form G-28 (Rev. 04/22/09)N

not receive payment directly or indirectly for his representation.¹⁹ A USCIS official may waive the requirement that a pre-existing relationship exist between the applicant or petitioner and the representative in cases where adequate representation would not otherwise be available.²⁰

- The reputable individual must submit a declaration that states that he or she is appearing without direct or indirect remuneration. (See Sample Declaration in Appendix 12-1).
- The reputable individual must receive permission from the DHS official before whom he or she wishes to appear. In order to determine whether or not to grant the request of a person seeking to appear as a reputable individual, the DHS official should review the declaration presented and ask the individual questions regarding his or her eligibility and record this information in the record of proceedings. Permission will not be granted to any individual who regularly engages in immigration and naturalization practice or preparation or holds himself or herself out to the public as qualified to do so.²¹
- USCIS does not accept Forms G-28 filed by reputable individuals, as they are not included in the limited category of representatives in 8 CFR 103.2(a)(3).²²
- The reputable individual who is granted permission to appear with an applicant or petitioner may appear only in person in that case. The reputable individual will not receive copies of notices or other written communication that USCIS sends to the individual being represented.²³

(F) Law Students and Law School Graduates

Law students who are enrolled in an accredited U.S. law school and **law graduates** of an accredited U.S. law school not yet admitted to the bar may provide representation, constituting practice and preparation, with the supervision required in 8 CFR 292.1(a)(2).

- Law students and law graduates must seek permission to appear in proceedings before DHS officials.²⁴ The USCIS officer may require that the supervising faculty member, attorney, or accredited representative appear with the law student or law graduate.²⁵
- A **law student** enrolled in an accredited U.S. law school must file a statement that states that, he or she is participating under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a legal aid program or

¹⁹ 8 CFR 292.1(a)(3) (2011)

²⁰ 8 CFR 292.1(a)(3)(iii) (2011)

²¹ 8 CFR 292.1(a)(3)(iv) (2011)

²² 8 CFR 103.2(a)(3); 292.1(a); 292.4(a) (2011); Instructions for Form G-28 (Rev. 04/22/09)N

²³ 8 CFR 103.2(a)(3) and 292.5(a) (2011).

²⁴ 8 CFR 292.1(a)(2)(iv) (2011)

²⁵ 8 CFR 292.1(a)(2) (2011)

- clinic conducted by a law school or non-profit organization, and is appearing without direct or indirect remuneration from the individual he or she represents.²⁶
- A **law school graduate** of an accredited U.S. law school who is not yet admitted to the bar must file a statement that states that he or she is appearing under the supervision of an attorney or accredited representative, and is appearing without direct or indirect remuneration from the applicant or petitioner.²⁷
 - The supervising attorney or accredited representative of a law student or law graduate must submit a "Notice of Entry of Appearance as Attorney or Accredited Representative" (Form G-28) on which the law student or law graduate provides his or her name and signature.²⁸ All notices and communication to the applicant/petitioner's representative in such cases should be addressed to the supervising attorney or accredited representative listed on the G-28 (not the law student or law graduate).
 - If the USCIS officer observes an action by a law student or graduate that provides good cause for the officer to believe that the representation by the law student or graduate will impair the efficient conduct of the proceeding, the USCIS officer may alert a USCIS supervisor who may contact the supervising faculty member, attorney, or accredited representative.

(G) Accredited Officials

Although it is rare, an **accredited official** of the alien's home government (e.g., a consular officer) may represent an alien if the official is in the United States and appears solely in his official capacity and with the applicant or petitioner's consent.²⁹

- In exercising discretion to allow an accredited official to appear before DHS, DHS officials should ensure that the individual does not regularly engage in immigration practice or preparation or hold himself out to the public as qualified to do so. To properly document this exercise of discretion, DHS officials should request such individuals submit a written statement in support of their appearance, addressing the relevant factors. (See Sample Statement in Appendix 12-1.)
- DHS does not send notices or other written communications to accredited officials.

12.2 Notice of Entry of Appearance

(A) Filing a Notice of Entry

Attorneys, attorneys outside the United States, and accredited representatives must establish their eligibility to appear on the form designated by DHS in each case.³⁰

²⁶ 8 CFR 292.1(a)(2) (2011)

²⁷ 8 CFR 292.1(a)(2) (2011)

²⁸ 8 CFR 292.1(a)(2) (2011); Instructions to Form G-28. (Submitted to OMB on Oct. XX, 2011 for 60 day notice)

²⁹ 8 CFR 292.1(a)(5) (2011)

³⁰ 8 CFR 292.4(a) (2011)

- Attorneys and accredited representatives must submit a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.
- Attorneys outside the United States must submit a Form G-28I, Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States.
- The Form G-28 and Form G-28I must be properly completed and signed by the applicant or petitioner in order for the appearance to be recognized by USCIS. Once the Form G-28 or Form G-28I is accepted, the appearance will be recognized until the conclusion of the matter for which it was entered.
- When filing an appeal with the Administrative Appeals Office on Form I-290B, the attorney or accredited representative must file a new Form G-28.
- Other representatives (law students and law graduates, reputable individuals, and accredited officials) may not submit Form G-28 or Form G-28I and may only appear after filing a statement in which they provide specific information listed in the regulations.³¹ The appearance of these other representatives is subject to the approval of the USCIS official before whom they seek to appear.³²

USCIS officers may verify an attorney's or accredited representative's eligibility and require further proof of authority to act in a representative capacity. Officers should seek more information at the DHS Disciplinary Counsel website and at www.justice.gov/eoir/legalrepresentation.htm. Officers should also reference the list of disciplined practitioners at <http://www.justice.gov/eoir/discipline.htm>, which includes attorneys and accredited representatives who are currently expelled or suspended from practice before DHS and EOIR. USCIS officers should be aware of individuals who have falsely claimed to be attorneys or accredited representatives when they are not and individuals who have been the subject of federal state or local court action to stop their unauthorized practice of law or theft of fees for legal services they may not lawfully provide. USCIS is not to communicate with such individuals, even if they submit a "Notice of Entry of Appearance as Attorney or Representative" (Form G-28) in a case.

(B) Substitution or Withdrawal of Representation

It is not uncommon for applicants or petitioners to wish to change representatives or elect to forgo representation during the course of a proceeding. Substitution or withdrawal of an attorney or accredited representative may be made upon the written withdrawal of the attorney or accredited representative of record or upon notification of the new attorney or accredited representative.³³ An applicant or petitioner may elect to proceed without his or her representative, but must submit a written statement to the USCIS official that he or she has voluntarily chosen to proceed without representation.

³¹ 8 CFR 292.1(a)(2), (3) and (5) (2011).

³² See fn. 28.

³³ 8 CFR 292.4 (2011)

12.3 Proper Service of Documents & Notices

Once an attorney (whether in or outside the United States) or accredited representative has filed a properly completed Form G-28 or Form G-28I on behalf of an applicant or petitioner, USCIS is required to serve documents and notices on the attorney or accredited representative.³⁴ Original notices and documents evidencing lawful status in the United States based on the approval of a benefit request will be sent to the attorney or accredited representative whom the applicant or petitioner has authorized to receive such notices and documents on his or her behalf. In such instances, a copy of the benefit notice will also be sent to the applicant or petitioner. **EXCEPTION:** Secure identification documents such as Form I-551, Permanent Resident Card or Form I-766, Employment Authorization Document, can only be sent to the applicant.³⁵

In all other instances (e.g., where the applicant or petitioner is not represented), original benefit notices and documents evidencing lawful status that are issued based on the approval of a benefit request will be sent directly to the applicant or petitioner.

In matters where the Form G-28 or Form G-28I is not accepted because the individual is not an eligible representative or because the form is not properly signed, the application or petition will be processed as if the applicant or petitioner is unrepresented.³⁶ The receipt notice and any other notices will be sent only to the applicant or petitioner.

12.4 Interviews

When an examination is to be conducted in immigration proceedings, the person involved has the right to be represented, at no expense to the government, by an attorney or representative, as defined in 8 CFR 292.1(a). The role of the representative at an interview is to ensure that the rights of the individuals he or she represents are protected.

Only an attorney, an attorney outside the United States, an accredited representative, or a law student or law graduate appearing with proper supervision and with the permission of a DHS official may provide legal advice to an applicant, petitioner, or witness.³⁷ USCIS may allow other eligible representatives (including reputable individuals, law students, and law school graduates), who have obtained the consent of the applicant, petitioner, beneficiary or other witness, to appear at interviews with the individual. These individuals must seek permission from the presiding DHS official to appear at the interview. Other categories of representatives may provide non-legal assistance and support that does not constitute practice or preparation, as defined in 8 CFR 1.1.

³⁴ 8 CFR 292.5 (2011).

³⁵ 8 CFR 103.2(b)(19)

³⁶ 8 CFR 103.2(a)(3) (2011)

³⁷ 8 CFR 1.1(i), (j) and (k).

When conducting an interview of a petitioner and beneficiary simultaneously, attorneys or eligible representatives of both the petitioner and beneficiary will be permitted to appear at the interview.³⁸ In visa petition proceedings, representatives who have obtained the consent of the petitioner should be recognized in interviews with the petitioner. Representatives who have obtained the consent of the beneficiary should be recognized in interviews with the beneficiary. Any individual appearing in a representative capacity may not respond to questions the interviewing officer has directed to the applicant, petitioner, or witness, except to ask clarifying questions.

An attorney or representative of an applicant or petitioner may not simultaneously serve as his or her client's interpreter during an interview.³⁹ If, after being so advised, the attorney or other representative continues to interpret for the applicant or petitioner or otherwise disrupts the interview, USCIS may terminate the interview and advise the parties that the interview cannot be completed under these circumstances and that USCIS will proceed to make a decision based on the record of proceedings.

12.5 Conduct of Attorneys and Representatives

DHS has rules of professional conduct for practitioners who practice before the Department's immigration agencies.⁴⁰ Under the rules, practitioners (attorneys, accredited representatives and other categories of representatives permitted to appear by DHS) are subject to discipline for criminal, unethical, or unprofessional conduct. Complaints of professional misconduct by practitioners should be reported to the DHS Disciplinary Counsel. USCIS officers should visit the Disciplinary Counsel website for more information on professional conduct, reporting misconduct, and how to verify the eligibility of an attorney or accredited representative.

Officers should not engage in personal conversations or arguments with attorneys or other representatives during the course of an interview. If a discussion becomes argumentative, the officer should seek assistance from a supervisor. The attorney or representative may raise an objection on an inappropriate line of questioning and, as a last resort, may request supervisory review without terminating the interview. Where necessary, disagreements between USCIS officers and attorneys or other representatives regarding the appropriate role of the attorney or other representative in USCIS interviews, should be elevated to the Field Office Director. USCIS employees may not file complaints directly to state bar disciplinary authorities. Complaints of unethical and unprofessional conduct by attorneys or other representatives should be reported to DHS Disciplinary Counsel through appropriate supervisory channels.

³⁸ 8 CFR 103.2(a)(3) (2011)

³⁹ Exceptions may be made if the interests of the Government will not be prejudiced.

⁴⁰ 8 CFR 292.3 (2011)

- ☞ 3. Add Appendix 12-1 the Table of Contents for Appendices.

Appendix 12-1 Sample Statements and Declarations

- ☞ 4. Appendix 12-1 is added as follows:

Appendix 12-1 Sample Statements and Declarations

**SAMPLE STATEMENT OF LAW STUDENT REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as a law student enrolled in Anystate Law School, an accredited U.S. law school.

I am appearing at the request of Jane Doe, a person entitled to representation.

I am participating under the direct supervision of Sam Samuels, a faculty member, Susan Williams, a licensed attorney, or Joe Johnson, a BIA accredited representative in a legal aid program or clinic conducted by a law school or non-profit organization.

I am appearing without direct or indirect remuneration from the individual I seek to represent.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request.

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

**SAMPLE STATEMENT OF A LAW GRADUATE REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as a graduate of Anystate Law School, an accredited U.S. law school, who is not yet admitted to the bar.

I received my law degree on June 1, 2011 and will take the bar examination on February 21, 2012; or, sat for the bar examination on July 24, 2011 and have not yet received my results.

I am appearing at the request of Jane Doe, a person entitled to representation.

I am appearing under the supervision of Susan Williams, a licensed attorney, or Joe Johnson, an accredited representative. I am appearing without direct or indirect remuneration from the individual I seek to represent.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request.

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

**SAMPLE DECLARATION OF A REPUTABLE INDIVIDUAL REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as a reputable individual of good moral character, as defined in 8 CFR 292.1(3).

I am appearing on an individual case basis at the request of Jane Doe, a person entitled to representation. I am appearing without direct or indirect remuneration. I have a pre-existing relationship with Jane Doe as a relative, neighbor, clergyman, business associate, and/or personal friend.

I am not regularly engaged in immigration and naturalization practice or preparation, nor do I hold myself out to the public as qualified to do so.

I declare, under penalty of perjury under the laws of the United States of America, that this statement is all true and correct.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

**SAMPLE STATEMENT OF AN ACCREDITED OFFICIAL REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as an accredited official of the Nowhereland government to which Jane Doe owes allegiance.

I am not regularly engaged in immigration and naturalization practice or preparation, nor do I hold myself out to the public as qualified to do so.

I am appearing with the consent of Jane Doe, a person entitled to representation.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request.

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

5. Revise Chapter 15.1(b)(2) to read:

15.1 Interview Policies

(b) Scheduling Interviews and Evaluating Requests for the Rescheduling of Interviews **[Revised 11-23-2005]**

(2) Evaluating Requests for the Rescheduling of Interviews (See 8 CFR 103.2(b)(9))

Prior to and at 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.

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 for the applicant or petitioner's request, 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 *AFM Chapter 15.1(d)(2)*.

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

If an attorney or other representative is unable to attend an interview for good cause, the local office should make best efforts to accommodate a timely request to reschedule an interview. Such requests are considered to be for good cause when the attorney or other representative has notified the local office that he or she is unable to appear at the scheduled date and time because of circumstances beyond his or her control, including but not limited to, scheduling conflicts resulting from a requirement that the attorney or other representative appear in court, previously planned travel, and any situation where two interviews of clients represented by the same attorney or representative are scheduled at the same time.

When an attorney or other representative is unable to attend the interview for any reason, the individual being interviewed may elect to proceed with the interview without his or her representative. The applicant's or petitioner's decision to proceed without his or her attorney or accredited representative must be voluntary. If the individual wishes to proceed without his or her representative the USCIS official should obtain a written statement from the individual. When possible, the attorney or accredited representative should communicate his or her consent to proceed without him or her present. The

officer may still consider statements and submissions by the individual's attorney or other representative in his or her absence.

6. Revise Chapter 15.2 to read:

15.2 Interview Environment.

(a) Adjudications Environment

It is essential that the person being interviewed appreciate the importance and seriousness of the proceedings. To ensure this, the setting in which the interview takes place must be orderly and official in appearance. Desktops should be uncluttered and files should be housed in cabinets. Flags, USCIS and DHS seals and other official displays can enhance the official appearance. Excessive amounts of personal items should not be displayed in view of applicants as these may be distracting or detract from the serious nature of the proceedings.

Because adjudications units in local USCIS offices are generally very busy with a high volume of applicants appearing for adjustment, naturalization, marriage fraud and conditional resident removal interviews, it is essential that adequate office space be provided for each district adjudications officer.

Sufficient seating for the officer and applicant, attorney or other representative and family members should be provided. The attorney or other representative should be seated directly next to the person being interviewed to facilitate appropriate participation unless the physical layout of the interview space cannot accommodate it. If the officer has a concern that the seating arrangements may be inhibiting or negatively impacting the interview process, he or she should contact a supervisor for guidance.

(b) General Office Environment

Ideally, individual offices or high-walled, acoustically insulated, modular offices with doors should be provided to ensure a reasonable level of privacy. Offices should be equipped with video or audio taping devices. If the district lacks sufficient recording equipment, arrangements should be made to provide such equipment for, at least, the most difficult cases. Each work station should be provided with sufficient storage space for files, supplies, research materials and personal items, so that the office remains uncluttered. Acoustical ceiling tiles or other sound dampening material should be installed to minimize noise from other interviews and protect the privacy of each applicant. Lighting and ventilation should be adequate for a pleasant, comfortable and efficient working environment. USCIS will make every effort to make reasonable accommodations for applicants with disabilities. When possible, the public waiting area

should be reasonably proximate to the interview area to minimize lost time between interviews.

7. Revise Chapter 15.3 to read:

15.3 Officer Conduct and Appearance

(a) Appearance

It is imperative that the officer conducting the interview dress in a professional manner. Both males and females should wear appropriate business attire, although some offices may permit "business casual" attire on certain days.

(b) Conduct and Attitude

All interviews should be conducted in a courteous and businesslike manner. The following guidelines will ensure that the interview is conducted professionally:

- Maintain control of the interview at all times. "Maintaining control" does not mean being overbearing or abusive; on the contrary, it requires that the officer maintain a professional demeanor at all times. The exact nature of that professional demeanor will sometimes vary, according to the interview techniques being employed (see below). The ability of the officer to maintain control of him/herself is instrumental in maintaining control of the interview.
- Speak clearly, distinctly and not too rapidly, using plain and simple language when questioning an applicant, petitioner or witness. Avoid complex and lengthy questions, and always obtain a responsive answer before proceeding to the next question. Avoid using USCIS or government jargon.
- At all times, maintain due regard for the rights of the person being questioned.
- Avoid arguments with the person being interviewed, as well as remarks of a personal nature that may be taken as a reflection of a judgment of a personal lifestyle.
- Refrain from making any extraneous comments or asking extraneous questions, as they are irrelevant to the purpose of the interview and detract from the professional demeanor that the officer should maintain. Avoid questions about a person's religious beliefs or practices unless they are relevant to determine the individual's eligibility for a benefit. Do not make any comments that might be taken as a negative reflection upon any other person, race, religion, or country.
- Maintain professional conduct even if the interviewee becomes abusive or if derogatory information is developed. If necessary, contact a supervisor.
- Be fair, courteous, and patient without diminishing in any degree full and complete development of the material facts, whether they be favorable or adverse to the person being interviewed or any other person.

- When questioning persons concerning sexual relations, always avoid questions which can be construed solely as prurient or prying.
- Ensure that your demeanor is unprejudiced, impartial, and creates no foundation for complaints that you have been unfair or have used any mistreatment or duress.

8. Revise Chapter 15.4 to read:

15.4 Interview Procedures

(a) Basic Interview Procedures and Techniques

Conducting successful interviews is a skill which requires knowledge and experience. Successful approaches will vary widely depending on the interviewer, the interviewee, and subject and purpose of the interview. Certain standards (such as those relating to the rights of the individual and the need for professionalism) remain constant; others change according to the circumstances.

Interview proceedings are not to be adversarial in nature. The purpose of the interview is to obtain the correct information in order to make the correct adjudication of the case, not to prove a particular point or to find a reason to deny the benefit sought. The purpose is to cover (and discover) all the pertinent information, both favorable and unfavorable to the applicant.

The following observations apply to all interviews:

(b) Preparing for the Interview

- The successful interview process begins when USCIS issues a call-in notice. In addition to accurately explaining the purpose of the interview, the notice should instruct the attorney (or in an unrepresented case, the interviewee(s)) on what to bring to the interview. In all cases, the notice should at least instruct the attorney / interviewee(s) to bring the originals of all documents previously submitted as photocopies.
- Do not commence an interview, even though time may be limited, until you have reviewed the application or petition and relating material, including submissions made by the applicant or the applicant's attorney or representative. Depending upon the case, this may range from a rapid scanning of the file to an intensive study of all available material. However, it is essential that the review of the material be made before commencing the questioning in order for the adjudicator to have the requisite knowledge and understanding of all the facts and circumstances involved in the case. Otherwise, the questioning may not cover all pertinent points. The review should be sufficiently thorough to enable the adjudicator to cover all issues necessary for an adjudication, thereby avoiding

any need for recalling the applicant, petitioner, or witness for further questioning on an issue which could have been covered during the initial interview. Review of the applicable provisions of the law and precedent decisions also should be made, if necessary, to ensure thorough familiarity with any legal issue that may be developed by questioning. In addition, when possible the adjudicator should review submissions made at the time of an interview that may assist in resolving legal issues. The more complete the preliminary preparation of the case prior to beginning the interview, the better equipped you will be to conduct an efficient interview, without time-wasting repetition or needless questions.

- If complex issues are involved, prepare an outline of the logical sequence of questioning to be followed, the information to be developed, and the evidence to be utilized. Such outlines are most conducive to eliciting all essential facts. Additionally, it may be advisable to select certain material from the file or relating files and arrange such material in the sequence of the plan of questioning. The extent of necessary preliminary preparation depends upon the issues involved in the individual case.

(c) At the Interview

- Greet the interviewee in a polite, dignified manner to put him or her at ease.
- Identify yourself, giving your name and title.
- Begin the interview with an explanation in non-technical terms of the purpose of the interview.
- Obtain identification from all parties to the interview, including interpreters, attorneys, and/or other representatives, unless identity has been previously established.
- Administer the following oath: "Do you solemnly swear (or affirm) that the statements you are about to make will be the truth, the whole truth, and nothing but the truth?"
- The oath or affirmation should always be administered in such a manner as to impress upon the person being interviewed the solemnity of the occasion and the importance of the testimony that he is about to give. The adjudicator and the person(s) to be sworn or affirmed should stand and raise their right hands during the administration of the oath or affirmation. The fact that the interview is being conducted under oath or affirmation should be noted in the transcript or in the file. If a verbatim question and answer statement is taken, the exact wording of the oath or affirmation should be included in the transcript. If such statement is not taken, the memorandum record of the interview should show that the person was under oath or affirmation.
- An applicant or the applicant's attorney or representative should be permitted to present documents or other evidence that may help to clarify an issue of concern to the interviewer. When possible, such evidence should be submitted and reviewed before the interview, and when relevant, should be added to the applicant's file.

- In certain other types of cases where more than one individual is to be questioned, it is generally best to question each party separately, asking each party several of the same questions in order to identify inconsistent answers. It may be necessary to recall either party for further questioning if contradictory answers are provided. In other types of interviews, an entire family group may be interviewed collectively.
- In a case where there is reason to believe that a witness under oath has given or may give false testimony, it may be advisable to inform the subject that willfully giving false testimony on a material matter under oath constitutes the crime of perjury, and that a person convicted of perjury is subject to a penalty of a fine, imprisonment or both. (However, see the comment below about challenging every false statement immediately.)
- Should the interviewing officer be required to leave the office for any reason during the interview, the relating file(s) should be removed to avoid unauthorized review during the officer's absence.

(d) Questioning Techniques

- All questions are either "closed-ended" or "open-ended."
 - Closed-ended questions call for specific, factual and usually brief responses (e.g., "Have you ever been arrested?").
 - Open-ended questions solicit views, opinions, thoughts and feelings and generally call for longer, narrative-type responses (e.g., "Tell me about any arrest you have had."). Open-ended questions are normally more useful in assessing an individual's credibility and for eliciting statements which may later be supported or contradicted.
 - Leading questions, which assume a controversial fact or suggest the answer, should be avoided except to expedite obtaining preliminary identifying material. For example, the leading question "You have never been arrested?" anticipates and assumes the subject's answer.
- Persons being questioned should be permitted to give a full explanation of any issue involved in the case. Fairness requires consideration of all relevant evidence. In some instances, detailed questioning may be desirable in order to make it more difficult for the subject to disavow his statements at a later time or to fabricate a new story. In this connection, however, remember that an adjudicator is duty-bound to develop the facts, favorable as well as unfavorable, with equal fairness to the subject and to the interests of the Government.

(e) Concluding or Terminating an Interview

An adjudicator should not unnecessarily prolong an interview, but should conclude it when all necessary information has been elicited. The subject(s) should be thanked for cooperating and providing information.

On some occasions it may be necessary to terminate an interview even though all essential information has not been elicited; however, termination should be avoided whenever possible. Termination may be necessary in the following situations, which are not intended to be exclusive:

- The interviewee is unable to communicate without an interpreter and one is not available.
- An interpreter clearly has difficulty in translating effectively.
- The officer has reasonable doubts about either the ability or impartiality of an interpreter supplied by the interviewee, and a USCIS or DHS interpreter is not immediately available.
- An attorney or other representative of an applicant or petitioner insists on responding to questions or coaching the person being interviewed.
- An attorney or other representative of an applicant or petitioner insists on interpreting for his or her client during an interview.
- The subject refuses to respond to questions essential to the successful completion of the interview.

The interviewing officer should explain the reason(s) for the termination. When appropriate, the interview should be rescheduled and (if needed) arrangements made for a competent interpreter. If the subject(s) or representative insists on continuing, a supervisor should be informed of the reason for the termination. It is the responsibility of the supervisor to determine if termination is warranted and to deal with the subject(s) and/or representative if they refuse to accept an unfavorable determination.

(f) After the Interview

- An alien, or attorney or accredited representative with a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative (Form **G-28**), may request a personal review and/or copy of the record of proceedings, including any written record of an interview conducted before a USCIS officer. The requesting party may file a Freedom of Information/Privacy Act Request (Form **G-639**) with USCIS to gain access to other record material.

[See also **Appendix 15-2**, Techniques for Interviewing and Preparing Sworn Statements.]

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

AD11-42 12/21/2011	<ul style="list-style-type: none">• Chapter 12• Appendix 12-1• Chapter 15.1(b)(2)• Chapter 15.2• Chapter 15.3• Chapter 15.4	This PM amends the <i>AFM</i> to include a revised Chapter 12, Private Attorneys and Other Representatives; new Appendix 12-1, Sample Affidavits; and revisions to Chapter 15.1(b)(2), Chapter 15.2, Chapter 15.3, and Chapter 15.4.
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Use

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

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to your Directorate.

Greenwood, Tembora A

From: USCIS Broadcast
Sent: Tuesday, May 29, 2012 4:00 PM
Subject: USCIS Today 5-29-12



**U.S. Citizenship
and Immigration
Services**

USCIS Today

Tuesday, May 29, 2012

Information contained in *USCIS Today* is summarized below and available through [USCIS Today Online](#). Contact the [Internal Communications Mailbox](#) to submit items for broadcast, access archived issues or share comments and suggestions.

MANAGEMENT DIRECTORATE NEWS

Contracting Office Annual Contracting Officer's Representative (COR) of the Year Award for 2012 on June

1

NEW!

Please join the USCIS Contracting Office for the annual presentation of the Contracting Officer's Representative (COR) of the Year Award for 2012. The Associate Director for Management Directorate, Mr. Rendell L. Jones will be presenting the awards for the COR of the Year and the Runner Up COR of the Year on June 1 at 12:00 p.m. in the Tomich Center at 111 Massachusetts Avenue, Washington, DC. Please join us and congratulate the award recipients and all other USCIS CORs for their outstanding support in this important role supporting the USCIS mission and our acquisition program.

2012 Hurricane Season Reminder

REMINDER

The 2012 hurricane season for the Atlantic basin starts June 1 and continues through September. USCIS personnel should take time to review office and local emergency plans. This is a perfect time to review your family emergency communications plan and build or stock your personal emergency kits for your workplace, car, and home.

To learn more, please read the [entire article](#) and visit the [OSI EMS ECN](#) page. For further information, please contact the OSI Emergency Management and Safety Division (EMSD) or your local EMS or Emergency Management Coordinator representative.

Reminder – Complete the 2012 Federal Employee Viewpoint Survey

REMINDER

Please take a few minutes to share your opinions and make your voice count by completing the **2012 Federal Employee Viewpoint Survey!** The Office of Personnel Management launched the survey on April 30; it will close **on June 8**. The survey takes approximately 20 – 25 minutes and is designed so you can stop at any point and resume later. **Responses are strictly confidential and will not be attributed to individual employees.** A list of frequently asked questions is available online. We need to hear from you!

AFGE Settlement of Grievance Arbitration

REMINDER

In settlement of a grievance arbitration filed by the AFGE National Citizenship and Immigration Services Council, U.S. Citizenship and Immigration Services will no longer require the use of a grievance form (e.g. CIS Form 827, Form G-1162) in the grievance process. Additionally, USCIS will drop all claims to a procedural deficiency relating to a grievance form alleged in grievances currently within the process at any step.

New USCIS Parking Applications

REMINDER

The Office of Administration, HQ Services, has two new parking applications - the G-1249, USCIS Controlled Parking Application, and the G-1174, USCIS Paid Parking Application. These forms can be accessed by clicking the links on the USCIS Parking Web page.

Tips for Official Outgoing Mail

REMINDER

Successful delivery or receipt of mail depends on the clarity and accuracy of delivery and return addresses. USCIS offices should remember that the use of three-digit office codes is not acceptable. Please include a complete, accurate and legible address for all outbound mail shipped internally or externally through domestic or international channels by using an authorized commercial carrier or the U.S. Department of State international shipping system (DIP Pouch System).

Contact the Mail Management Division for additional mailing-related information, or view the International Addressing Tips and the Domestic Delivery Address Tips. Please send inquiries via email to Sophia Pressley or refer to the CRDS Customer Mail Guide.

Retirement Planning and Related Webinars

The Federal Long Term Care Insurance Program (FLTCIP) will offer webinars on retirement, benefits, and other related topics. To learn about these webinars and register for any of the events listed, visit

the FLTCIP website. Live sessions and archived sessions such as: "Retirement: It's not too early (or late) to think about it!", "What's your retirement number?" and "A forum on caregiving" are also available on the website. Upcoming FLTCIP webinars are listed below:

April Edition of the Management Directorate Newsletter Now Available

The April edition of the Management Directorate newsletter, **Management DIRECT**, is now available. Some of the topics for this month include:

- A reminder about mandatory mid-cycle reviews
- A feature on the "Take Your Daughters and Sons to Work" celebration at Headquarters
- A special recognition for achievements and milestones throughout the Directorate

New OSI Connection Newsletter

The April 2012 issue of the Office of Security and Integrity (OSI) newsletter, **OSI Connection**, is now available on Connect. This issue features articles that will:

- Introduce you to OSI's new Chief, Gilbert Schmelzinger, and Deputy Chief, Jeff Conklin
- Explain why different USCIS facilities have different security procedures
- Clarify the differences between USCIS credentials, badges, and DHS Personal Identification Verification (PIV) cards

Cyber Security Tip

The only approved peer-to-peer (P2P) software in USCIS is the Microsoft Communicator that is automatically installed on your computer. The use of any other P2P software is **STRICTLY PROHIBITED** while using your USCIS desktop, laptop, Blackberry, etc. Refer to **DHS 4300A "Sensitive Systems Handbook," Section 5.4.9** and the US-CERT cyber tip **Risks of File-Sharing Technology** or download the **P2P poster** for more information.

Voluntary Leave Transfer Program (VLTP)

The following USCIS employee(s) are approved VLTP recipients in need of leave donations. Please **view the list of employees.**

...Read More Management Directorate News...

USCIS EXECUTIVE MEMORANDA

Final Policy Memoranda



USCIS has cleared the following final policy memoranda for distribution:

- **PM-602-0043.1 (May 14, 2012) Process for Responding to Requests by the Department of State (DOS) To Accept a Locally Filed Form I-130, Petition for Alien Relative**
- **PM-602-0055.1 (May 23, 2012) Representation and Appearances and Interview Techniques: Revisions to Adjudicator's Field Manual (AFM) Chapters 12 and 15; AFM Update AD11-42**

Draft and interim policy memos will be posted on www.uscis.gov/outreach for stakeholder review and comment. Interim and final policy memos are official USCIS policy documents and effective the date the memos are approved.

Visit the [Feedback Opportunities Web page](#) on Connect for additional information.

[...Read More Executive Memoranda...](#)

OFFICE OF CITIZENSHIP NEWS

USCIS and the Smithsonian Institution launch Preparing for the Oath



USCIS released *Preparing for the Oath: U.S. History and Civics for Citizenship*, a Web-based learning tool designed to help immigrants prepare for the civics portion of the naturalization test.

The USCIS Office of Citizenship partnered with the Smithsonian Institution's National Museum of American History (NMAH) to develop this self-study tool, which is based on the 100 civics questions and answers from the naturalization test. *Preparing for the Oath* is organized into themes related to U.S. history, government and civics, and features:

- Short videos and self-tests on the content of each civics question
- Interactive learning activities, including object explorations of Smithsonian artifacts
- A "Test Yourself" section, which provides users with a randomly generated list of ten questions
- A "Teachers" section, which provides materials and strategies to use *Preparing for the Oath* in a classroom setting

Preparing for the Oath is a valuable addition to the citizenship preparation materials USCIS offers to aspiring citizens. Encourage your staff to explore *Preparing for the Oath* and share the link with colleagues and customers. Users will also be able to access *Preparing for the Oath* on the Citizenship Resource Center under [Study Materials for the Civics Test](#).

[...Read More Office of Citizenship News...](#)

JOB OPPORTUNITIES

New Training Officer Positions

In support of the Director's initiative announced to employees on May 4, USCIS is recruiting qualified applicants for the new Training Officer position in the Field Operations Directorate and the Service Centers Operations Directorate. This position is posted in USAJobs under two vacancy announcements: Immigration Services Officer (Training) and Training Officer. The vacancy closes on June 11. Visit the Connect page for more information on this position and to view answers to FAQs that USCIS employees have raised on this position.

Leadership Development Training Opportunity: Senior Executive Service Candidate Development Program

DHS is now accepting applications from federal and non-federal employees at the GS-15 level, or equivalent, for the Senior Executive Service Candidate Development Program (SES CDP). DHS is seeking to develop a cadre of high performing employees standing ready to step into SES positions to address the evolving challenges and missions at DHS. Applications for the SES CDP must be completed through USAJOBS by **June 1**.

Office of Intake and Document Production

The Office of Intake and Document Production, Intake Enhancement Division is recruiting qualified individuals for a Supervisory Management and Program Analyst (GS-14) position located in Washington, D.C. This vacancy closes on June 4.

The Office of Intake and Document Production, Intake Enhancement Division is recruiting qualified individuals for the following positions:

- Management and Program Analyst (9-12) and
- Management and Program Analyst (12-13).

These positions are located in Washington, D.C. This vacancy closes on June 4.

Office of Communications

REMINDER

The Office of Communications is recruiting qualified individuals to apply for a Management Program Analysis (GS-13/14) position in Washington, D.C. This vacancy announcement closes on May 29.

...Read More Job Ops News...

TEAM USCIS

Houston Asylum Office

NEWS

Earlier this month The Houston Asylum Office observed Asian Pacific American Heritage Month with an exciting show that celebrated the diversity and uniqueness within different Asian Pacific American cultures. The event featured performers who wore traditional attire, and performed dances and music that were native to a particular island region. The audience also had the opportunity to participate during the event. One group of performers, the Polynesian Revue, presented traditional dances from Tahiti, Samoa, New Zealand, Fiji and Hawaii. [...Continue Reading](#)

[...Read More Team USCIS News...](#)

TRANSFORMATION NEWS

ELIS Launch Link Available

NEWS

We launched the first phase of our electronic immigration system, USCIS ELIS, to begin the agency's transition to an electronic environment. This release marks a significant milestone in our agency's history and is the result of the hard work and unwavering commitment of our workforce.

To celebrate this important achievement, we will recognize employees who supported the work of our agency's transformation over the past three years during an event with Director Mayorkas at the Tomich Conference Center in Washington, D.C.

The event took place on May 24 and the [video](#) is now available on-demand.

[...Read More Transformation News...](#)

OPE NEWS

Next Spanish-Language "Enlace" Via Teleconference on June 13

REMINDER

On June 5, USCIS will conduct the next national Spanish-language public engagement, or "Enlace," via teleconference on June 13, from 7:30 – 9 p.m. EDT. The Office of Public Engagement will share agency updates, discuss immigration-related topics and answer questions.

For more information, view the [Enlace flier](#) or email public.engagement@dhs.gov.

[...Read More OPE News...](#)

NOTABLE NATURALIZATIONS

Fresno Field Office

The Fresno Field Office sent a team of adjudicators to Bakersfield, Calif., in mid-April to interview and swear in applicants on the same day. This was particularly helpful for Margie Walters who lives in Bishop, Calif., which is more than 227 miles away from the Fresno Field Office.

Portland Field Office

The Portland Field Office recently held a naturalization ceremony during the Portland Guadalajara Sister City Association's annual Cinco de Mayo Fiesta in Portland, Ore., from May 4-6. This year, the naturalization ceremony kicked off the weekend's activities.

Fifty candidates from 31 nations were sworn in by Field Office Director Evelyn Sahli.

[...Read More Notable Naturalizations...](#)

USCIS GREEN PROGRAM

Recycling: Keep it Clean!

While the practice of recycling has grown significantly in the United States, sometimes the effort and benefits are reduced due to poor recycling habits. Please consider these simple tips to maximize the benefits of recycling

[...Read More USCIS Green Program News...](#)

ON MASS AVE

USCIS Headquarters Unity through Diversity Day 2012 - Save the Date!

REMINDER

USCIS will host its first-ever Unity through Diversity Day at headquarters on July 12 at 10 a.m., so please mark your calendar. Throughout the day there will be a variety of learning opportunities aimed at raising cultural awareness and sensitivity in order to help foster an inclusive environment at the agency. Additional information will be provided as the event approaches. If you have any questions, please contact Vicky Crawford at Vicky.Crawford@dhs.gov.

...Read More On Mass Ave News...

TODAY'S HEADLINES

The following clips are intended to provide a brief overview of the news as it relates to USCIS. The thoughts and opinions expressed in the following articles are not those of the USCIS Today.

Town Hall meeting in Dearborn focuses on immigration policy
Dearborn Press & Guide

Four Senators propose easing Visa limits for highly skilled
New York Times

Immigration agency opens gate for online applications
Federal News Radio

Deportation threat lifted from local couple
Battleboro Reformer

Husband avoids jail in slave labor case
Lower Hudson Online

For more news clips regarding the department, visit DHS News Briefing at
<http://www.bulletinnews.com/dhs/>

CONTACT USCIS TODAY

Internal Communications



May 23, 2012

PM-602-0055.1

Policy Memorandum

SUBJECT: Representation and Appearances and Interview Techniques; Revisions to
Adjudicator's Field Manual (AFM) Chapters 12 and 15; *AFM* Update AD11-42

Purpose

This policy memorandum (PM) provides guidance regarding representation and appearances and interview techniques in certain application and petition proceedings before USCIS.

Scope

This PM applies to the adjudication processes of the Field Operations and Service Center Operations Directorates and the International Operations Division of the Refugee, Asylum, and International Operations Directorate. This PM replaces *AFM* Chapter 12, parts 1-5 and Chapter 15, parts 1(a), 1(b)(2), 2-4, and adds new Appendix 12-1. This PM does not apply to the Asylum Division or the Refugee Affairs Division of the Refugee, Asylum, and International Operations Directorate or site visits conducted by the Fraud Detection and National Security Directorate, which are governed by other established procedures, guidance, and lesson plans.

Authority

Section 292 of the Immigration & Nationality Act
8 CFR 1; 103; 292

Introduction

U.S. Citizenship and Immigration Services (USCIS) is committed to ensuring the integrity of the immigration system. This goal is furthered when USCIS adjudicators recognize the range of individuals who may represent applicants and petitioners, respect the relationship between client and representative, and conduct interviews professionally. The Department of Homeland Security has rules of professional conduct for employees and practitioners who practice before the Department. This policy memorandum provides guidance to adjudicators and balances the meaningful role of attorneys and other representatives in the interview process with the important responsibility of adjudicators to conduct fair, orderly interviews. This policy memorandum provides guidance for appearances and interview techniques in application and petition proceedings before USCIS; however, it does not apply to asylum or refugee processing procedures or site visits conducted by the Fraud Detection and National Security Directorate, for which specific guidance exists. In the refugee processing context, among other differences in

interviewing procedures, refugee applicants do not have the right to representation as such applicants are deemed to be applicants for admission.¹

Background

An applicant or petitioner for immigration benefits may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.²

Prior to 1994, the regulations governing the adjudication of applications and petitions (8 CFR 103.2) did not include provisions specifically addressing the representation of applicants and petitioners during such proceedings. In 1991, the Immigration and Naturalization Service (“Service”) proposed amending the regulations at 8 CFR 103.2 to provide that an applicant or petitioner may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.³ The Service proposed limiting the categories of eligible representatives in application and petition proceedings from the “broad range” of representatives listed in 8 CFR 292.1. Moreover, in order to properly document representation, the Service proposed revising 8 CFR 292.4(a)(4) to require that an applicant or petitioner sign the notice of appearance in order to authorize representation before the Service.⁴ In adopting these changes in a final rule in 1994, the Service determined that the reasons cited in the supplemental information in the proposed rule supported requiring the signature of the applicant or petitioner on the G-28, and that this was also a way to help combat the unauthorized practice of law by ineligible individuals.⁵ This final rule included the language in 8 CFR 103.2(a)(3) that exists today⁶ and added to 8 CFR 292.4 the requirement that the notice of appearance form be signed by the applicant or petitioner in order to authorize representation before the Service.⁷

In 2010, the regulations at 8 CFR 292.1 were revised to specifically reference the limited categories of eligible representatives in application and petition proceedings set forth in

¹ Consistent with the longstanding position of the former Immigration and Naturalization Service and USCIS, refugee applicants do not have the right to representation during an interview regarding a request for classification as a refugee, unless the applicant is the focus of a criminal investigation and has been taken into custody as outlined in 8 CFR 292.5(b). Furthermore, the Department of State (DOS) is responsible for scheduling refugee applicants for an interview with USCIS, and therefore, interview notifications and rescheduling policies for refugee applicants are governed by DOS procedures.

² 8 CFR 103.2(a)(3) (2011)

³ Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits, 56 Fed. Reg. 6120161202 (proposed Dec. 2, 1991) (to be codified at 8 CFR 103, 214, 223, 223a, 248, 264 and 292)

⁴ Id.

⁵ Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits, 59 Fed. Reg. 1455 (Jan. 11, 1994) (amending 8 CFR 103, 214, 223, 223a, 248, 264 and 292)

⁶ Id. at 1460.

⁷ Id. at 1466.

8 CFR 103.2(a)(3).⁸ The change reinforced the policy that the other categories of representatives listed in 8 CFR 292.1 (law students, law graduates, reputable individuals and accredited officials) may not file a G-28 in application and petition proceedings before USCIS, and notification regulations do not apply to them.

Policy

Effective immediately, USCIS Officers in the Field Operations and Service Center Operations Directorates and the International Operations Division of the Refugee, Asylum, and International Operations Directorate will follow the instructions contained in Chapter 12 and 15 of the *AFM* as amended by this PM.

⁸ Professional Conduct for Practitioners: Rules, Procedures, Representation, and Appearances, 75 Fed. Reg. 5225, 5227 (Interim rule with request for comments Feb. 2, 2010) (amending 8 CFR 1 and 292)

Implementation

The *AFM* is revised as follows.

1. Revise the Table of Contents for Chapter 12 to read:

Chapter 12 Representation and Appearances

- 12.1 Representation before USCIS
- 12.2 Appearances before USCIS
- 12.3 Proper Service of Documents and Notices
- 12.4 Interviews
- 12.5 Rules of Professional Conduct for Practitioners
- 12.6 The Role of USCIS District Directors in the Board of Immigration Appeals Recognition and Accreditation Process¹

References

Section 292 of the INA
8 CFR 103 and 292

2. Revise Chapter 12 to read:

Chapter 12: Representation and Appearances

Chapter 12.1 Representation before USCIS

(a) General

An applicant or petitioner may be represented in matters filed with USCIS.² Whenever an examination is provided for under the regulations, the person involved has the right to be represented by an attorney or representative before USCIS.³

¹ The Role of USCIS District Directors in the Board of Immigration Appeals Recognition and Accreditation Process; Revisions to the *Adjudicator's Field Manual*, New Chapter 12.6, *AFM* Update AD 11-34. Interim Memo for Comment, PM 602-0039 (June 7, 2011).

² 8 CFR 103.2(a)(3) (2011).

³ 8 CFR 292.5(b) (2011). Refugee applicants do not have the right to representation, as such applicants are deemed to be applicants for admission. Consistent with the longstanding position of the former Immigration and Naturalization Service and USCIS, refugee applicants do not have the right to representation during an interview regarding a request for classification as a refugee, unless the applicant is the focus of a criminal investigation and has been taken into custody as outlined in 8 CFR 292.5(b). Accordingly, this guidance does not apply to the Refugee Affairs Division or the Asylum Division of the Refugee, Asylum, and International Operations Directorate, which are governed by other established procedures, guidance, and lesson plans. This guidance does not apply to site visits conducted by the Fraud Detection and National Security Directorate, which are governed by other established procedures, guidance, and lesson plans.

Title 8 CFR 292.1 lists the categories of individuals who may represent a “person entitled to representation” before DHS, “subject to the limitations in 8 CFR 103.2(a)(3).” An applicant or petitioner may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.⁴ Only these categories of representatives may file a notice of appearance on Form G-28 or G-28I in an application or petition proceeding before USCIS.

Law students and law graduates may engage in practice⁵ and preparation⁶ under the requirements described in the regulations⁷ but may not be the official representative of record on Form G-28. USCIS provides notices in writing to the supervising attorney or accredited representative identified as the representative on the Form G-28. Law students and law graduates may attach a statement with the information required in 8 CFR 292.1(a)(2) to the Form G-28 filed by their supervising attorney or accredited representative, or in person at a USCIS office. A law student or law graduate who has filed the required statement in a case may communicate with USCIS in writing. Substantive filings require the signature of the supervising attorney or accredited representative. See section 12.1(e) for additional information.

Reputable individuals and accredited officials may assist a person entitled to representation before USCIS. Unless otherwise licensed to do so, reputable individuals may not engage in the practice of law, but may apply to appear in-person before a DHS official at an interview or other meeting or appointment at a USCIS office. These individuals may not file a Form G-28. They must provide a written declaration to the USCIS official before whom they seek to appear, and may participate in the interview process only if that official permits their appearance. The original of this written declaration is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding. An accredited official of the government to which an applicant or petitioner owes allegiance may appear at an interview solely in his or her official capacity and only with the applicant’s or petitioner’s consent.⁸ See section 12.1(f) for additional information.

USCIS does not provide notices in writing to reputable individuals or accredited officials.⁹

(b) Attorneys in the United States

An “attorney” is any person who is eligible to practice law in and is a member in good

⁴ 8 CFR 103.2(a)(3) (2011)

⁵ 8 CFR 1.2

⁶ 8 CFR 1.2

⁷ 8 CFR 292.1(a)(2) (2011)

⁸ 8 CFR 292.1(a)(5) (2011)

⁹ Id.

standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.¹⁰

- An attorney need not be admitted to practice in the state in which his or her office is located or where the applicant or petitioner resides, and may have an office outside the United States, as long as he or she is an attorney as defined in the regulations.
- USCIS employees must routinely consult the DHS Disciplinary Counsel website for information on how to verify the eligibility of an attorney.
- An attorney must submit a "Notice of Entry of Appearance as Attorney or Accredited Representative" (Form G-28) in each case in which he or she seeks to appear. The form must be properly completed and signed by the petitioner or applicant in order for the appearance to be recognized by USCIS.¹¹

(c) Attorneys outside the United States

An "attorney outside the United States" is an attorney (other than one who fulfills the requirements of an "attorney" in the United States) "who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he or she resides and who is engaged in such practice."¹²

- An attorney outside the United States may only represent applicants or petitioners in matters outside the geographical confines of the United States at a USCIS overseas office. He or she must receive permission to appear from the USCIS official before whom he or she wishes to appear.
- In order to establish eligibility, such an attorney must establish that he or she resides outside the United States in the country in which he or she was admitted to the practice of law, and that he or she is engaged in practice in that country.
- An attorney outside the United States must submit a "Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States" (Form G-28I) in each case in which he or she seeks to appear.
- The form must be properly completed and signed by the petitioner or applicant for the appearance to be recognized by USCIS.¹³

(d) Accredited Representatives

An "accredited representative" is a person who represents an organization that has been recognized by the Board of Immigration Appeals (BIA) and has been accredited by the BIA to represent others in immigration proceedings before the immigration courts and the BIA of the Executive Office for Immigration Review and/or DHS.¹⁴

¹⁰ 8 CFR 1.2 (2011)

¹¹ 8 CFR 292.4(a) (2011); Instructions for Form G-28 (Rev. 04/22/09)N

¹² 8 CFR 292.1(a)(6) (2011)

¹³ 8 CFR 292.4(a) (2011); Instructions for Form G-28I (04/22/09)

¹⁴ 8 CFR 292.1(a)(4) & 8 CFR 292.2

- EOIR maintains a list of Recognized Organizations and accredited representatives who have authority to represent individuals before EOIR and/or DHS at www.justice.gov/eoir/legalrepresentation.htm. Accredited representatives who are listed as “partially accredited” are authorized to practice only before DHS.
- Accredited representatives must submit a “Notice of Entry of Appearance as Attorney or Accredited Representative” (Form G-28) in each case in which they seek to appear.
- The form must be properly completed and signed by the petitioner or applicant for the appearance to be recognized by USCIS.¹⁵

(e) Law Students and Law Graduates not yet admitted to the bar

Law students who are enrolled in an accredited U.S. law school and **law graduates** of an accredited U.S. law school who are not yet admitted to the bar may engage in practice¹⁶ and preparation,¹⁷ constituting representation¹⁸ under supervision as required in 8 CFR 292.1(a)(2).

- The supervising attorney or accredited representative of a law student or law graduate must submit a “Notice of Entry of Appearance as Attorney or Accredited Representative” (Form G-28) in application and petition proceedings before USCIS.
- A **law student** enrolled in an accredited U.S. law school must file a statement that he or she is participating under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a legal aid program or clinic conducted by a law school or non-profit organization and is appearing without direct or indirect remuneration from the individual he or she represents.¹⁹
- A **law school graduate** of an accredited U.S. law school who is not yet admitted to the bar must file a statement that he or she is appearing under the supervision of an attorney or accredited representative, and is appearing without direct or indirect remuneration from the applicant or petitioner.²⁰
- The statement from the law student or law graduate may be attached to the Form G-28 filed by the supervising attorney or accredited representative, or submitted in person at a USCIS office. (See Sample Statement in Appendix 12-1.)
- Law students and law graduates must seek permission from the DHS official before whom they seek to appear with an applicant or petitioner in person at a USCIS office.²¹ If the DHS official does not permit a law student or law graduate to appear, the reason for this decision shall be provided to the law student or law graduate in writing.

¹⁵ 8 CFR 292.4(a) (2011); Instructions for Form G-28 (Rev. 04/22/09)N

¹⁶ 8 CFR 1.2 (2011)

¹⁷ 8 CFR 1.2 (2011)

¹⁸ 8 CFR 1.2 (2011)

¹⁹ 8 CFR 292.1(a)(2) (2011)

²⁰ 8 CFR 292.1(a)(2) (2011)

²¹ 8 CFR 292.1(a)(2)(iv) (2011)

- The USCIS officer may require that the supervising faculty member, attorney, or accredited representative appear with the law student or law graduate.²² Law students and law graduates who are accompanied by the supervising attorney or accredited representative shall be permitted to appear at the interview or other examination.
- If the USCIS officer observes an action by a law student or law graduate that provides good cause for the officer to believe that the representation by the law student or law graduate will impair the efficient conduct of the proceeding, the USCIS officer may alert a USCIS supervisor who may contact the supervising faculty member, attorney, or accredited representative if they are not present.
- All notices and communication to the applicant/petitioner's representative in such cases should be addressed to the supervising attorney or accredited representative listed on the Form G-28 (not the law student or law graduate). Law students and law graduates who have submitted a statement with the information required in 8 CFR 292.1(a)(2) may communicate in writing with USCIS with regard to procedural issues, such as rescheduling of interviews or biometrics appointments. Substantive filings, such as the filing of briefs or submission of evidence, require the signature of the supervising attorney or accredited representative.

(f) Reputable Individuals

A **reputable individual** is an individual of good moral character who appears on an individual case basis at the request of the person entitled to representation. The reputable individual must have a pre-existing relationship with the applicant or petitioner (e.g., relative, neighbor, clergyman, business associate or personal friend), and must not receive payment directly or indirectly for his or her representation.²³ A USCIS official may waive the requirement that a pre-existing relationship exist between the applicant or petitioner and the representative in cases where adequate representation would not otherwise be available.²⁴

- The reputable individual must submit a declaration that states that he or she is appearing without direct or indirect remuneration. (See Sample Declaration in Appendix 12-1.)
- The reputable individual must receive permission from the DHS official before whom he or she wishes to appear. In order to determine whether or not to grant the request of a person seeking to appear as a reputable individual, the DHS official should review the declaration presented and ask the individual questions regarding his or her eligibility and record this information in the record of proceedings. Permission will not be granted to any individual who regularly engages in

²² 8 CFR 292.1(a)(2) (2011)

²³ 8 CFR 292.1(a)(3) (2011)

²⁴ 8 CFR 292.1(a)(3)(iii) (2011)

immigration and naturalization practice or preparation or holds himself or herself out to the public as qualified to do so.²⁵

- USCIS does not accept Forms G-28 filed by reputable individuals, as they are not included in the limited category of representatives in 8 CFR 103.2(a)(3).²⁶
- The reputable individual who is granted permission to appear with an applicant or petitioner may appear only in-person in that case.
- USCIS does not send notices or other written communications to reputable individuals.²⁷

(g) Accredited Officials

An **accredited official** of the alien's home government (e.g., a consular officer) may represent an alien if the official is in the United States and appears solely in his official capacity and with the applicant's or petitioner's consent.²⁸

- In exercising discretion to allow an accredited official to appear before DHS, DHS officials should ensure that the individual does not regularly engage in immigration practice or preparation or hold himself out to the public as qualified to do so. To properly document this exercise of discretion, DHS officials should request such individuals submit a written statement in support of their appearance, addressing the relevant factors. (See Sample Statement in Appendix 12-1.)
- USCIS does not send notices or other written communications to accredited officials.²⁹

12.2 Appearances before USCIS

(A) Filing a Notice of Entry of Appearance as Attorney or Accredited Representative

Attorneys, attorneys outside the United States, and accredited representatives must establish their eligibility to appear on the form designated by DHS in each case.³⁰

Notices of entry appearance may be filed at any stage in the proceedings.

- Attorneys and accredited representatives must submit a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.
- Attorneys outside the United States must submit a Form G-28I, Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States.
- The Form G-28 and Form G-28I must be properly completed and signed by the applicant or petitioner in order for the appearance to be recognized by USCIS.

²⁵ 8 CFR 292.1(a)(3)(iv) (2011)

²⁶ 8 CFR 103.2(a)(3); 292.1(a); 292.4(a) (2011); Instructions for Form G-28 (Rev. 04/22/09)N

²⁷ 8 CFR 103.2(a)(3) and 292.5(a) (2011).

²⁸ 8 CFR 292.1(a)(5) (2011)

²⁹ 8 CFR 103.2(a)(3) and 292.5(a) (2011)

³⁰ 8 CFR 292.4(a) (2011)

Once the Form G-28 or Form G-28I is accepted, the appearance will be recognized until the conclusion of the matter for which it was entered.

- When filing an appeal with the Administrative Appeals Office on Form I-290B, the attorney or accredited representative must file a new Form G-28.
- Other representatives (law students, law graduates, reputable individuals and accredited officials) may not submit Form G-28 or Form G-28I.
- See section 12.1(e) for additional information on law students and law graduates.

USCIS officers may verify an attorney's or accredited representative's eligibility and require further proof of authority to act in a representative capacity. Officers should seek more information at the DHS Disciplinary Counsel website and at www.justice.gov/eoir/legalrepresentation.htm. Officers should also review the list of disciplined practitioners at <http://www.justice.gov/eoir/discipline.htm>, which includes attorneys and accredited representatives who are currently disbarred or suspended from practice before DHS and EOIR. USCIS officers should be aware of individuals who have falsely claimed to be attorneys or accredited representatives when they are not and individuals who have been the subject of federal, state, or local court action to stop their unauthorized practice of law or theft of fees for legal services they may not lawfully provide. USCIS officers should not communicate with these individuals, even if they submit a "Notice of Entry of Appearance as Attorney or Accredited Representative" (Form G-28) in a case.

(b) Substitution or Withdrawal of Representation

It is not uncommon for applicants or petitioners to wish to change representatives or elect to forgo representation during the course of a proceeding. Notification to USCIS of the substitution or withdrawal of a representative may occur in a written notice of withdrawal by the representative of record or upon the filing of a properly completed G-28 or G-28I by the new representative.³¹ Written notifications are to be filed in the record of proceedings. An applicant or petitioner may elect to proceed without his or her representative, but must submit a written statement to the USCIS official that he or she has voluntarily chosen to proceed without representation.

12.3 Proper Service of Documents and Notices

Once an attorney (whether in or outside the United States) or accredited representative has filed a properly completed Form G-28 or Form G-28I on behalf of an applicant or petitioner, USCIS is required to serve documents and notices on the attorney or accredited representative.³² Original notices and documents evidencing lawful status in the United States based on the approval of a benefit request will be sent to the attorney or accredited representative whom the applicant or petitioner has authorized to receive such notices and documents on his or her behalf. In such instances, a copy of the

³¹ 8 CFR 292.4 (2011)

³² 8 CFR 292.5 (2011).

benefit notice will also be sent to the applicant or petitioner. **EXCEPTION:** Secure identification documents such as Form I-551, Permanent Resident Card, Form I-766, Employment Authorization Document, Form I-327 Re-entry Permit, and Form I-571 Refugee Travel Document can only be sent to the applicant.³³

In all other instances (e.g., where the applicant or petitioner is not represented), original benefit notices and documents evidencing lawful status that are issued based on the approval of a benefit request will be sent directly to the applicant or petitioner.

In matters where the Form G-28 or Form G-28I is not accepted because the individual is not an eligible representative or because the form is not properly signed, the application or petition will be processed as if the applicant or petitioner is unrepresented.³⁴ The receipt notice and any other notices will be sent only to the applicant or petitioner.

12.4 Interviews

When an examination is to be conducted in immigration proceedings, the person involved has the right to be represented, at no expense to the government, by an attorney or representative, as defined in 8 CFR 292.1(a). The role of the representative at an interview is to ensure that the rights of the individuals he or she represents are protected.

When conducting an interview of a petitioner and beneficiary simultaneously, attorneys or other representatives of both the petitioner and beneficiary will be permitted to appear.³⁵ In visa petition proceedings, representatives who have obtained the consent of the petitioner should be recognized in interviews with the petitioner. Representatives who have obtained the consent of the beneficiary should be recognized in interviews with the beneficiary. An attorney or representative may not respond to questions the USCIS officer directs to the applicant, petitioner, or witness, except to ask the USCIS officer to clarify the question asked. An attorney or representative may ask the applicant or petitioner additional questions at the conclusion of the interview by the officer.

An attorney or other representative of an applicant or petitioner may not simultaneously serve as his or her client's interpreter during an interview.³⁶ If, after being so advised, the attorney or other representative continues to interpret for the applicant or petitioner or otherwise disrupts the interview, USCIS may terminate the interview and advise the parties that the interview cannot be completed under these circumstances and that USCIS will proceed to make a decision based on the record of proceedings.³⁷

³³ 8 CFR 103.2(b)(19)

³⁴ 8 CFR 103.2(a)(3) (2011)

³⁵ 8 CFR 103.2(a)(3) (2011)

³⁶ Exceptions may be made if the interests of the Government will not be prejudiced.

³⁷ This language does not apply to examinations governed by 8 CFR 312.4.

See Chapter 15 for additional guidance on Interview Techniques.

12.5 Rules of Professional Conduct for Practitioners

DHS has rules of professional conduct for practitioners who practice before the Department's immigration agencies.³⁸ Under the rules, practitioners (attorneys, accredited representatives and other categories of representatives permitted to appear by DHS) are subject to discipline for criminal, unethical, or unprofessional conduct. Complaints of professional misconduct by practitioners should be reported to the DHS Disciplinary Counsel. USCIS officers should visit the Disciplinary Counsel website for more information on the rules of professional conduct, reporting misconduct, and how to verify the eligibility of an attorney or accredited representative. Attorneys and other representatives have a duty to represent their clients zealously. They must, however, do so within the bounds of the law and in accordance with the Rules of Professional Conduct for Practitioners.

Officers should not engage in personal conversations or arguments with attorneys or other representatives during the course of an interview. If a discussion becomes disruptive, abusive, or otherwise interferes with the orderly process of the interview, the officer should seek assistance from a supervisor. The attorney or representative may object to the appropriateness of a line of questioning and, as a last resort, may request supervisory review without terminating the interview. Where necessary, disagreements between USCIS officers and attorneys or other representatives regarding the appropriate role of the attorney or other representative in USCIS interviews, should be elevated to the Field Office Director. USCIS employees may not file complaints directly to state bar disciplinary authorities. Complaints of unethical and unprofessional conduct by attorneys or other representatives should be reported to DHS Disciplinary Counsel through appropriate supervisory channels.

3. Add Appendix 12-1 the Table of Contents for Appendices.

Appendix 12-1 Sample Statements and Declarations

³⁸ 8 CFR 292.3 (2011)

4. Appendix 12-1 is added as follows:

Appendix 12-1 Sample Statements and Declarations

**SAMPLE STATEMENT OF LAW STUDENT REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as a law student enrolled in Anystate Law School, an accredited U.S. law school.

I am appearing at the request of Jané Doe, a person entitled to representation.

I am participating under the direct supervision of Sam Samuels, a faculty member, Susan Williams, a licensed attorney, or Joe Johnson, a BIA accredited representative in a legal aid program or clinic conducted by a law school or non-profit organization.

I am appearing without direct or indirect remuneration from the individual I seek to represent.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request.

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

**SAMPLE STATEMENT OF A LAW GRADUATE REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as a graduate of Anystate Law School, an accredited U.S. law school, who is not yet admitted to the bar.

I received my law degree on June 1, 2011 and will take the bar examination on February 21, 2012; or, sat for the bar examination on July 24, 2011 and have not yet received my results.

I am appearing at the request of Jane Doe, a person entitled to representation.

I am appearing under the supervision of Susan Williams, a licensed attorney, or Joe Johnson, an accredited representative. I am appearing without direct or indirect remuneration from the individual I seek to represent.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request.

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

**SAMPLE DECLARATION OF A REPUTABLE INDIVIDUAL REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as a reputable individual of good moral character, as defined in 8 CFR 292.1(3).

I am appearing on an individual case basis at the request of Jane Doe, a person entitled to representation. I am appearing without direct or indirect remuneration. I have a pre-existing relationship with Jane Doe as a relative, neighbor, clergyman, business associate, and/or personal friend.

I am not regularly engaged in immigration and naturalization practice or preparation, nor do I hold myself out to the public as qualified to do so.

I declare, under penalty of perjury under the laws of the United States of America, that this statement is all true and correct.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

**SAMPLE STATEMENT OF AN ACCREDITED OFFICIAL REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as an accredited official of the Nowhereland government to which Jane Doe owes allegiance.

I am not regularly engaged in immigration and naturalization practice or preparation, nor do I hold myself out to the public as qualified to do so.

I am appearing with the consent of Jane Doe, a person entitled to representation.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request.

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

5. Revise Chapter 15.1(a) to read:

(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.

This chapter discusses policies and procedures to be followed in conducting interviews that involve immigration benefits. The basic principles for conducting interviews are outlined and defined below. The policies set forth below apply to all officers, and all personnel interviewing applicants for immigration benefits should be familiar with the contents of this chapter. No adjudicator should be assigned to conduct interviews until his/her first line supervisor is satisfied that the officer is fully competent to do so.

The purpose of an interview is to obtain accurate and complete information from the individual and to make a determination regarding the individual's credibility. The fundamental objective is to obtain the facts necessary to make a correct decision. Therefore, the length of the interview may vary for many reasons including, but not limited to the following:

- The amount and complexity of material being covered;
- Any fraud indicators that may be present;
- The number of individuals interviewed in connection with the case;
- The degree to which all required documents have been submitted;
- The need for an interpreter or the need to tailor questioning to an individual's background and experience; and
- The degree and ease with which IT, recording and other equipment is used.

Interviews conducted by adjudication officers are non-adversarial in nature, as opposed to a court proceeding involving two attorneys where each advocates a particular position.

Developing the skills necessary to conduct such an interview takes time and practice, there are a number of reference guides that can be of assistance. Please see **Appendix 15-2**.

6. Revise Chapter 15.1(b)(2) to read:

15.1 Interview Policies

(b) Scheduling Interviews and Evaluating Requests for the Rescheduling of Interviews.

(2) Evaluating Requests for the Rescheduling of Interviews (See 8 CFR 103.2(b)(9))

Prior to and at 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.

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 for the applicant or petitioner's request, 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 *AFM Chapter 15.1(d)(2)*.

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

If an attorney or other representative is unable to attend an interview for good cause, the local office should make best efforts to accommodate a timely request to reschedule an interview. Such requests are considered to be for good cause when the attorney or other representative has notified the local office that he or she is unable to appear at the scheduled date and time because of circumstances beyond his or her control, including but not limited to, scheduling conflicts resulting from a requirement that the attorney or other representative appear in court, previously planned travel, and any situation where two interviews of clients represented by the same attorney or representative are scheduled at the same time.

When an attorney or other representative is unable to attend the interview for any reason, the individual being interviewed may elect to proceed with the interview without his or her representative. The applicant's or petitioner's decision to proceed without his or her attorney or accredited representative must be voluntary. If the individual wishes to proceed without his or her representative, the USCIS official should obtain a written statement from the individual. Written statements are to be filed in the record of proceedings. When possible, the attorney or accredited representative should communicate his or her consent to proceed without him or her present. The officer

should still consider statements and submissions by the individual's attorney or other representative in his or her absence.

☞ 7. Revise Chapter 15.2 to read:

15.2 Interview Environment.

(a) Adjudications Environment

It is essential that the person being interviewed appreciate the importance and seriousness of the proceedings. To ensure this, the setting in which the interview takes place must be orderly and official in appearance. Desktops should be uncluttered and files should be housed in cabinets. Flags, USCIS and DHS seals and other official displays can enhance the official appearance. Excessive amounts of personal items should not be displayed in view of applicants, as these may be distracting or detract from the serious nature of the proceedings.

Because adjudications units in local USCIS offices are generally very busy with a high volume of applicants appearing for interviews, it is essential that adequate office space be provided for each district adjudications officer.

Sufficient seating for the officer and the person being interviewed, attorney or other representative and family members should be provided. The attorney or other representative should be seated directly next to the person being interviewed to facilitate appropriate participation unless this cannot be accommodated due to the physical layout of the interview space. If the officer has a concern that the seating arrangements may be inhibiting or negatively impacting the interview process, he or she should contact a supervisor for guidance.

(b) General Office Environment

Ideally, individual offices or high-walled, acoustically insulated, modular offices with doors should be provided to ensure a reasonable level of privacy. Offices should be equipped with video or audio taping devices. If the district lacks sufficient recording equipment, arrangements should be made to provide such equipment for, at least, the most difficult cases. Each work station should be provided with sufficient storage space for files, supplies, research materials and personal items, so that the office remains uncluttered. Acoustical ceiling tiles or other sound dampening material should be installed to minimize noise from other interviews and protect the privacy of each applicant. Lighting and ventilation should be adequate for a pleasant, comfortable and efficient working environment. USCIS will make every effort to make reasonable accommodations for applicants with disabilities. When possible, the public waiting area should be reasonably near the interview area to minimize lost time between interviews.

8. Revise Chapter 15.3 to read:

15.3 Officer Conduct and Appearance

(a) Appearance

It is imperative that the officer conducting the interview dress in a professional manner. Both men and women should wear appropriate business attire, although some offices may permit "business casual" attire on certain days.

(b) Conduct and Attitude

All interviews should be conducted in a courteous and businesslike manner. The following guidelines will ensure that the interview is conducted professionally:

- Maintain control of the interview at all times. "Maintaining control" does not mean being overbearing or abusive; on the contrary, it requires that the officer maintain a professional demeanor at all times. The exact nature of that professional demeanor will sometimes vary, according to the interview techniques being employed (see below). The ability of the officer to maintain control of him/herself is instrumental in maintaining control of the interview.
- Speak clearly, distinctly and not too rapidly, using plain and simple language when questioning an applicant, petitioner or witness. Avoid complex and lengthy questions, and always obtain a responsive answer before proceeding to the next question. Avoid using USCIS or government jargon.
- At all times, maintain due regard for the rights of the person being interviewed.
- Avoid arguments with the person being interviewed, as well as remarks of a personal nature that may be taken as a reflection of a judgment of a personal lifestyle.
- Refrain from making any extraneous comments or asking extraneous questions, as they are irrelevant to the purpose of the interview and detract from the professional demeanor that the officer should maintain. Avoid questions about a person's religious beliefs or practices unless they are relevant to determine the individual's eligibility for a benefit. Do not make any comments that might be taken as a negative reflection upon any other person, race, religion, or country.
- Maintain professional conduct even if the person being interviewed becomes abusive or if derogatory information is developed. If necessary, contact a supervisor. See section 15.4(e) for guidance on Concluding or Terminating an Interview.
- Be fair, courteous, and patient without diminishing a full and complete development of the material facts, whether they are favorable or adverse to the person being interviewed or any other person.
- When questioning persons concerning sexual relations, always avoid questions which can be construed solely as prurient or prying.

- Ensure that your demeanor does not imply or reflect prejudice. Interviews should proceed in a fair and impartial manner so as to avoid complaints regarding the conduct of USCIS officers.

9. Revise Chapter 15.4 to read:

15.4 Interview Procedures

(a) Basic Interview Procedures and Techniques

Conducting successful interviews is a skill which requires knowledge and experience. Successful approaches will vary widely depending on the interviewer, the interviewee, and subject and purpose of the interview. Certain standards (such as those relating to the rights of the individual and the need for professionalism) remain constant; others change according to the circumstances.

Interview proceedings are not to be adversarial in nature. The purpose of the interview is to obtain the correct information in order to make the correct adjudication of the case, not to prove a particular point or to find a reason to deny the benefit sought. The purpose is to cover (and discover) all the pertinent information, both favorable and unfavorable to the applicant.

The following observations apply to all interviews:

(b) Preparing for the Interview

- The successful interview process begins when USCIS issues a call-in notice. In addition to accurately explaining the purpose of the interview, the notice should instruct the attorney (or in an unrepresented case, the person(s) being interviewed) on what to bring to the interview. In all cases, the notice should at least instruct the attorney / person being interviewed(s) to bring the originals of all documents previously submitted as photocopies.
- Do not commence an interview, even though time may be limited, until you have reviewed the application or petition and relating material, including submissions made by the applicant or the applicant's attorney or representative. Depending upon the case, this may range from a rapid scanning of the file to an intensive study of all available material. However, it is essential that the review of the material be made before commencing the questioning in order for the adjudicator to have the requisite knowledge and understanding of all the facts and circumstances involved in the case. Otherwise, the questioning may not cover all pertinent points. The review should be sufficiently thorough to enable the adjudicator to cover all issues necessary for an adjudication, thereby avoiding any need for recalling the applicant, petitioner, or witness for further questioning on an issue which could have been covered during the initial interview. Review

of the applicable provisions of the law and precedent decisions also should be made, if necessary, to ensure thorough familiarity with any legal issue that may be developed by questioning. In addition, when possible the adjudicator should review submissions made at the time of an interview that may assist in resolving legal issues. The more complete the preliminary preparation of the case prior to beginning the interview, the better equipped you will be to conduct an efficient interview, without time-wasting repetition or needless questions.

- If complex issues are involved, prepare an outline of the logical sequence of questioning to be followed, the information to be developed, and the evidence to be utilized. Such outlines are most conducive to eliciting all essential facts. Additionally, it may be advisable to select certain material from the file or relating files and arrange such material in the sequence of the plan of questioning. The extent of necessary preliminary preparation depends upon the issues involved in the individual case.

(c) At the Interview

- Greet the person being interviewed in a polite, dignified manner to put him or her at ease.
- Identify yourself, giving your name and title.
- Begin the interview with an explanation in non-technical terms of the purpose of the interview.
- Obtain identification from all parties to the interview, including interpreters, attorneys, and/or other representatives, unless identity has been previously established.
- Administer the following oath: "Do you solemnly swear (or affirm) that the statements you are about to make will be the truth, the whole truth, and nothing but the truth?"
- The oath or affirmation should always be administered in such a manner as to impress upon the person being interviewed the solemnity of the occasion and the importance of the testimony that he is about to give. The adjudicator and the person(s) being interviewed should stand and raise their right hands during the administration of the oath or affirmation. The fact that the interview is being conducted under oath or affirmation should be noted in the transcript or in the file. If a verbatim question and answer statement is taken, the exact wording of the oath or affirmation should be included in the transcript. If such a statement is not taken, the memorandum record of the interview should show that the person being interviewed was under oath or affirmation.
- An applicant or his or her attorney or representative should be permitted to present documents or other evidence that may help to clarify an issue of concern to the interviewer. When possible, such evidence should be submitted and reviewed before the interview, and when relevant, should be added to the applicant's file.

- In certain other types of cases where more than one individual is to be questioned, it is generally best to question each party separately, asking each party several of the same questions in order to identify inconsistent answers. It may be necessary to recall either party for further questioning if contradictory answers are provided. In other types of interviews, an entire family group may be interviewed collectively.
- In a case where there is reason to believe that a witness under oath has given or may give false testimony, it may be advisable to inform the subject that willfully giving false testimony on a material matter under oath constitutes the crime of perjury, and that a person convicted of perjury is subject to a penalty of a fine, imprisonment or both. (However, see the comment below about challenging every false statement immediately.)
- Should the interviewing officer be required to leave the office for any reason during the interview, the relating file(s) should be removed to avoid unauthorized review during the officer's absence.

(d) Questioning Techniques

- All questions are either "closed-ended" or "open-ended."
 - Closed-ended questions call for specific, factual and usually brief responses (e.g., "Have you ever been arrested?").
 - Open-ended questions solicit views, opinions, thoughts and feelings and generally call for longer, narrative-type responses (e.g., "Tell me about any arrest you have had."). Open-ended questions are normally more useful in assessing an individual's credibility and for eliciting statements which may later be supported or contradicted.
 - Leading questions, which assume a controversial fact or suggest the answer, should be avoided except to expedite obtaining preliminary identifying material. For example, the leading question "You have never been arrested?" anticipates and assumes the subject's answer.
- The person(s) being interviewed should be permitted to give a full explanation of any issue involved in the case. Fairness requires consideration of all relevant evidence. In some instances, detailed questioning may be desirable in order to make it more difficult for the subject to disavow his statements at a later time or to fabricate a new story. USCIS officers are reminded that the purpose of the interview is to develop the facts, favorable as well as unfavorable, with equal fairness to the subject and to the interests of the Government, in order to properly adjudicate the application or petition.

(e) Concluding or Terminating an Interview

An adjudicator should not unnecessarily prolong an interview, but should conclude it when all necessary information has been elicited. The person(s) being interviewed(s) should be thanked for cooperating and providing information.

On some occasions it may be necessary to terminate an interview even though all essential information has not been elicited; however, termination should be avoided whenever possible. Termination may be necessary in the following situations, which are not intended to be exclusive:

- The person being interviewed is unable to communicate without an interpreter, and one is not available.
- An interpreter clearly has difficulty translating effectively.
- The officer has reasonable doubts about either the ability or impartiality of an interpreter supplied by the interviewee, and a USCIS or DHS interpreter is not immediately available.
- An attorney or other representative of an applicant or petitioner insists on responding to questions or coaching the person being interviewed.
- An attorney or other representative of an applicant or petitioner insists on interpreting for his or her client during an interview.
- The person being interviewed refuses to respond to questions essential to the successful completion of the interview.
- The conduct of the attorney or other representative has exceeded the bounds of zealous representation and interferes with the ability of the officer to conduct the interview.

The interviewing officer should explain the reason(s) for the termination. When appropriate, the interview should be rescheduled and (if needed) arrangements made for a competent interpreter. If the person being interviewed(s) or the attorney or other representative insists on continuing, a supervisor should be informed of the reason for the termination. It is the responsibility of the supervisor to determine if termination is warranted and to deal with the subject(s) and/or the attorney or representative if they refuse to accept an unfavorable determination.

(f) After the Interview

- An applicant or petitioner, or attorney or accredited representative with a properly executed "Notice of Entry of Appearance as Attorney or Accredited Representative" (Form **G-28**), may request a copy of the record of proceedings, including any written record of an interview conducted before a USCIS officer, by filing a Freedom of Information/Privacy Act Request (Form **G-639**).³⁹

[See also **Appendix 15-2**, Techniques for Interviewing and Preparing Sworn Statements.]

³⁹ 8 CFR 292.4(b) (2011)

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

AD11-42 5/23/2012	<ul style="list-style-type: none">• Chapter 12• Appendix 12-1• Chapter 15.1(a)• Chapter 15.1(b)(2)• Chapter 15.2• Chapter 15.3• Chapter 15.4	This PM amends the <i>AFM</i> to include a revised Chapter 12, Private Attorneys and Other Representatives; new Appendix 12-1, Sample Affidavits; and revisions to Chapter 15.1(a), Chapter 15.1(b)(2), Chapter 15.2, Chapter 15.3, and Chapter 15.4.
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Use

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

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to your Directorate.

Greenwood, Tembra A

From: INTERNAL COMMUNICATIONS, USCIS
Sent: Friday, May 25, 2012 11:27 AM
Subject: USCIS Leadership Guidance #41-12
Attachments: image001.wmz



**U.S. Citizenship
and Immigration
Services**

Leadership Guidance

May 25, 2012
#41-12

1. **USCIS and the Smithsonian Institution launch *Preparing for the Oath***
2. **Two Final Policy Memoranda:**
 - **PM-602-0043.1 (May 14, 2012)** Process for Responding to Requests by the Department of State (DOS) To Accept a Locally Filed Form I-130, Petition for Alien Relative
 - **PM-602-0055.1 (May 23, 2012)** Representation and Appearances and Interview Techniques; Revisions to *Adjudicator's Field Manual (AFM)* Chapters 12 and 15; *AFM* Update AD11-42

1. **USCIS and the Smithsonian Institution launch *Preparing for the Oath***

USCIS released yesterday *Preparing for the Oath: U.S. History and Civics for Citizenship*, a Web-based learning tool designed to help immigrants prepare for the civics portion of the naturalization test.

The USCIS Office of Citizenship partnered with the Smithsonian Institution's National Museum of American History (NMAH) to develop this self-study tool, which is based on the 100 civics questions and answers from the naturalization test. *Preparing for the Oath* is organized into themes related to U.S. history, government and civics, and features:

- Short videos and self-tests on the content of each civics question
- Interactive learning activities, including object explorations of Smithsonian artifacts
- A "Test Yourself" section, which provides users with a randomly generated list of ten questions
- A "Teachers" section, which provides materials and strategies to use *Preparing for the Oath* in a classroom setting

Preparing for the Oath is a valuable addition to the citizenship preparation materials USCIS offers to aspiring citizens. Encourage your staff to explore *Preparing for the Oath* and share the link with colleagues and customers. Users will also be able to access *Preparing for the Oath* on the Citizenship Resource Center under Study Materials for the Civics Test.

2. Final Policy Memoranda

USCIS has cleared the following final policy memoranda for distribution:

- **PM-602-0043.1 (May 14, 2012) Process for Responding to Requests by the Department of State (DOS) To Accept a Locally Filed Form I-130, Petition for Alien Relative**
- **PM-602-0055.1 (May 23, 2012) Representation and Appearances and Interview Techniques; Revisions to Adjudicator's Field Manual (AFM) Chapters 12 and 15; AFM Update AD11-42**

Draft and interim policy memos will be posted on www.uscis.gov/outreach for stakeholder review and comment. Interim and final policy memos are official USCIS policy documents and effective the date the memos are approved.

Visit the Feedback Opportunities Web page on Connect for additional information.

The USCIS Leadership Guidance is a product of the USCIS Office of Communications. To submit questions or cleared items, or to access previous Leadership Guidance, email USCIS Internal Communications.

Greenwood, Tembora A

From: USCIS Broadcast
Sent: Tuesday, January 17, 2012 4:30 PM
Subject: USCIS Today 1-17-12



**U.S. Citizenship
and Immigration
Services**

USCIS Today

Tuesday, January 17, 2012

Information contained in *USCIS Today* is summarized below and available through [USCIS Today Online](#). Contact the [Internal Communications Mailbox](#) to submit items for broadcast, access archived issues or share comments and suggestions.

EXECUTIVE MEMORANDA

Interim Policy Memorandum

NEWS

USCIS has cleared the following interim policy memorandum for distribution (**Final date for comments: Feb. 14, 2012**)

- PM-602-0055 (Dec. 21, 2011) The Role of Private Attorneys and Other Representatives; Revisions to Adjudicator's Field Manual (AFM) Chapters 12 and 15; AFM Update AD11-42

There will be opportunities for field leadership to provide their input. Details on an internal USCIS engagement will come next week.

Draft and interim policy memos will be posted on www.uscis.gov/outreach for stakeholder review and comment. Interim and final policy memos are official USCIS policy documents and effective the date the memos are approved.

Visit the [Feedback Opportunities Web page](#) on Connect for additional information. [...Continue Reading](#)

[...Read More Executive Memoranda News...](#)

USCIS UPDATE

New Garden City File Control Office Location in Queens, N.Y.

REMINDER

On Dec.2, the Garden City, N.Y., Field Office (GCU) successfully moved A-Files to its new location in the New York City borough of Queens. The new File Control Office (FCO) code is QNS. The former FCO code GCU may no longer be used. ...Continue Reading

[...Read More USCIS Updates...](#)

MANAGEMENT DIRECTORATE NEWS

Fifth Lunch-and-Learn Session on Stress Mitigation Training

REMINDER

The fifth session in a series of lunch-and-learn "Stress Mitigation Trainings (SMTs)" will take place on Jan. 19, from noon to 1 p.m. at the Administrative Appeals Office (AAO), Third Floor, Suite 302, Main Conference Room, 2121 Crystal Drive, Crystal City. This series is designed to provide USCIS employees at headquarters with self-calming techniques and stress-relieving information. The training will feature a meditation demonstration, tips on recognizing stress warning signs, stretching exercises that can be done at your desk, and much more. ...Continue Reading

USCIS Standardization of Performance Goals

REMINDER

USCIS is moving forward on Director Mayorkas' goal to prioritize quality and reinforce the agency's mission in performance management.

To achieve this goal, the entire agency will need to embrace and understand the concept of standardization. Standardization creates an environment of fairness, consistency and transparency. ...Continue Reading

USCIS Standardization: Goals for Supervisors

REMINDER

The standardized goals for supervisors for fiscal year (FY) 2012 have been approved by USCIS Leadership and published on the USCIS Performance Management site in Connect. Standardized goals for additional occupations in USCIS are under development in FY 2012 for future implementation. ...Continue Reading



USCIS employees and contract staff who currently have access to the Federal Financial Management System (FFMS) must submit a completed and approved FFMS Annual Recertification Request by Feb. 9.

This year's recertification process will be conducted online through the Enterprise Collaboration Network (ECN). The recertification will begin on Jan.16. [...Continue Reading](#)

LifeMart Discount Center Available to USCIS Employees

Shop smartly and avoid lines with WorkLife4You's LifeMart Discount Center. This service, available to USCIS employees and their household members at no cost, provides more than 500 discounts and special offers on brand-name products and services nationwide.

Visit the [WorkLife4You website](#) regularly to access these discounts and view updated offers that will help you save on everyday purchases. [...Continue Reading](#)

Training and Career Development Division Details: Career Development and Supervisory Training

The Training and Career Development Division (TCDD) of the Office of Human Capital and Training (HCT) is recruiting talented candidates at the GS-14 level from the Washington, D.C., and local commuting area to serve on 120-day detail assignments in two non-bargaining unit positions: Program Manager for Career Development and Program Manager for Supervisory Training.

[...Continue Reading](#)

[...Read More Management Directorate News...](#)

OFFICE OF PERFORMANCE AND QUALITY NEWS

USCIS Quality Fact Sheet Series: No. 3 of 8



The Office of Performance and Quality (OPQ) has recently launched the USCIS Quality Awareness Campaign. It has also shared the USCIS definition of quality and eight criteria for building a successful quality program.

In upcoming days, we will feature a series of USCIS Quality Fact Sheets, each of which will describe one of the eight criteria.

Today's USCIS Quality Fact Sheet focuses on [Customer Focus](#). [...Continue Reading](#)

[...Read More OP&Q News...](#)

OPE NEWS

USCIS's First-Ever National Chinese-Language Public Engagement Feb. 16

USCIS will host its first-ever national Chinese-language public engagement on Feb. 16 at the San Francisco Field Office. This engagement is the first in a series called Jiao Liu—meaning “engagement” in Chinese.

Modeled after the agency's successful quarterly Spanish-language Enlace series, Jiao Liu expands our ongoing efforts to engage directly with our customers to provide them with information as well as answers to questions about our benefits and services. [...Continue Reading](#)

[...Read More OPE News...](#)

JOB OPPORTUNITIES

DHS Headquarters

The DHS Homeland Security Rotation Program (HSRP), sponsored by the Office of the Chief Human Capital Officer, Enterprise Learning and Development is seeking three Rotational Assignment Content Managers for DHS.gov for three to six month assignments. Interested candidates should submit their resume to Kathleen McShea, Director of New Media and Web Communications by Jan. 31.

Fraud Detection and National Security Division

The Arlington, Va., Asylum Office's Fraud Detection and National Security (FDNS) Division is recruiting talented individuals interested in serving there as an FDNS Immigration Officer (GS-13). This vacancy closes on Jan.19.

Western Regional Office

The Western Regional Office's Operations Branch is recruiting talented individuals for a Supervisory Immigration Services Officer (Associate Regional Director) (GS-15) position in Laguna Niguel, Calif. This vacancy closes on Jan. 18.

Office of Performance and Quality

The Office of Performance and Quality is recruiting talented individuals for the Management and Program Analyst (GS-12/14) position in Washington, D.C. This vacancy will close on Jan.18.

Office of the USCIS Director

Office of the USCIS Director is recruiting talented individuals for the Chief of the Project Liaison Team (GS-15) position in Washington, D.C. This vacancy will close on Jan. 20.

Office of the USCIS Director is recruiting talented individuals for the Staff Assistant to the Director (GS-9/11) position in Washington, D.C. This vacancy will close on Jan. 20.

Service Center Operations

The Texas Services Center is recruiting talented individuals for the following four positions in Dallas.

- Immigration Services Analyst (GS-09). This posting closes on Jan. 26.
- Immigration Services Analyst (GS-11). This posting closes on Jan. 26.
- Supervisory Immigration Services Officer (GS-13). This posting closes Jan. 31.
- Immigration Services Officer (GS-13). This posting closes on Jan. 31.

[...Read More Job Ops News...](#)

CELEBRATING SERVICE

Art Newell, Central Region Branch Chief, OIT

On Dec. 31, Art Newell, Central Region Branch Chief for the Office of Information Technology (OIT), retired after 30 years of dedicated service. [...Continue Reading](#)

[...Read More Celebrating Service News...](#)

TEAM USCIS

Southeast Regional Office

The Southeast Regional Office participated in the Salvation Army's Adopt-A-Family Program in Orlando, Fla. Through this program, the office sponsored a family that was unable to afford a Christmas dinner or new toys and warm clothing for their children. Regional Office personnel delivered assorted toys, clothes and food items to the family on Dec. 21. [...Continue Reading](#)

[...Read More Team USCIS News...](#)

USCIS GREEN PROGRAM

Claim Unused Ink and Toner across the Agency

The Excess Ink & Toner Sharing (EITS) Program allows offices to claim unused ink and toner across the agency. You can check the list of available items on the Green Program website and simply click the point of contact to request your items. You pay the shipping, which is only a fraction of the cost of purchasing the item from a vendor. ...Continue Reading

...Read More Green Program News...

ONE DHS

S1 Town Hall Link

On Dec. 13, DHS Secretary Napolitano held a Town Hall meeting with DHS employees at USCIS headquarters in the Tomich Conference Center. More than 100 employees joined Secretary Napolitano in person, while others joined her virtually from their workstations via a previously distributed link. The Secretary thanked employees for their hard work and dedication and answered questions regarding the future of USCIS. She also addressed news media coverage of DHS programs and personal preparedness.

The Town Hall is available for viewing online. ...Continue Reading

...Read More One DHS News...

FIELD OPERATIONS DIRECTORATE NEWS

New Link to Naturalization Quality Procedures 5 Manual

Due to the USCIS Enterprise Collaboration Network (ECN) Migration to SharePoint 2010, the link to the Naturalization Quality Procedures (NQP) 5 Manual on the ECN has changed. The new NQP 5 Manual can be accessed via ECN. If you have any problems accessing this site, please email the OFO Citizenship mailbox. ...Continue Reading

[...Read More Field Ops News...](#)

TRANSFORMATION NEWS

Do you know how USCIS engages partners across the federal government?

USCIS regularly collaborates with federal partners to effectively support the USCIS Transformation effort. The agency meets quarterly with all partner agencies at Federal Stakeholder Exchange (FSE) meetings to provide USCIS federal partner staff and program leadership with an update on USCIS Transformation. [...Continue Reading](#)

[...Read More Transformation News...](#)

COMMUNITY OUTREACH

San Jose Field Office

On Jan. 10, about 140 people gathered at the Cupertino Adult Center in California to attend a naturalization outreach session conducted by the San Jose Field Office. Community Relations Officer Rosemarie Fan provided information on the inaugural Jiao Liú Chinese-language engagement, which will be held in San Francisco on Feb. 16. Since the Jiao Liú will focus on the naturalization process and citizenship, it is anticipated that many people attending this outreach session will take part.

[...Continue Reading](#)

[...Read More Community Outreach News...](#)

ON MASS AVE

Fiscal Year 2012 - Ask PoP Live Question and Answer Forum

REMINDER

The Financial Management Division (FMD) will be conducting its monthly Financial Policy discussion. This session will cover policy and procedures (PoP) on "Other or Miscellaneous Expenses Incurred While on Travel" and will take place on Jan. 18 at 111 Mass. Ave., LL, Conference Room C104, from 2 to 3 p.m. EST.

As in previous sessions, the agenda will include begin with an overview of the policies, followed by a Q&A session.

Only telephone conference lines will be available for the discussion. Where possible, please make arrangements to share one conference line as there are a limited number available.

ECN online registration for this session is currently not available. If you would like to participate in this

session and receive meeting information, please register via email at USCIS-FMD-Ask-PoP@dhs.gov on or before Jan. 17. [...Continue Reading](#)

DHS News for Veterans: FY Hiring Goals; Career Fair and Expo on Jan. 18

REMINDER

DHS has set new goals for assuring that veterans of the U.S. armed forces are well represented among its new employees, and has scheduled a Veteran Career and Expo for Jan. 18 in Washington, D.C. [...Continue Reading](#)

Training on Assessment of Contractor Support Services Jan. 19

REMINDER

The USCIS Contracting Office is offering on a quarterly basis comprehensive training sessions on assessment of contractor support services. The next session is Jan. 19 from 9 a.m. to noon at 20 Massachusetts Ave. NW in the Potomac Room in Washington, D.C.

DHS has amended the guidance in Acquisition Alert 11-30 on the mandatory requirement for assessment of contractor support services. The full text of the newly amended guidance is available online. [...Continue Reading](#)

DHS AAPIN Open House and Lunar New Year on Jan. 20

NEWS

You are invited to join the DHS Asian-American Pacific Islander Network (AAPIN) in the first event on its 2012 calendar: "The DHS AAPIN Open House and Lunar New Year". The event takes place on Jan. 20 from noon until 2 p.m. at the Transportation Security Administration Headquarters, East Building, 601 South 12th St., first floor, Arlington, Va., across from Metro's Pentagon City stop. [...Continue Reading](#)

[...Read More On Mass Ave News...](#)

TODAY'S HEADLINES

The following clips are intended to provide a brief overview of the news as it relates to USCIS. The thoughts and opinions expressed in the following articles are not those of the USCIS Today.

Former El Monte Transit developer trying to revive visa program for foreign investors - San Jose Mercury News

Springfield E-Verify proposal sparks debate - Springfield News-Leader

Young U.S. Citizens in Mexico Brave Risks for American Schools - New York Times

Keeping Families Together Isn't Pandering, It's an American Value - Huffington Post

111-year-old Iraqi woman is 'newest American citizen' - The Detroit News

For more news clips regarding the department, visit DHS News Briefing at
<http://www.bulletinnews.com/dhs/>

CONTACT USCIS TODAY

Internal Communications

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

(b)(5)

(b)(7)(e)

October 12, 2012

MEMORANDUM FOR:

Alejandro N. Mayorkas
Director, U.S. Citizenship and Immigration Services

FROM:

Ivan K. Fong
General Counsel

A handwritten signature in black ink, appearing to read "Ivan K. Fong", written over a horizontal line.

SUBJECT:

Ex parte Contacts with Represented Parties during USCIS Site
Inspections



(b)(5)

(b)(7)(e)

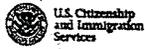
Fraud Detection

Standard Operating Procedures



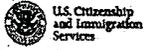
U.S. Citizenship and Immigration Services
Fraud Detection and National Security
Fraud Detection Branch

March 17, 2011



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Version Control Record

Version	Date	Description of Revision/Update
3	3/17/2011	Initial Release

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