

From: Monica, Donald J [mailto:dfmonica@fins3.dhs.gov]
Sent: Thursday, April 14, 2011 7:27 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,

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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