



U.S. Citizenship
and Immigration
Services

MAY 11 2011

Mr. Benjamin Johnson
American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005

Ms. Crystal Williams
American Immigration Lawyers Association
1331 G Street NW, Suite 300
Washington, DC 20005

Dear Mr. Johnson and Ms. Williams:

Thank you for your March 24, 2011 letter regarding access to counsel during immigration benefit interviews. Thank you also for taking the time to meet with us on this important subject.

We understand that your concerns regarding access to counsel relate not only to counsel's physical proximity to a client during an interview, but also to when counsel may insert himself or herself in the interview. In our meeting, you noted the example of a counsel's participation for the discrete purpose of clarifying a question posed for the client's benefit.

The issue of physical proximity between client and counsel was first raised with me in a national stakeholder engagement in May 2010. Immediately following that event, we disseminated the following guidance to our Field Operations Directorate:

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 [our] 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.

In addition, we modified our training module to echo the guidance quoted above, and our training will continue to reinforce this guidance. Please let us know of any data you have assembled that you believe will help us carry out our training and supervision responsibilities on this subject.

The issue of when a counsel may insert himself or herself in an interview is significant. We understand a counsel's commitment to protecting the client's interests, and we appreciate the need to ensure the integrity of the interview process. Currently, Chapter 15 of our *Adjudicator's Field Manual* provides as follows:

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.

In our recent meeting, we agreed that you would submit to us proposed language for guidance on this subject. We look forward to receiving your proposal.

We also are considering whether a beneficiary of an I-130 petition should be entitled to representation by counsel in the I-130 interview. We look forward to discussing this issue with you in the context of the broader discussion referenced above.

Thank you again for raising this important subject with us. We look forward to continuing our discussions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alejandro N. Mayorkas". The signature is fluid and cursive, with the first name "Alejandro" being the most prominent part.

Alejandro N. Mayorkas
Director