

2013

FOIA Response from USCIS on Notices to Appear

Shoba S Wadhia



U.S. Citizenship
and Immigration
Services

May 30, 2013

COW2013000146

Shoba Sivaprasad Wadhia, Esq
Center of Immigrants' Rights
The Pennsylvania State University
329 Innovation Park
State College, PA 16803

Dear Shoba Sivaprasad Wadhia, Esq:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office March 06, 2013 seeking records pertaining to Notices to Appear (NTA).

We have completed the review of all documents and have identified 191 pages that are responsive to your request. Enclosed are 145 pages released in their entirety, and 13 pages released in part. We are withholding 33 pages in full. In our review of these pages, we have determined that they contain no reasonably segregable portion(s) of non-exempt information. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)(E) of the FOIA.

Exemption (b)(5) provides protection for inter-agency or intra-agency memoranda or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

Exemption (b)(7)(E) provides protection for records or information for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information we have withheld could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

The enclosed record consists of the best reproducible copies available. If you wish to appeal this determination, you may write to the USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139, within 60 days of the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

The National Records Center does not process petitions, applications or any other type of benefit under the Immigration and Nationality Act. If you have questions or wish to submit documentation relating to a matter pending with the bureau, you must address these issues with your nearest District Office.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Please include the NRC number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, or sent by fax to 816-350-5785. You may also submit FOIA/PA related requests to our e-mail address at uscis.foia@uscis.dhs.gov.

Sincerely,

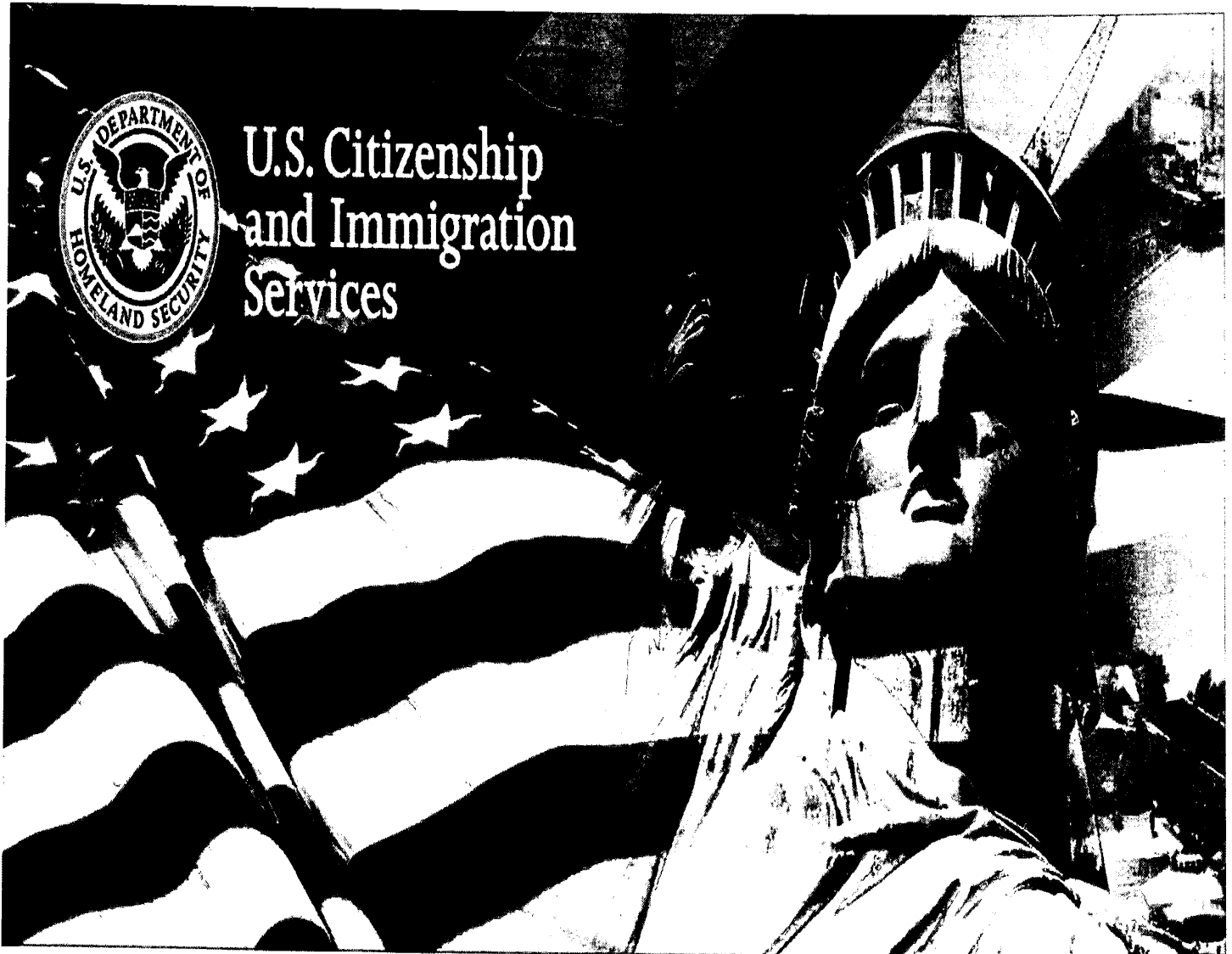
A handwritten signature in blue ink, appearing to read "Jill A. Eggleston". The signature is fluid and cursive, with the first name "Jill" and last name "Eggleston" clearly distinguishable.

Jill A. Eggleston
Director, FOIA Operations

Enclosure(s)

Policy Memorandum 602-0050

***Revised Guidance for the Referral of Cases and Issuance of NTAs in
Cases Involving Inadmissible and Removable Aliens**



Donald J. Monica

February 4, 2011

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Purpose of Memo

To promote sound use of DHS and DOJ resources while enhancing National Security, Public Safety and the Integrity of the Immigration System

Supersedes Policy Memo 110 *Disposition of Cases Involving Removable Aliens*, dated 07/11/2006



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February 4, 2011

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Policy Memo 602-0050 Sections:

- I. National Security Cases**
- II. Statutory/Regulatory NTA**
- III. Fraud**
- IV. Cases Referred to ICE for NTA**
- V. Cases Involving N-400 Applications**
- VI. Other Cases**
- VII. Exceptions**
- VIII. Coordination with ICE**



I. National Security Concerns

- PM 602-0050 does not affect the handling of national security concerns.
- Seek national security guidance from FDNS.
 - NABISCOP



II. Statutory or Regulatory NTA

- A. Termination of Conditional Permanent Resident Status and Denials of Form I-751, Petition to Remove the Conditions of Residence (8 CFR 216.3, 216.4, 216.5)
- B. Denials of Form I-829, Petition by Entrepreneur to Remove Conditions (8 CFR 216.6)
- C. Termination of refugee status by the District Director (8 CFR 207.9)
- D. Denials of NACARA 202 and HRIFA adjustments
 - 1. NACARA 202 adjustment denials (8 CFR 245.13(m));
 - 2. HRIFA adjustment denials (8 CFR 245.15(r)(2)(i)).



II. Statutory or Regulatory NTA

- E. Asylum, NACARA 203, and Credible Fear cases:
 - 1. Asylum referrals (8 CFR 208.14(c)(1));
 - 2. Termination of asylum or termination of withholding of removal or deportation (8 CFR 208.24(e));
 - 3. Positive credible fear findings (8 CFR 208.30(f));
 - 4. NACARA 203 cases where suspension of deportation or cancellation of removal is not granted, and the applicant does not have asylum status, or lawful immigrant or non-immigrant status (8 CFR 240.70(d)).



**PM-602-0050 does not affect the handling
and NTA Issuance of cases involving:**

- Form I-360 (VAWA)
- Temporary Protected States (TPS)



III. Fraud

- Statement of Findings (SOF)
 - Must substantiate fraud
 - Must be part of the record
 - NTA will be issued even if case was not denied for fraud
 - NTA should include a charge of fraud if possible
 - Consult with local USCIS counsel



IV. Cases to be Referred to ICE

- A. Criminal Cases

- 1. Egregious Public Safety
- 2. Non-Egregious Public Safety Criminal Cases

- B. NSEERS violators



Egregious Public Safety (EPS)

- a. Murder, rape, or sexual abuse of a minor as defined in section 101(a)(43)(A) of the INA.
- b. Illicit trafficking in firearms or destructive devices as defined in section 101(a)(43)(C) of the INA.
- c. Offenses relating to explosive materials or firearms as defined in section 101(a)(43)(E) of the INA.



Egregious Public Safety (EPS)

- d. Crimes of violence for which the term of imprisonment imposed, or where the penalty for a pending case, is at least one year as defined in section 101(a)(43)(F) of the INA.
- e. An offense relating to the demand for, or receipt of, ransom as defined in section 101(a)(43)(H) of the INA.
- f. An offense relating to child pornography as defined in section 101(a)(43)(I) of the INA.



Egregious Public Safety (EPS)

- g. An offense relating to peonage, slavery, involuntary servitude, and trafficking in persons as defined in section 101(a)(43)(K)(iii) of the INA.
- h. An offense relating to alien smuggling as described in section 101(a)(43)(N) of the INA
- i. Human Rights Violators, known or suspected street gang members, or Interpol hits.



Egregious Public Safety (EPS)

- j. Re-entry after an order of exclusion, deportation or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal, has not been approved.
- *There is no provision for additional types of cases based on local criteria as agreed by ICE SAC and USCIS District Director*



EPS Referral Process

- EPS case will be referred to ICE as soon as it is identified
 - Referral to Immigration and Customs Enforcement (RTI)
- USCIS will suspend adjudication for 60 days, or until ICE provides notification of its action on the case, whichever is earlier.
- In response to the RTI –
 - 1. ICE may issue an NTA. ICE's issuance of an NTA allows USCIS to proceed with adjudication (unless jurisdiction transfers to EOIR or the pending application is an N-400), taking into account the basis for the NTA.
 - 2. If ICE does not issue an NTA or otherwise provide notification of its action on the case within 60 days of the RTI, USCIS may resume its adjudication of the case, taking into account the referral grounds.



EPS Referral Process

- If ICE does not issue an NTA or otherwise provide notification of its action on the case within 60 days of the RTI, USCIS may resume its adjudication of the case, taking into account the referral grounds.
- If the case is approvable, USCIS will consult with ICE prior to adjudication.
- Once adjudicated, regardless of the decision, USCIS will notify ICE of the result by sending a copy of the original RTI to ICE with a cover memorandum advising of the outcome of the case.



EPS Referral Process

- EPS cases referred to ICE prior to adjudication should be called up and reviewed no later than 60 days after referral.
- Normally, the case should be adjudicated by USCIS.
- However, USCIS retains discretion to place the case on hold for more than 60 days if ICE requests additional time to conduct an investigation.



Non-EPS Cases:

- If alien is inadmissible due to a criminal offense not included on the EPS list: USCIS will **adjudicate and then refer** the case to ICE.
- This section applies to N-400 cases if the N-400 has been denied on good moral character (GMC) grounds based on the criminal offense.

***Note:** USCIS will not issue an NTA if ICE declines to issue an NTA



Non-EPS Referral Process

- USCIS will send an RTI to ICE.
 - If certified court disposition is available attach it.
 - USCIS will not hold the RTI on a completed case solely to obtain disposition records
- USCIS will concurrently transmit a copy of the RTI to ICE Headquarters (HQ) Enforcement and Removal Operations (ERO) Criminal Alien Division for statistical monitoring purposes.
 - CIS RFI's Criminal Non-Egregious is the Outlook Address
- The accompanying A-file will be referred to ICE with the RTI, if the file is in the possession of the referring USCIS office or center.



NSEERS Violators

USCIS will refer all cases in which an application is denied based on an NSEERS violation to ICE for possible NTA issuance.

New guidance on NSEERS is forthcoming



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V. Cases Involving Form N-400 Applications

- A. The applicant may be eligible to naturalize but is also deportable under section 237 of the INA.
- B. The applicant was inadmissible at the time of adjustment or admission to the United States
- **NOTES:**
 - *If the N-400 case involves fraud (documented in the SOF) the procedures found in this section must be followed, rather than the procedures found in Section III.*
 - *EPS cases must be referred in accordance with Section IV.A.1*
 - *Non-EPS criminal cases when the N-400 can be denied on GMC grounds based on the criminal act*



ISO's Written Recommendation

- A review of the totality of the circumstances to include:
 - Crimes
 - severity of crime,
 - time since crime committed,
 - other criminal conduct,
 - reformation,
 - Immigration history
 - method of entry,
 - length of presence in the U.S.,
 - prior immigration violations,
 - Contributions to society
 - pursuit of education
 - military service



N-400 NTA Review Panel

- A “Review Panel” must be formed at each Field Office and should include:
 - SISO;
 - Local USCIS OCC attorney
 - District representative
 - An attorney from ICE’s local Office of Chief Counsel will be invited to participate and will have an advisory role on the panel



N-400 NTA Review Panel

- The Review Panel will make the final determination on NTA issuance.
- If consensus cannot be reached by the Review Panel, the case will be elevated to the District Director, through the district representative, for a final decision.
- If the Review Panel decides to issue an NTA, place the N-400 on hold until removal proceedings have concluded.
- Once proceedings have concluded, or if the Review Panel declines to issue an NTA, adjudicate the case appropriately



VI. Other Cases

- A. An alien may request NTA issuance to renew an application for adjustment or in certain cases with a denied N-400. The request must be made in writing.
- An asylum applicant issued an NTA may request NTA issuance for family members not included on the asylum application as dependents for family unification purposes. The request must be made in writing.



VII. Exceptions

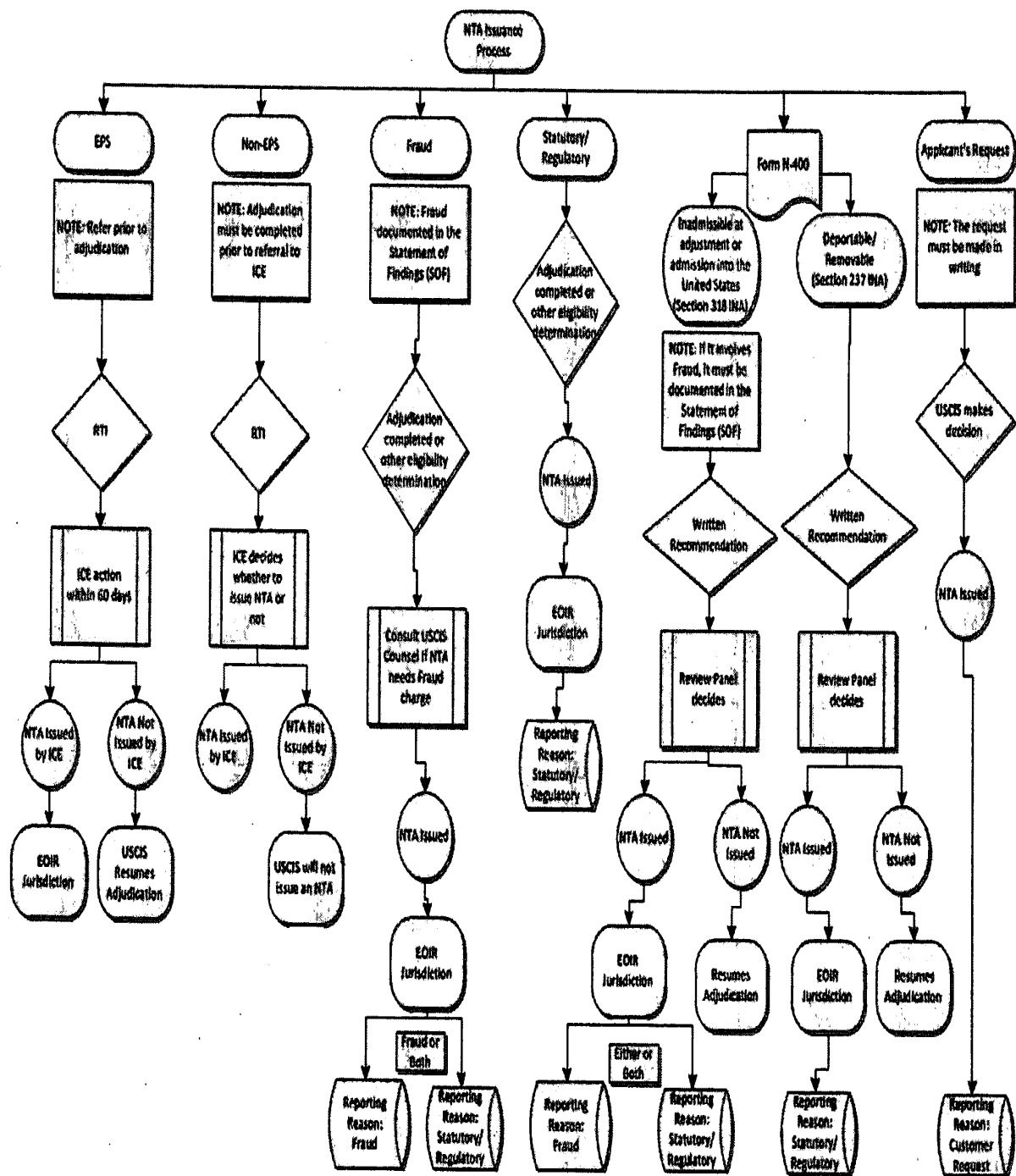
- Exceptions to the guidance in PM-602-0050 require concurrence from Regional or Center Directors, who will consult with ICE before issuing an NTA.



VIII. Coordination with ICE

- USCIS will receive notice before an ICE attorney exercises prosecutorial discretion and dismisses, suspends, or closes a case.
- The local N-400 NTA Review Panel will work with ICE to come to a resolution if USCIS does not agree with ICE's use of prosecutorial discretion in a particular case.
- If concurrence cannot be reached, the case should be elevated to the USCIS Office of Chief Counsel in headquarters.





U.S. Citizenship
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Resources

- Field Operations Directorate NTA Guidance page on ECN
 - <http://ecn.uscis.dhs.gov/team/fod/adjofstatus/NTAGuidance/default.aspx>

- Field Operations Directorate NTA Point of Contact

- [Redacted]

(b)(6)

- Regional NTA Points of Contact

- Central:

- Northeast

- Southeast

- Western:

- National Benefits Center:



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7. When ICE does not take action within 60 days of the RTI on the EPS case, will USCIS be responsible for consulting ICE if the case is approvable?

If the case is approvable, USCIS will consult with ICE prior to adjudication. Once adjudicated, regardless of whether the final decision was to approve or deny, USCIS is required to notify ICE of the result by sending a copy of the original RTI to ICE with a cover memorandum advising on the final outcome of the case.

8. Is the A-file required when referring RTIs to ICE?

For non-EPS cases, if the referring Field Office is in possession of the A-File, the field is required to refer the accompanying A-file to ICE with the RTI once the adjudication is complete. If the A-file is not at the referring Field Office, the RTI must include relevant attachments as instructed in the guidance.

For EPS cases, the Field Office will refer the RTI to ICE and will hold the accompanying A-file unless the A-file is requested by ICE.

9. Will cases suspected of marriage fraud have to be referred to Fraud Detection National Security (FDNS)?

This is an NTA policy memo and it does not affect the current process for handling suspected marriage fraud cases. In cases where fraud is suspected and/or identified, the field is to follow current procedures to refer the case to FDNS.

10. In naturalization cases where the Naturalization Review Panel declines to issue an NTA and the applicant is denied naturalization under INA 318, what further action are the field offices advised or expected to take under these circumstances? Does the field refer the case to the NTA Review Panel a 2nd time, now that there is a denied N-400?

In this situation, once the N-400 has been denied no further action will be taken. The field office will not refer the case back to the NTA Review Panel a second time; however, the alien may request NTA issuance. There is nothing in PM-602-0050 that would require denial of the alien's request for an NTA based on the NTA Review Panel's failure to issue an NTA.

11. Will the Fraud Detection Standard Operating Procedure (SOP) be amended based on this memo?

Yes. The working group will ensure that the Fraud Detection SOP is updated to be in line with the memo.

12. Why must USCIS send a copy of the Referral to ICE (RTI) HQ on Non-Egregious Public Safety cases?

ICE requested that USCIS also transmit a copy of the RTI to ICE HQ because the data is captured by ICE HQ for statistical purposes.

13. Is there guidance on how the N-400 NTA Review panels should operate?

Operation of the N-400 NTA Review panel will be determined by local leadership in the field.

14. Does the new NTA policy memorandum (PM-602-0050) supersede the policy memorandum entitled "Exercising Prosecutorial Discretion", dated November 17, 2000 (aka the Meissner memo)? Does USCIS have discretionary authority to not issue an NTA in cases indicated under PM 602-0050?

PM 602-0050 does not supersede the Meissner memo. USCIS has discretionary authority to not issue an NTA. In accordance with the Meissner memo, the decision to exercise prosecutorial discretion should be clearly documented in the alien file, including the specific decision taken and its factual and legal basis.

15. In cases where an individual is removable but the case does not fall within USCIS's authority to issue the NTA, should local offices include a memo to the file indicating that an NTA was not issued based on the



NTA Guidance & FAQs

Search this site...

USCIS ECN > Field Operations Directorate (FOD) > Adjustment of Status > NTA Guidance & FAQs

Notice to Appear (NTA)

Guidance & Frequently Asked Questions

NTA FAQ

Field Operations Directorate has received questions from the field regarding Policy Memorandum 602-0050, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens.

The following Official FAQs have been vetted by the Office of Policy and Strategy (OP&S), Office of the Chief Counsel (OCC), and the Fraud Detection and National Security (FDNS) Directorate.

1. Which USCIS staff member is responsible for issuing a Notice to Appear (NTA)?

The Field Office Directors and Center Directors will continue to determine the appropriate personnel in their offices responsible for issuance of a Notice to Appear.

2. When ICE does not issue an NTA for an egregious Public Safety (EPS) case, does USCIS have the discretion to issue the NTA?

USCIS cannot issue an NTA on a particular EPS ground after ICE declines to issue an NTA on the same ground. If some other basis unrelated to the EPS concern becomes apparent during the course of the adjudication, an NTA may be issued in accordance with the guidance in the policy memorandum.

3. Can a Field Office Issue an NTA in cases of suspected fraud when FDNS has not issued a Statement of Findings (SOF)?

For cases other than naturalization cases, USCIS can issue an NTA in cases of suspected fraud only if there is an SOF documenting the fraud, or if the NTA is required by statute or regulation. There is an exception allowing USCIS to issue NTAs outside of the enumerated categories in the memo, but that requires concurrences from the Regional or Center Director. In naturalization cases, however, an NTA can be issued in cases of suspected fraud, even without an SOF, based on the NTA Review Panel Recommendation.

4. Who within USCIS will prepare the RTI?

The Field Office Directors and Center Director will determine the appropriate personnel in their offices responsible for preparing and transmitting the RTI.

5. Can USCIS NTA naturalization applicants who were not statutorily eligible at time of adjustment?

Yes, for cases not arising in the Third Circuit, USCIS can issue an NTA in these cases if the N-400 NTA Review Panel decides to issue an NTA. For cases in the Third Circuit, please consult with your local OCC attorney.

6. Please provide guidance on how field offices should handle written requests for NTA issuance.

Field offices should generally issue an NTA if they receive a written request from an individual who is seeking to renew a denied application for adjustment of status or in certain cases where the N-400 was denied. The field office can issue an NTA in the case of a denied N-400 even if the NTA review panel previously decided not to issue an NTA. NTA issuance outside of these parameters requires concurrence from Regional or Center Directors, who will consult with ICE before issuing an NTA.

Content Point of Contact

☐ Helm, James R
Immigration Services Officer (Training)

Site Facilitator

☐ Parks, Debrah A
N/A



Links

- Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens, PM602-0050 (11/07/2011)
- <http://connect.uscis.dhs.gov/workingresources/immigrationpolicy/Documents/PM-602-0066.pdf>
- NSEERS PM-602-0066

Ask your NTA question here:

☐ Edit Question

Should requests for issuance of an NTA for members of the military and their dependents be sent to the Regional Director?

In the case where the alien requests an NTA and ICE decide not to issue it, how should the Field office handle the alien as a result?

Is the field to provide a temp I-551 stamp to CR's that have had their CR terminated?

If a CR that has had their CR terminated shows up at a Field Office asking for proof of residency, is the field office to issue an NTA at the field office level, per the NTA memo, if the Service Center has not completed one yet?

NTA Guidance Documents

Type	Name	Modified By
	PM-602-0066 NSEERS	Helm, James R
	NTA Power Point	Helm, James R
	PM-602-0050	Helm, James R

NTA Memo?

If an NTA is not indicated by PM 602-0050 there is no need for documentation outlining why an NTA is not being issued.

16. What process should be followed in naturalization cases where an applicant has voted unlawfully or made a false claim to U.S. Citizenship?

When USCIS becomes aware of unlawful voting or false claims to U.S. citizenship during the naturalization process, officers should consult the May 7, 2002 memo entitled, "Procedures for Handling Naturalization Applications of Aliens Who Voted Unlawfully or Falsely Represented Themselves as U.S. Citizens by Voting or Registering to Vote." If the applicant's N-400 is denied for GMC based on a conviction for these acts, the case should be handled under section IV.2 of PM 602-0050 dealing with non-EPS criminal cases. Alternatively, if the applicant is eligible to naturalize, but removable, or if the applicant's conduct affects the lawfulness of his or her LPR status, the case should be handled under Section V of PM 602-0050.

17. Does this policy memorandum apply retroactively to NTAs that have been completed as of the implementation date, but are awaiting signature?

Policy Memorandum 602-0050 applies to NTA "issuance" not just NTA preparation. Therefore, an NTA that has only been prepared has not been issued and the PM-602-0050 would apply.

18. Will field offices be provided with standardized language advising applicants who have been found ineligible to adjust status, but will not be issued an NTA, about consequences of being present in the United States without legal status? Will denied applicants be eligible for employment authorization?

Field Operations Headquarters is developing denial templates which will address the applicant's status and the consequences of being present in the U.S. without authorization. If denial of the I-485 leaves an applicant in a status that does not allow employment, then there is no basis for USCIS to approve new applications for employment authorization. Until the denial templates are released, the following paragraphs should be included in denials issued by field offices:

FOR APPLICANTS WHO WILL REMAIN IN A VALID NON-IMMIGRANT STATUS

"The evidence of record shows that, when you filed your application, you were lawfully present in the United States as a [class] nonimmigrant. Your period of authorized stay as a [class] nonimmigrant does not expire until [DATE]. You are authorized to remain in the United States until that date (or any further extension). You must, however, continue to comply with all the conditions that apply to your nonimmigrant admission, including any prohibition against engaging in employment that may apply to an alien who is admitted as a [class] nonimmigrant."

FOR APPLICANTS WHO WILL REMAIN IN A VALID NON-IMMIGRANT STATUS FOR WHICH EMPLOYMENT AUTHORIZATION IS INCIDENT TO STATUS:

"The evidence of record shows that, when you filed your application, you were lawfully present in the United States as a [class] nonimmigrant. Your period of authorized stay as a [class] nonimmigrant does not expire until [DATE]. You are authorized to remain in the United States as a [class] nonimmigrant, and to be employed as authorized in 8 CFR 274a.12 [insert specific paragraph from (a) or (b) that applies to the nonimmigrant class] until that date (or any further extension). You must, however, continue to comply with all the conditions that apply to your authorized stay as a [class] nonimmigrant. Engaging in any employment other than as authorized in 8 CFR 274a.12 will violate the terms of your authorized stay as a [class] nonimmigrant."


FOR APPLICANTS IN EXPIRED STATUS:

"The evidence of record shows that, when you filed your application, you were lawfully present in the United States as a [class] nonimmigrant. Your period of admission as a [class] nonimmigrant has expired. You are not authorized to remain in the United States and should make arrangements to depart as soon

as possible. Failure to depart may result in your being found ineligible for immigration benefits and inadmissible to the United States in the future. See section 212(a)(9)(B) of the Immigration and Nationality Act."

FOR APPLICANTS IN UNLAWFUL STATUS:

"The evidence of record shows that, when you filed your application, you were present in the United States contrary to law because [state reason, such as - YOUR LAWFUL NONIMMIGRANT STATUS HAD ALREADY EXPIRED or YOU WERE PRESENT WITHOUT ADMISSION OR PAROLE or YOU HAD ENGAGED IN UNAUTHORIZED EMPLOYMENT or other appropriate basis regarding the alien's lack of legal status]. You are not authorized to remain in the United States and should make arrangements to depart as soon as possible. Failure to depart may result in your being found ineligible for immigration benefits and inadmissible to the United States in the future. See section 212(a)(9)(B) of the Immigration and Nationality Act.

 U.S. Citizenship and Immigration Services



June 20, 2012

PM-602-0066

Policy Memorandum

SUBJECT: Adjudication of applications that are submitted by individuals subject to the registration and reporting requirements of the National Security Entry Exit Registration System ("NSEERS" or "Special Registration"); Addition of Adjudicator's Field Manual (AFM) Chapter 10.23 (AFM Update AD12-08)

Purpose

On April 28, 2011, through a notice published in the Federal Register, the Department of Homeland Security (DHS) removed the list of countries whose nationals have been subject to NSEERS registration and reporting requirements. However, the notice is silent on how the DHS components should treat past failure to comply with special registration and reporting provisions prior to this announcement.

On April 16, 2012, DHS issued a memo, Department of Homeland Security Guidance on Treatment of Individuals Previously Subject to the Reporting and Registration Requirements of the National Security Entry Exit Registration System. The DHS memo calls on all components to issue specific guidance consistent with the DHS policy within sixty (60) days, as well as to review existing internal guidance related to the NSEERS program and take appropriate steps to revise those documents.

This memorandum outlines U.S. Citizenship and Immigration Services (USCIS) policy and procedures for adjudicating pending and future applications that are submitted by individuals who have been subject to past NSEERS registration and reporting requirements. This memorandum supersedes and replaces the NSEERS policy memorandum of April 2, 2004, entitled *Adjudication of Benefit Applications Involving NSEERS Registrants* (2004 NSEERS Memo).

Scope

Unless specifically exempted herein, this policy memorandum applies to and is binding on all USCIS employees.

Authority

Sections 214 and 264 of the Immigration and Nationality Act (Act), 8 U.S.C. §§ 1184 and 1304; 8 C.F.R. §§214.1(f) and 264.1(f).

PM-602-0066: Adjudication of applications that are submitted by individuals subject to the registration and reporting requirements of the National Security Entry Exit Registration System ("NSEERS" or "Special Registration").

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Background

On September 11, 2002, the legacy Immigration and Naturalization Service (INS) began its implementation of a new special registration program, NSEERS, to ensure that certain aliens registered their arrival, presence in, and departure from the United States. Aliens required to register included those nonimmigrants: (i) who in accordance with the requirements outlined in 8 C.F.R. § 264.1(f), were designated by Federal Register notice, and (ii) whose presence in the United States required monitoring in the national security or law enforcement interests of the United States. Aliens subject to NSEERS were required to be registered, photographed, fingerprinted, provide specific information at regular intervals to ensure compliance with visa and admission requirements, and verify they departed from the United States at the end of their authorized stay.

Previously, in accordance with the 2004 NSEERS Memo, in cases where a USCIS officer suspected that an alien applying for an immigration benefit was subject to NSEERS and had not complied with registration and reporting requirements, the officer would forward the case to U.S. Immigration and Customs Enforcement (ICE) to determine whether NSEERS was violated and, if so, whether said violation was willful and, if willful, whether it was reasonably excusable.

Policy

Based on the recent removal of all designated countries from the NSEERS registration and reporting requirements, and upon consultation with the appropriate components within DHS, and based upon DHS guidance, USCIS is rescinding its prior guidance and modifying NSEERS adjudication policy and procedures to focus on cases that involve clear evidence of willful noncompliance. USCIS will continue to investigate possible NSEERS violations in cases where it is determined that additional scrutiny of an individual's compliance with immigration laws is appropriate.

Also, effective immediately, USCIS will no longer refer cases involving suspected NSEERS violations to ICE for assistance in determining eligibility for immigration benefits administered by USCIS. Instead, solely for purposes of adjudicating pending immigration benefit requests, USCIS will assume responsibility for making determinations as to whether: 1) NSEERS compliance is relevant to an adjudication, 2) an alien was subject to NSEERS, 3) an alien has violated an NSEERS requirement, and 4) an alien's past failure to comply with an NSEERS requirement was willful. Finally, all cases that were previously forwarded to ICE that remain unresolved (i.e., ICE has not made a determination as to whether an alien failed to comply with NSEERS or whether such noncompliance was willful, and if so, whether it was reasonably excusable) will be returned to USCIS for further processing in accordance with this memorandum.

USCIS officers will follow the policy stated in the Adjudicator's Field Manual, as amended by this PM, in adjudicating petitions or applications involving clear evidence of willful noncompliance with NSEERS.

PM-602-0066: Adjudication of applications that are submitted by individuals subject to the registration and reporting requirements of the National Security Entry Exit Registration System ("NSEERS" or "Special Registration").

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Implementation

The *Adjudicator's Field Manual* (AFM) is amended as follows:

1. A new Chapter [10.23] is added to read as follows:

Chapter 10 An Overview of the Adjudication Process

* * * * *

[10.23] Adjudication of Applications Submitted by Individuals Subject to the Registration and Reporting Requirements of the National Security Entry Exit Registration System ("NSEERS" or "Special Registration")

(a) General NSEERS Adjudication Guidance

Step 1: Determine whether NSEERS compliance is relevant to the adjudication of the pending immigration benefit request.

A willful failure to comply with NSEERS registration provisions "constitutes a failure to maintain nonimmigrant status" under INA 237(a)(1)(C)(i), 8 CFR 214.1(f). Accordingly, if an applicant must demonstrate that he or she has maintained nonimmigrant status to qualify for the benefit sought, a finding that he or she willfully violated an NSEERS requirement will result in the denial of the application. A willful failure may also be cited as a discretionary ground for denying an application where an individual must demonstrate that he or she merits the favorable exercise of USCIS's discretion to qualify for the benefit sought.

Step 2: Determine whether the individual seeking an immigration benefit before USCIS was previously subject to NSEERS registration and reporting requirements.

Immigration Services Officers (ISOs) should find that an individual was subject to NSEERS when the record reveals the following:

- A TECS/IBIS hit (or other clear evidence) indicating that ICE, U.S. Customs and Border Protection (CBP) or the Department of State (DOS) has determined that the individual was subject to NSEERS, or is a possible NSEERS violator; or
- An admission on the part of the individual that s/he was subject to NSEERS.

Note: Proceed to Step 3 if there is evidence on the record or an admission indicating that the person was subject to NSEERS registration and reporting requirements.¹

Step 3: Determine whether the individual complied with all applicable NSEERS requirements.

ISOs should find that an individual subject to NSEERS complied with all applicable NSEERS requirements unless the record reveals:

(b)(7)(e)

(b)(7)(e)

Step 6: Referral to ICE for Notice to Appear (NTA)

If USCIS denies a case based on a finding of willful noncompliance with an NSEERS requirement, USCIS will refer the case to ICE for possible issuance of a Notice to Appear, using the procedures outlined in PM 602-0050, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens, dated November 7, 2011.

(b) Motions to Reopen

Assuming jurisdiction over the application remains with USCIS, a field office or service center director will grant a request to reopen or reconsider a denial that was based solely on an

PM-602-0066: Adjudication of applications that are submitted by individuals subject to the registration and reporting requirements of the National Security Entry Exit Registration System ("NSEERS" or "Special Registration").

Page 6

NSEERS violation if the original decision might have been different under the new DHS guidance.

The new DHS guidance will also be a sufficient basis for accepting an otherwise untimely motion to reopen a denial based on an NSEERS violation, if the decision might have been different under the new guidance. In the latter case, the new guidance establishes that the delay in filing was reasonable and beyond the applicant's control. 8 CFR 103.5(a)(1)(i) (allowing USCIS to waive 30-day deadline for motion to reopen if delay in presenting the new factual argument "was reasonable and was beyond the control of the applicant"). Any applicant seeking a new decision must file a properly completed Form I-290B, in accordance with the Form I-290B instructions and with the fee prescribed by 8 CFR 103.7.

Jurisdiction to reopen or reconsider, or to act on a motion to reopen or reconsider, is with the USCIS office that made the most recent decision or, if the applicant has moved, with the USCIS office that now has jurisdiction over the applicant's place of residence. If AAO made the most recent decision, AAO would adjudicate the motion.

In any case in which the applicant is in removal proceedings, and in which EOIR now has jurisdiction over the application, the applicant should present to EOIR any arguments about the effect of the new DHS guidance on the applicant's case. If jurisdiction is with EOIR, USCIS will deny any motion to reopen that is filed with USCIS.

NOTES:

¹ In cases that require additional scrutiny, the ISO should proceed through all 5 Steps. Clear evidence indicating a person was subject to NSEERS and required to register is not needed to proceed through all 5 Steps to determine compliance.

² ISOs will find the charts in Attachments A: *Adjudication of Benefit Applications Involving NSEERS Applicants*, B: *Alien Classifications Not Subject to NSEERS*, and (if applicable) C: *Citizenship laws of the world* (at Appendix 10-11 of this field manual) to determine whether the alien appears to be subject to NSEERS only in these cases requiring further scrutiny. Attachments A, B, and C were original attachments to the DHS memo, *Adjudication of Benefit Applications Involving NSEERS Registrant*, dated April 2, 2004.

**

2. The AFM Transmittal Memorandum button is revising by adding, in numerical order, a new entry to read:

AD 12-08

Chapter [10.23];

Provides guidance on the adjudication of applications submitted by individuals subject to the requirements of NSEERS.

05/18/12

PM-602-0066: Adjudication of applications that are submitted by individuals subject to the registration and reporting requirements of the National Security Entry Exit Registration System ("NSEERS" or "Special Registration").

Page 7

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. The guidance provided in this memorandum will become effective upon signature of this document and will apply to all pending and future filings.

Contact Information

Questions or suggestions regarding this memorandum should be directed through appropriate supervisory and operational channels. Local offices should work through their chain of command.

Attachment A: *Adjudication of Benefit Applications Involving NSEERS Applicants*, original attachment to the Interoffice Memorandum, *Adjudication of Benefit Applications Involving NSEERS Registrants*, dated April 2, 2004.

Attachment B: *Alien Classifications Not Subject to NSEERS*, original attachment to the Interoffice Memorandum, *Adjudication of Benefit Applications Involving NSEERS Registrants*, dated April 2, 2004.

Attachment C: *Citizenship Laws of the World*, original attachment to the Interoffice Memorandum, *Adjudication of Benefit Applications Involving NSEERS Registrants*, dated April 2, 2004.

(b)(7)(e)

(b)(7)(e)

(b)(7)(e)

(b)(5)

(b)(5)

Umoru, Victoria E

From: Johnson, Leslie K
Sent: Tuesday, June 14, 2011 11:55 AM
To: Lee, Tyronda
Subject: NTA Served on Subject Alien but not the Court and Cancellations

From: Johnson, Leslie K
Sent: Friday, December 17, 2010 9:50 AM
To: Roberts, Christie; Adeniran, Adekunle A
Cc: 'Hotz, Gabrielle A'; Mitchell, Denice X (b)(5)
Subject: NTA Served on Subject Alien but not the Court and Cancellations

☐ Additionally, when cancelling an NTA we should choose from the below (8 CFR 239.2a...) as to the reason why we cancelled the NTA (the 7 reasons below would not fit the scenario of the Court not receiving the NTA.)

- (1) The respondent is a national of the United States;
- (2) The respondent is not deportable or inadmissible under immigration laws;
- (3) The respondent is deceased;
- (4) The respondent is not in the United States;
- (5) The notice was issued for the respondent's failure to file a timely petition as required by section

216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section **216(d)(2)(B)** of the Act;

(6) The notice to appear was improvidently issued, or

(7) Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.

(b)(5)

§ Sec. 239.2 Cancellation of notice to appear.

(a) Any officer authorized by **§ 239.1(a)** to issue a notice to appear may cancel such notice prior to jurisdiction vesting with the immigration judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable or inadmissible under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States;

(5) The notice was issued for the respondent's failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section **216(d)(2)(B)** of the Act;

(6) The notice to appear was improvidently issued, or

(7) Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.

(b) A notice to appear issued pursuant to section **235(b)(3)** of the Act may be canceled under provisions in paragraphs (a)(2) and (a)(6) of this section only by the issuing officer, unless it is impracticable for the issuing officer to cancel the notice.

(c) **Motion to dismiss**. After commencement of proceedings pursuant to **8 CFR 1003.14**, ICE counsel, or any officer enumerated in paragraph (a) of this section, may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. (Revised 6/13/03; **68 FR 35273**)

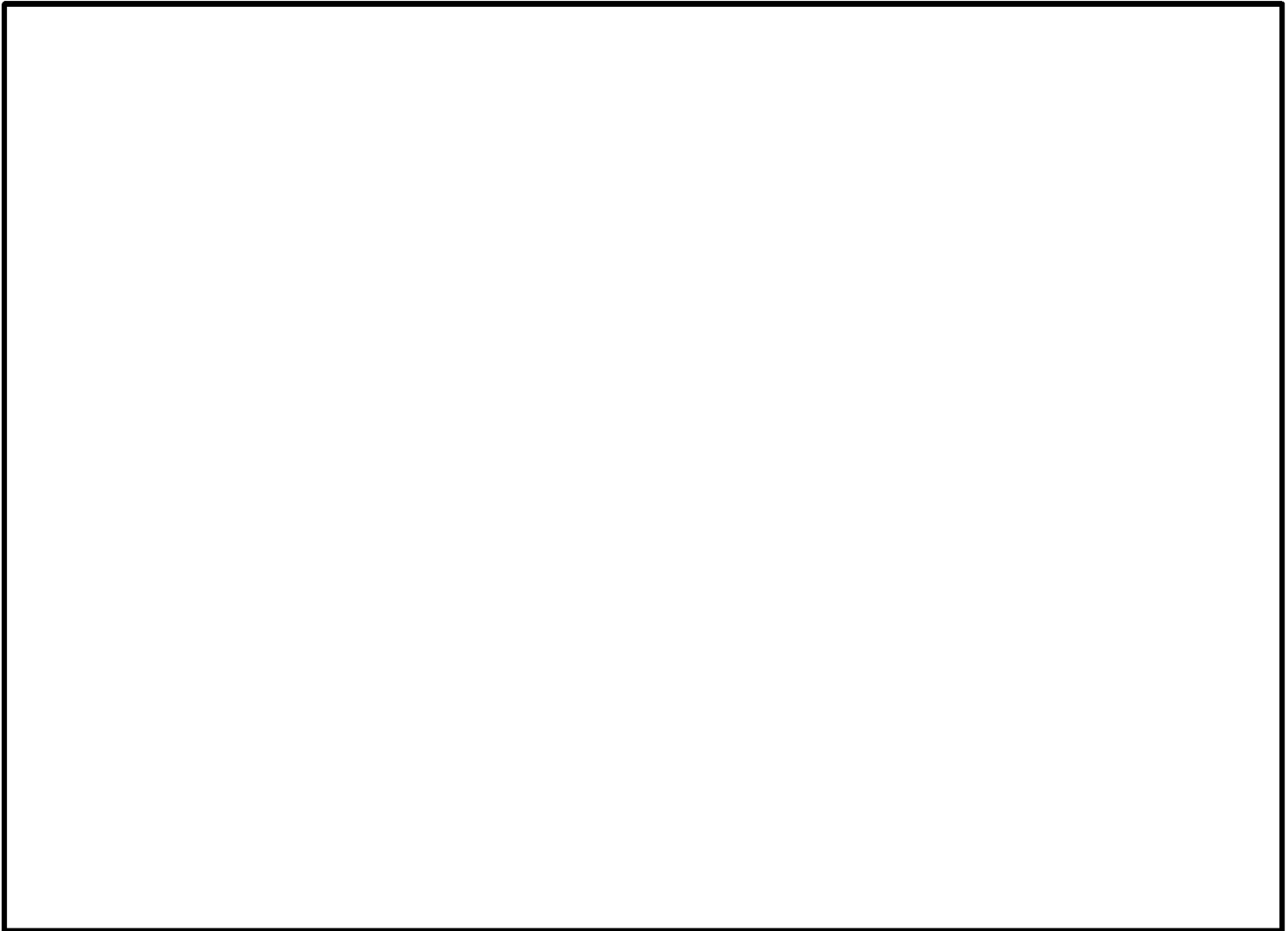
(d) **Motion for remand**. **Motion for remand**. After commencement of the hearing, ICE counsel, or any officer

enumerated in paragraph (a) of this section may move for remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration. (Revised 6/13/03; **68 FR 35273**)

(e) Warrant of arrest. When a notice to appear is canceled or proceedings are terminated under this section any outstanding warrant of arrest is canceled.

(f) (Removed 6/13/03; 68 FR 35273)

(b)(5)



Herring, Monte R

From: Gooselaw, Kurt G
Sent: Wednesday, May 16, 2012 9:23 AM
To: Brouillette, Bradley J; Martin, Evelyn M; Thomas, Ronnie D
Cc: Herring, Monte R
Subject: FW: NTA
Importance: High
Follow Up Flag: Follow up
Flag Status: Yellow

This is the guidance we are following in regards to NTAs on TPS. If there are no conviction documents and just arrests, we do not issue.

Thanks,
Kurt

From: Connor, Alina M
Sent: Thursday, May 27, 2010 11:45 AM
To: Aguilar, Lorri L; Attary, Lesley; Bul, Tini; Carvalho, Christian A; Dewitty-Davis, Janine L; Fasnacht, Jason L; Fierro, Joseph; Greeley, Karen L; Kortum, Carol E; Laroe, Lisa A; Libbey, Beth F; Louis, Jennifer E; Pollnow, Steven J; Prehoda, Kathryn J; Rainville-Pare, Lisa A; Rangaswamy, Janaki; Roberts, Vivian; Scott, Raymond J; Sherman, Lori A; Simon, Karl J; Simon, Keith A; Stanley, Matthew D; Stock, Chrysta D; Thornburg, Trudi J; Venuti, Melanie R; Williams, Abigail L
Cc: Cox, Sophia; Legaspi, Dionisio
Subject: TPS - When to Issue NTA

Hello everyone,

After speaking with CSC and NSC, and hearing from the stakeholders, we are sending out this email to provide guidance on when an NTA is mandatory.

Pursuant to 8 CFR 244.10(c)(1), an NTA is mandatory when a denial of TPS is based on a ground of ineligibility under 244.4 or inadmissibility under 244.3(c). Note that 244.3(c) are inadmissibility grounds that cannot be waived. This covers the following:

- 1) 8 CFR 244.4 – any felony or two or more misdemeanors
- 2) 8 CFR 244.3(c)
 - a. 212(a)(2)(A)(i) – CIMT and Drug offense (except for single possession of 30 grams or less of marijuana)
 - b. 212(a)(2)(B) – Multiple criminal convictions
 - c. 212(a)(2)(C) – Controlled substance traffickers
 - d. 212(a)(3)(A) – General security grounds
 - e. 212(a)(3)(B) – Terrorist activities
 - f. 212(a)(3)(C) – Foreign policy
 - g. 212(a)(3)(D) – Immigrant membership in totalitarian party
 - h. 212(a)(3)(E) – Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing

Now, INA 244(c)(B)(ii) has an additional ineligibility ground, which are the asylum bars. To stay consistent with the reading of 8 CFR 244.10(c)(1), an NTA will also be required for the 208(b)(2)(A) asylum bars, EXCEPT FOR “firmly resettled.” All other ineligibility and inadmissibility grounds that require an NTA upon denial are criminal and security grounds. “Firmly resettled” is not. Therefore, an NTA will not be required for a denial of “firmly resettled.”

Do not issue an NTA for any other denials. If you have any further questions, please do not hesitate to contact us.

Thank you,
Alina

Alina M. Connor

Adjudications Officer, Family and Status (FAST)
Service Center Operations Directorate (SCOPS)
U.S. Citizenship & Immigration Services (USCIS)
20 Massachusetts Ave., NW
Washington, D.C. 20529



(b)(6)

Herring, Monte R

From: Pearl, Thomas F
Sent: Friday, January 18, 2013 11:59 AM
To: Thomas, Ronnie D
Cc: Brouillette, Bradley J; Ducharme, Marshall J; Paul, Michael J; Martin, Gregory D; Haskell, Alexandra P; Gooselaw, Kurt G; Herring, Monte R
Subject: FW: TPS - When to Issue an NTA
Follow Up Flag: Follow up
Flag Status: Yellow
Attachments: NTA Issuance and Notification Procedures for TPS Applicants with Criminal Histories.doc

Ron,

Here is a roll up of our conversation this morning for your review.

Thanks, Tom

Thomas F. Pearl
Section Chief – BCU
Vermont Service Center
USCIS/DHS

From: Ducharme, Marshall J
Sent: Friday, January 18, 2013 2:04 PM
To: Pearl, Thomas F
Cc: Paul, Michael J
Subject: FW: TPS - When to Issue an NTA

Tom,

(b)(5)

(b)(6)

I have attached the notes from this morning's call with Ronnie.

Marshall Ducharme | Immigration Services Officer (3) | DHS – USCIS | Background Check Unit – VSC | St. Albans, VT

From: Thomas, Ronnie D
Sent: Friday, January 18, 2013 9:14 AM
To: Pearl, Thomas F
Cc: Brouillette, Bradley J; Paul, Michael J; Martin, Gregory D; Ducharme, Marshall J; Gooselaw, Kurt G; Haskell, Alexandra P
Subject: Re: TPS - When to Issue an NTA

3/18/2013

Ron

(b)(5)

(b)(7)(e)

From: Thomas, Ronnie D

Sent: Friday, January 18, 2013 08:45 AM

To: Pearl, Thomas F

Cc: Brouillette, Bradley J; Paul, Michael J; Martin, Gregory D; Ducharme, Marshall J; Gooselaw, Kurt G; Haskell, Alexandra P

Subject: Re: TPS - When to Issue an NTA



Thanks, Tom

Thomas F. Pearl
Section Chief – BCU
Vermont Service Center
USCIS/DHS

(b)(6)



From: Ducharme, Marshall J

Sent: Friday, January 11, 2013 3:10 PM

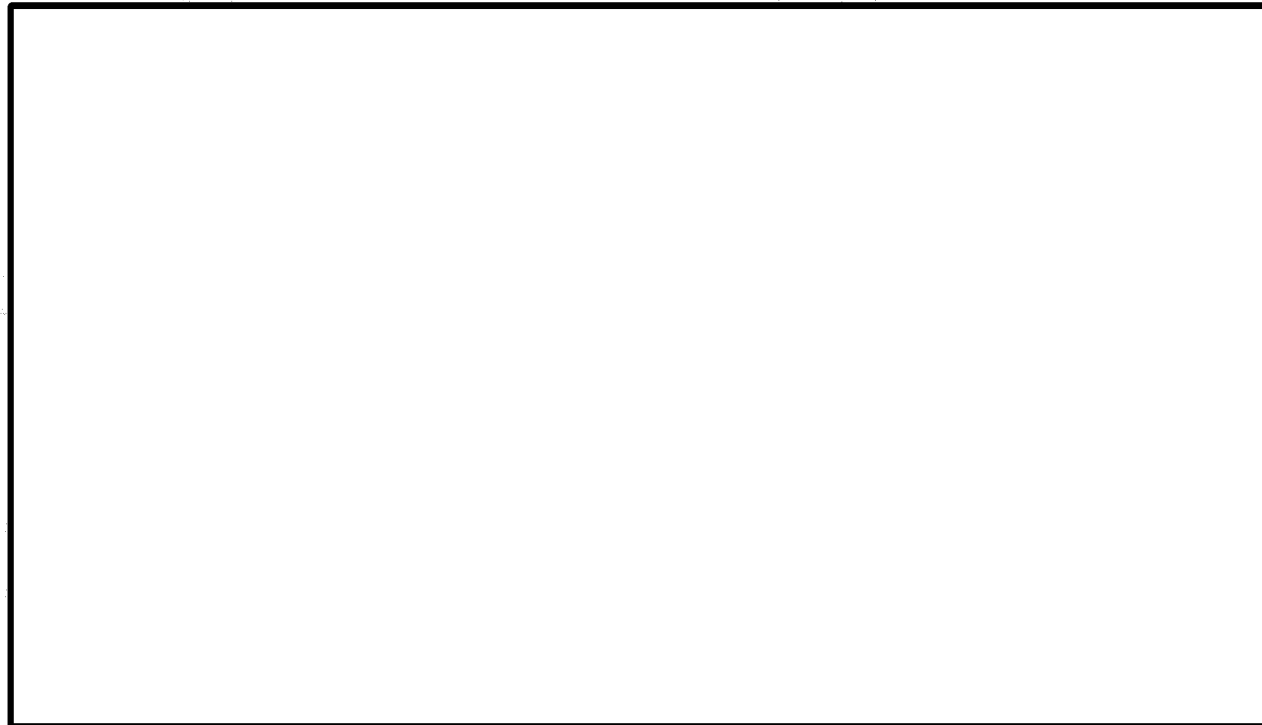
To: Pearl, Thomas F

Cc: Martin, Gregory D; Paul, Michael J
Subject: FW: TPS - When to Issue an NTA

(b)(5)

(b)(7)(e)

Tom,



Marshall Ducharme | Immigration Services Officer (3) | DHS – USCIS | Background Check Unit – VSC | St. Albans, VT



(b)(6)

From: Brouillette, Bradley J

Sent: Tuesday, June 12, 2012 11:39 AM

To: Ducharme, Marshall J; Harlow, Seth A

Cc: Beyor, Avery G Jr; Collins, Timothy M; Libby, Brian M; Martin, Gregory D; Williams, Abigail L; Thomas, Peter R

Subject: FW: TPS - When to Issue an NTA



From: Thomas, Ronnie D

Sent: Friday, June 08, 2012 2:19 PM

To: Gooselaw, Kurt G; Brouillette, Bradley J

Subject: RE: TPS - When to Issue an NTA

Brad,



Thanks,
Ron

From: Gooselaw, Kurt G

Sent: Friday, June 08, 2012 12:00 PM

To: Brouillette, Bradley J

(b)(5)

Cc: Thomas, Ronnie D

(b)(7)(e)

Subject: RE: TPS - When to Issue an NTA

[Redacted]

[Redacted]

[Redacted]

[Redacted]

get a chance. Thanks.

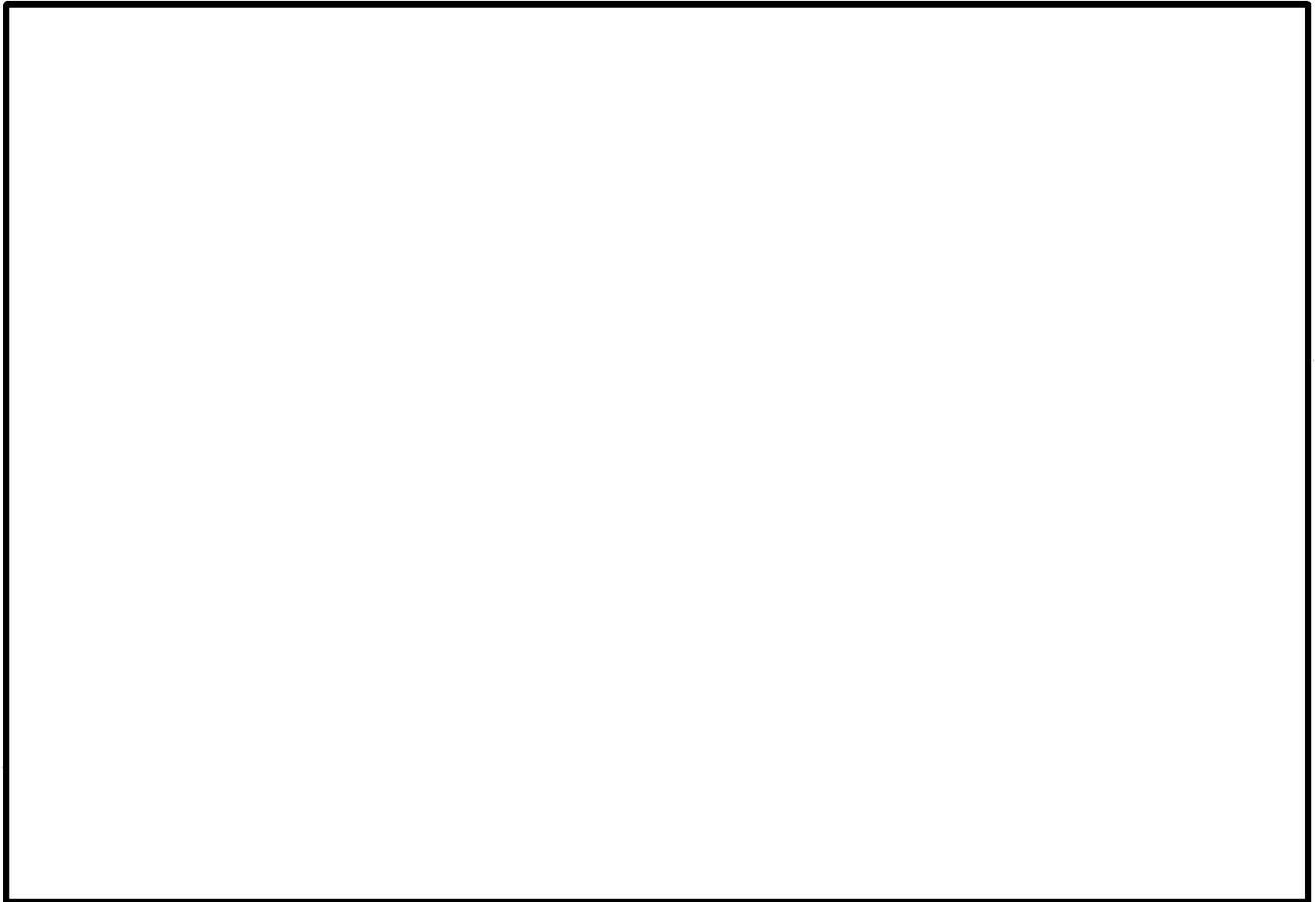
- Brad

From: Ducharme, Marshall J
Sent: Friday, June 08, 2012 8:14 AM
To: Brouillette, Bradley J
Cc: Harlow, Seth A
Subject: FW: TPS - When to Issue an NTA
Importance: High

(b)(5)

(b)(7)(e)

Brad,



Marshall Ducharme | Immigration Services Officer (3) | DHS – USCIS | Background Check Unit – VSC | St. Albans, VT

From: Brouillette, Bradley J
Sent: Wednesday, May 16, 2012 12:26 PM
To: Beyor, Avery G Jr; Collins, Timothy M; Harlow, Seth A; Libby, Brian M; Martin, Gregory D; Williams, Abigail L; Ducharme, Marshall J; Thomas, Peter R
Subject: TPS - When to Issue an NTA
Importance: High

FYI...per the TAB call today...thanks.

From: Gooselaw, Kurt G
Sent: Wednesday, May 16, 2012 12:23 PM

3/18/2013

(b)(5)

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(b)(6)

Vermont Service Center

Standard Operating Procedure (SOP)

NOTICE TO APPEAR
(NTA)
REFERRAL

Prepared by: Center Training Unit
December 4, 2012

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General

Purpose	This SOP prescribes procedures for identifying cases that may require the issuance of a Notice to Appear (NTA) and explains the process for referral to the VSC Background Check Unit (BCU).
Applicability/ Scope	Each individual adjudicator at the VSC is responsible for identifying cases that may require the issuance of a NTA, in compliance with HQ directive. The NTA Referral Standard Operating Procedure is designed to assist adjudicators with this responsibility. Personnel performing other duties pertaining to NTAs will be similarly bound by the provisions of this SOP that apply to their specific task or duties. This SOP is applicable to all SISOs, ISOs, and clerical personnel performing adjudicative or clerical functions or review of those functions.
Conflict Resolution	<p>Any provision of the Immigration and Nationality Act (the Act) or Title 8, Code of Federal Regulations (8 CFR) that conflicts with this SOP will take precedence over the SOP. If you identify a conflict, report the matter immediately to your supervisor or to any SISO.</p> <p>If any conflict is noted between this SOP and policy or guidance documents issued by Headquarters Service Center Operations (HQSCOPS), report the matter through the supervisory chain for resolution.</p> <p>This SOP supersedes all previous VSC guidance documents, policy memoranda, training packets, or other materials; all previous documents should be discarded.</p>

Continued on next page

Background

Relevant Memos

USCIS has the authority to issue a Notice to Appear (NTA) and thereby initiate removal proceedings against an alien.

In accordance with the William R. Yates memorandum titled Service Center Issuance of Notice to Appear (I-862) dated September 12, 2003, Service Centers were directed to issue Notices to Appear (NTA) to aliens encountered during routine adjudications if it was determined that the alien is amenable to removal as an inadmissible or deportable alien.

The Michael Aytes memorandum titled Disposition of Cases Involving Removable Aliens dated July 11, 2006, modified U.S. Citizenship and Immigration Services (USCIS) prioritization of the NTA issuance.

On November 7, 2011, this memo was superseded by Policy Memo 602-0050, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens. This memo further refines NTA priorities.

Who Is Responsible for Issuing NTAs at Service Centers

The Background Check Unit is tasked with the mission of issuing Notices to Appear and/or properly routing files to the appropriate Immigration and Customs Enforcement (ICE) office or Immigration Court.

Who is Responsible for Identifying Cases for NTA Issuance

The responsibility of identifying cases that may require the issuance of a Notice to Appear, in compliance with HQ directive, rests with each individual adjudicator at the VSC. The NTA Referral Standard Operating Procedure is designed to assist adjudicators with this responsibility.

Identification of Cases for NTA Referral

NTA Priorities USCIS prioritizes NTA issuance as follows:

- Cases where an NTA is required by law or regulation
- Cases for which fraud has been substantiated
- Aliens who are removable on criminal grounds
- Other cases as permitted by policy

Generally, aliens removable on criminal grounds fall within Immigration and Customs Enforcement's (ICE) purview. The BCU is responsible for routing these cases to the appropriate ICE office. In some cases (e.g TPS) BCU is authorized to issue the NTA. Whether its role involves referring the case to ICE or issuing the NTA, BCU considers criminal aliens to be a high priority.

National Security and Egregious Public Safety Cases

National security cases are handled by the Threat Assessment Unit (TAU) and Egregious Public Safety cases are handled by the BCU. This SOP does not alter the referral process for these types of cases. If you encounter a national security or an egregious public safety case refer to the Non-IBIS National Security and Egregious Public Safety Related Cases SOP for processing guidelines.

NTA Referral

Aliens described in the following categories will have their cases referred to the VSC BCU for consideration of NTA issuance **after final action is complete**. This referral shall occur in the manner described in the "referral process" section of this document.

NTA Referral for Fraud Cases

The following fraud cases require referral for issuance of an NTA:

- Cases relating to organized fraud schemes that have resulted in prosecution of the petitioner, representative, or the applicant/beneficiary, regardless of how they come to light.
 - All cases where the Center Fraud Detection Operations (CFDO) has articulated fraud via a Summary of Findings (SOF) and the alien appears to be removable under any sections under 212 and 237 of the INA.
-

Continued on next page

Identification of Cases for NTA Referral, Continued

NTA Referral When Required by Regulation

Regulation requiring an NTA to be issued **with** the decision:

- 8 CFR 244.10(c)(1) [Temporary Protected Status (TPS)]
- 8 CFR 244.14(b)(3) [Temporary Protected Status (TPS)]

Regulations requiring a charging document (NTA) to be issued **subsequent** to the decision pursuant to:

- 8 CFR 236.14(c) (Family Unity)
- 8 CFR 216.4(a)(6) (Conditional Residents)*
- 8 CFR 216.4(d)(2) (Conditional Residents)*

* The Contractor automatically forwards the conditional resident cases to the BCU after the appropriate purge from the denial shelves.

NTA Referral for Criminal Aliens

Refer any cases where the alien has been convicted of, or admits committing, a criminal offense that may render him or her removable under section 212(a)(2) or 237(a)(2) of the INA.

- Crime involving moral turpitude (see Appendix C)
- Violation of any law relating to a controlled substance (U.S. or foreign)
- Multiple criminal convictions with aggregate sentence of 5 years or more
- Prostitutes within the past 10 years
- Procurers (pimps and importers) within the past 10 years
- Received any proceeds from prostitution within the past 10 years
- Commercialized vice (illegal gambling and illegal lotteries)
- Committed a serious crime, asserted diplomatic immunity from prosecution and has not submitted fully to the jurisdiction of the court
- Foreign government official who has engaged in severe violations of religious freedom
- Engaged in the significant trafficking in persons
- Engaged in money laundering
- Convicted of high speed flight from an immigration checkpoint
- Convicted of a firearms offense
- Convicted of domestic violence, child abuse, or stalking
- Violated an order of protection

Continued on next page

Identification of Cases for NTA Referral, Continued

NTA Referral for TPS Applicants

Refer Applications for Temporary Protected Status (Forms I-821) that are denied or withdrawn because of:

- the applicant's criminal record,
 - due to terrorist related inadmissibility grounds (TRIG), or
 - because of the applicant's prior involvement in persecution.
-

NTA Referral for Outstanding Warrants and Previously Removed

Any case where the alien has an outstanding order of removal or a warrant of removal or where the alien was previously removed and is now back in the United States in violation of immigration law. These referrals will be limited to **denied and revoked cases where the alien was found removable pursuant to Section 212(a)(2), 212(a)(3), 237(a)(2), or 237(a)(4) of the INA**. This includes absconders whether the information is derived from an IBIS hit (follow IBIS referral procedures) or from other means.

Exceptions to the NTA Referral Process

Cases That Should Not Be Referred for NTA Issuance

Even though a case fits one of the categories listed in the section titled “Identification of Cases for NTA Referral”, it will not be referred for NTA issuance if it meets one or more of the following criteria:

- The case will be relocated to a field office for final decision processing.
- The alien in question is currently in removal proceedings with no final disposition from the IJ.
- The alien in question has been granted Deferred Action Status (DAS) and that status has not expired or been revoked (primarily applies to VAWA cases).
- Any denied ancillary form (i.e. I-765, I-131) where the primary form is at another File Control Office (FCO).

Cases that meet one or more of the exceptions listed above will be processed in accordance with current Service Center procedure.

NOTE: Send any questions relating to whether or not a case should be referred via email to NTA, Helpdesk.

Referral Process for Non-TPS Cases

Procedure

All adjudicative and IBIS resolution actions must be completed prior to referral to the NTA Unit.

Note: Review the exceptions before referring a case to the NTA Unit.

If the case has been completed (final action) and...	Then ...
Clerical action is required,	<ol style="list-style-type: none">1. Order the clerical action on the adjudication worksheet.2. Instruct clerical to forward the file to the "NTA Referral" Shelf in FCU after the decision is mailed.3. NFTS the file to clerical.4. Place in proper clerical drop-off.
No clerical action is required,	<ol style="list-style-type: none">1. Mark the "NTA Referral" block on the Adjudications Worksheet.2. NFTS the file to FCU.3. Place the file in the "NTA Referral" drop in FCU.

Referral Process for TPS Cases

NTA Referral Prior to Denial or Withdrawal Issuance

This category includes any TPS case that is being denied or withdrawn because the applicant is inadmissible under INA Section:

- 212(a)(2)(A)(i)(I) – convicted of a crime involving moral turpitude (CIMT),
- 212(a)(2)(A)(i)(II) – convicted of a law relating to controlled substances,
- 212(a)(2)(B) – convicted of two or more crimes with an aggregate sentences of at least 5 years, or
- 212(a)(2)(C) – drug trafficker.

It also includes any case that is denied or withdrawn based on:

- Section 208(a)(2)(A)(ii) of the INA, where the applicant has been convicted of a particularly serious crime (e.g. aggravated felony).
- a terrorist related inadmissibility ground (TRIG).

Follow the steps below to process these cases:

Step	Action
1	Ensure IBIS Checks are complete and valid.
2	Compose denial /withdrawal letter in MS Word and save it to the LAN.
3	Update CLAIMS appropriately.
4	Mark the “NTA Referral (LAN)” box on the TPS Checklist/Routing Sheet.
5	NFTS the file to FCU.
6	Deliver the file to the “NTA Referral” shelf in FCU.

Continued on next page

Referral Process for TPS Cases, Continued

NTA Referral After Denial or Withdrawal Issuance

This category encompasses any TPS case, not identified in the “NTA Referral Prior to Denial or Withdrawal Issuance” block, that is being denied or withdrawn for reasons relating to:

- the applicant’s criminal record,
- a felony conviction or two or more misdemeanor convictions, and
- failure by the applicant to provide Judgment and Conviction records (J&Cs).

This category also includes persecutor cases and cases where TRIG issues exist but the denial or withdrawal is based on reasons other than TRIG.

Follow the steps below to process these cases:

Step	Action
1	Ensure IBIS checks are complete and valid.
2	Compose denial/withdrawal letter and process through Correspondence Generator.
3	Update CLAIMS appropriately.
4	Complete the TPS Adjudications Worksheet ensuring that the NTA TPS Denial/Withdrawal Hold block is marked.
5	NFTS the file to FCU and place it on the “NTA TPS Denial/Withdrawal Hold” Shelf.

Vermont Service Center

Standard Operating Procedure (SOP)

Notice to Appear (NTA) SOP

Prepared by:
Center Training Unit
Vermont Service Center

December 19, 2012

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General

Introduction

Purpose

This SOP prescribes the processes and procedures for:

- Determining whether an alien should be served with a Notice to Appear (Form I-862).
 - Preparing the Notice to Appear (Form I-862), the Record of Deportable Alien (Form I-213), and related forms.
 - Processing cases where a Notice to Appear is not warranted.
-

Goals / Mission

This document provides a standard operating procedure for personnel at the VSC responsible for processing NTA cases. An additional goal, as directed by HQ, is to exercise our authority to issue Form I-862 (NTA) when adjudicating benefits applications where grounds of removability and/or inadmissibility are found.

Background

Relevant Memos

USCIS has the authority to issue a Notice to Appear (NTA) and thereby initiate removal proceedings against an alien.

In accordance with the William R. Yates memorandum titled Service Center Issuance of Notice to Appear (I-862), dated September 12, 2003, Service Centers were directed to issue Notices to Appear (NTA) to aliens encountered during routine adjudications if it was determined that the alien is amenable to removal as an inadmissible or deportable alien.

The Michael Aytes memorandum titled Disposition of Cases Involving Removable Aliens, dated July 11, 2006, modified USCIS's prioritization of the NTA issuance.

On November 7, 2011, this memo was superseded by Policy Memo 602-0050 (PM-602-0050), Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens. This memo further refines NTA priorities.

Who Is Responsible for Issuing NTAs at Service Centers

The Background Check Unit (BCU) is tasked with issuing Notices to Appear and/or properly routing files to the appropriate Immigration and Customs Enforcement (ICE) office, the Executive Office of Immigration Review (EOIR), or Asylum offices.

Who is Responsible for Identifying Cases for NTA Issuance

The responsibility of identifying cases that may require the issuance of a Notice to Appear, in compliance with HQ directive, rests with each individual Immigration Services Officer at the VSC.

Continued on next page

Background, Continued

NTA Priorities USCIS prioritizes NTA issuance as follows:

- Cases where an NTA is required by law or regulation
- Cases for which fraud has been substantiated
- Aliens who are inadmissible or removable on criminal grounds
- Other cases as permitted by policy

Generally aliens who are removable on criminal grounds fall within ICE's purview. The BCU is responsible for routing these cases to the appropriate ICE office. For some form types (e.g., TPS), the BCU is authorized to issue the NTA. Whether its role involves referring the case to ICE or issuing the NTA itself, BCU considers criminal aliens to be a high priority.

NTA Referral

NTA Referrals from Adjudications

General

Adjudicating officers have been instructed to refer the following categories of cases to the VSC NTA Unit for consideration of NTA issuance after final action is complete:

- Fraud cases
- Prescribed by regulation
- Criminal aliens
- TPS cases that are withdrawn/denied where alien has a criminal history
- TPS Late Initial Filing (LIF) or Prima Facie Initial Filing cases that are withdrawn/denied
- Outstanding warrants
- Aliens previously removed

Each category is described in detail in this section.

Fraud Cases

The following fraud cases require referral for issuance of an NTA:

- Cases relating to organized fraud schemes that have resulted in prosecution of the petitioner, representative, or the applicant/beneficiary, regardless of how they come to light.
 - All cases where the Center Fraud Detection Office (CFDO) has articulated fraud via a Fraud Verification Memorandum, now known as a Statement of Findings (SOF), and the alien appears to be removable under any sections of 212 or 237 of the INA.
 - Cases where fraud was not articulated by the CFDO, but fraud is still suspected and the alien appears to be removable on other grounds.
-

Continued on next page

NTA Referrals from Adjudications, Continued

NTA Issued With Decision

Regulations requiring an NTA to be issued **with** the decision include Temporary Protected Status (TPS) applications:

- Denied pursuant to 8 CFR 244.10(c)(1).
- Withdrawn pursuant to 8 CFR 244.14(b)(3).

NOTE: These cases are discussed in more detail in the *De Novo Review* section.

* The contractor automatically forwards all other TPS cases not listed above in the *General* section to the NTA team after the appropriate purge from the denial shelves.

NTA Issued Subsequent to Decision

Regulations requiring a charging document (NTA) to be issued **subsequent** to the decision include:

- 8 CFR 236.14(c) {Relates to Family Unity denials}
- 8 CFR 216.4(a)(6) {Relates to the termination of Conditional Permanent Resident Status for failure to file an I-751}*
- 8 CFR 216.4(d)(2) {Relates to the termination of Conditional Permanent Resident Status resulting from denial of a jointly filed I-751}*
- 8 CFR 216.5(f) {Relates to the termination of Conditional Permanent Resident Status resulting from the denial of an I-751 where the alien requested a waiver of the joint filing requirement}*

*The contractor automatically forwards the conditional resident cases to the NTA team after the appropriate purge from the denial shelves.

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NTA Referrals from Adjudications, Continued

Criminal Aliens Any cases where the alien admits to committing or has been convicted of a criminal offense that may render them removable under section 212(a)(2) or 237(a)(2) of the INA¹.

- Crime involving moral turpitude
 - Violation of any law relating to a controlled substance (U.S. or foreign)
 - Multiple criminal convictions with aggregate sentence of 5 years or more
 - Prostitutes within the past 10 years
 - Procurers (pimps and importers) within the past 10 years
 - Received any proceeds from prostitution within the past 10 years
 - Commercialized vice (illegal gambling and illegal lotteries)
 - Committed a serious crime, asserted diplomatic immunity from prosecution and has not submitted fully to the jurisdiction of the court
 - Foreign government official who has engaged in severe violations of religious freedom
 - Engaged in the significant trafficking in persons
 - Engaged in money laundering
 - Convicted of high speed flight from an immigration checkpoint
 - Convicted of a firearms offense
 - Convicted of domestic violence, child abuse, or stalking
 - Violated an order of protection
-

TPS Types of NTA referrals.

- All denied or withdrawn Applications for Temporary Protected Status (TPS) where the alien has a criminal history.
 - All denied TPS Late Initial Filing (LIF) cases are automatically forwarded to the NTA team after being purged from the denial shelf.
 - All denied or withdrawn TPS non-LIF cases where the application was denied for lack of Prima Facie eligibility on a timely filed application (i.e., denied, but there is no criminal history).
-

Outstanding Warrants and Previously Removed

Any case where the alien has an outstanding order of removal or a warrant of removal, that has not been executed and the alien was never removed, or the alien was previously removed and is now back in the United States in violation of immigration law. These referrals will be limited to **denied cases where the alien was found removable pursuant to Section 212(a)(2), 212(a)(3), 237(a)(2), or 237(a)(4) of the INA**. This includes absconders whether the information is derived from an IBIS hit or from other means.

¹ Please adhere to your case specific SOP for waiver eligibility requirements under Section 212 or 237 of the INA.
Revised December 19, 2012

Exceptions to the NTA Referral Process

Cases That Should Not Be Referred for NTA Issuance

Even if a case fits one of the categories that ordinarily requires an NTA referral, it will not be referred for NTA issuance if it meets one or more of the following criteria:

- The case will be relocated to a field office for final decision processing.
 - The alien in question is currently in removal proceedings with no final disposition from the Immigration Judge.
 - The alien in question has been granted Deferred Action Status (DAS) and that status has not expired or been revoked (primarily applies to VAWA cases).
 - Any denied ancillary form (e.g., I-765, I-131) where the primary form is at another File Control Office (FCO).
-

NTA Process

Preliminary Review

Review File to Determine Removability

Review the file to determine if NTA issuance is warranted. The alien must be removable on at least one ground.

- See Appendix A for Classes of Inadmissible Aliens under Section 212 of the INA.
- See Appendix B for Classes of Deportable Aliens under Section 237 of the INA.

If an NTA is....	Then...
Warranted,	Proceed to <i>Returned Mail</i> section.
Not warranted,	Send the file to records.

Continued on next page

Preliminary Review, Continued

Returned Mail Follow the steps below to determine if there is a valid mailing address for the alien.

Step	Action	
1	Determine if the file contains returned mail.	
	If the file...	Then...
	Contains returned mail,	Go to step 2.
	Does not contain returned mail,	Go to the <i>Removal Documents in File</i> section.
2	Search the file and the following systems for a new address: <ul style="list-style-type: none">• AR11• CLAIMS• MFAS, if applicable	
	If a new address is...	Then...
	found,	Go to step 7.
	Not found,	Go to step 3.
3	Prepare a Prosecutorial Discretion Memo indicating that an NTA will not be issued due to lack of a reliable address. NOTE: See the <i>Prepare Prosecutorial Discretion Memorandum</i> section for instructions on how to prepare the memorandum.	
4	Update the NTA Team Action Database. NOTE: See the <i>Update NTA Team Action Database</i> section for instructions on how to update the database.	
5	Send the file to records – action is complete on this case.	
6	Prepare an explanation of finding for the form type POC.	
7	Route the file and explanation to the form type POC.	

Removal Documents in File

Review the file to determine if there are charging/removal documents.

If the file...	Then ...
Contains an I-221/I-110 (Order to Show Cause) or an I-862/I-213,	Proceed to the <i>Required Systems Checks, EARM</i> section.
Does not contain an I-221/I-110 (Order to Show Cause) or an I-862/I-213,	Proceed to the <i>Adjudicative Review</i> section.

Continued on next page

Preliminary Review, Continued

Adjudicative Review

After reviewing application(s)/petition(s) refer to the table below to determine if USCIS's decision was made with accuracy.

If the decision to deny, withdraw, or revoke...	Then...
Contains an error material to the NTA,	Prepare explanation of finding/error for form type POC. Route file and explanation to form type POC.
Is accurate,	Go to the <i>Prosecutorial Discretion</i> section. Route file and explanation to form type POC.

Prosecutorial Discretion

Prosecutorial Discretion – Background

On November 17, 2000, Doris Meissner, Commissioner of legacy INS, issued a memorandum titled Exercising Prosecutorial Discretion. This memorandum described the principles with which INS should exercise prosecutorial discretion and provided the process to be followed in making and monitoring those decisions.

Definition

Prosecutorial discretion is best defined as the authority of an agency charged with enforcing a law to decide whether to enforce, or not to enforce, the law against someone. USCIS has prosecutorial discretion when deciding whether to issue, serve or file Form I-862, Notice to Appear. The favorable exercise of prosecutorial discretion means a discretionary decision not to assert the full scope of USCIS's authority as permitted under the INA, depending on the totality of the circumstances.

Prosecutorial Discretion Does Not Apply

It is important to recognize not only what prosecutorial discretion is, but also what it is not. The doctrine of prosecutorial discretion applies to decisions whether, and to what extent to exercise the coercive power of the Government over liberty and property, as authorized by law in cases when individuals have violated the law. Prosecutorial discretion does not apply to affirmative acts of approval, or grants of benefits, under a statute or other applicable law that provides requirements for determining when the approval should be given. For example, USCIS has prosecutorial discretion not to place a removable alien in proceedings, but it does not have prosecutorial discretion to approve a naturalization application by an alien who is ineligible for that benefit under the INA.

Exercising Prosecutorial Discretion

In many cases, USCIS's decision making involves both a prosecutorial decision to take or not to take enforcement action, such as placing an alien in removal proceedings, and a decision whether or not the alien is substantively eligible for a benefit under the INA. Exercising prosecutorial discretion does not lessen USCIS's commitment to enforce the immigration laws to the best of our ability. It is not an invitation to violate or ignore the law. Rather it is a means to use our resources to best accomplish the mission of administering and enforcing immigration laws. USCIS is under no legal requirement to institute removal proceedings for every denied application.

Continued on next page

Prosecutorial Discretion, Continued

Humanitarian Factors for Prosecutorial Discretion

Review the file to determine if prosecutorial discretion should be exercised because of humanitarian factors.

Humanitarian factors include the following:

- Pending or approved applications/petitions that may lead to the alien obtaining permanent residence.
- Alien is a juvenile (under 18 years of age).
- Alien's spouse is in the U.S. Armed Forces.

See the remaining sections of this chapter for processing instructions for these scenarios.

Review File for Criminality

In addition to the factors listed above, the alien must be a person of good moral character to qualify for prosecutorial discretion. If you find indications of criminality during file review and/or system checks, determine if the charges/convictions rise to the level of Top 4, and/or involve crimes of violence.

Refer to the table below to determine how to proceed:

If indications of criminality are...	Then ...
Not found,	Proceed with prosecutorial discretion process.
Found,	<p>Refer to the <i>Allegations of Criminal Charges for NTA</i> section to determine the level of criminal activity.</p> <p>NOTE: If the charges/convictions rise to the level of Top 4 and/or include crimes of violence, prosecutorial discretion will not be exercised. The file will be sent to the (Enforcement and Removal Office) ERO, an email sent to NOC ICE and a TECS lookout will be posted.</p> <p>EXCEPTION: If there is definitive evidence that the alien has been removed and is outside the U.S., prosecutorial discretion will be exercised regardless of criminal history.</p>

Continued on next page

Prosecutorial Discretion, Continued

Top 4

These are the Top 4 hits:

1. Terrorist/National Security
 2. Egregious Public Safety (EPS) Aggravated Felons
 3. Interpol
 4. NCIC Wants/Warrants (only if case rises to EPS/Aggravated Felon level)
-

Prepare Prosecutorial Discretion Memorandum

If prosecutorial discretion is deemed appropriate and an NTA will not be issued, a prosecutorial discretion memorandum must be placed in the file.

Follow the steps below to prepare the memorandum:

Step	Action
1	Open the <u>Prosecutorial Discretion Memo</u>
2	Click on <u>F</u> ile, Save as, then save the memo on the I:\drive.
3	Enter: <ul style="list-style-type: none">• Today's date,• The A-file number (or T-file number is digitized),• Your NFTS code.
4	Select the box that best describes the reason for exercising prosecutorial discretion.
5	Print the memo and affix it to the non-record side of the file.
6	Route the file to records.

Pending Applications and/or Petitions with USCIS

The alien may qualify for prosecutorial discretion if he or she has a pending application/petition with USCIS.

Review the file and query CLAIMS (local and national) and MFAS, if applicable, to determine if the alien has new or pending cases.

If there are...	Then...
Pending cases,	Route file to the appropriate division.
No pending cases,	Go to <i>Alien is a Juvenile</i> section.

Continued on next page

Prosecutorial Discretion, Continued

Alien is a Juvenile

Follow the steps below to determine if the alien qualifies for prosecutorial discretion as a juvenile (under 18 years of age):

Step	Action	
1	Determine if the alien is under 18 years of age.	
	If the alien...	Then...
	Is under 18 years of age,	Proceed to step 2.
	Is over 18 years of age,	Proceed to the <i>Status Acquired by Other Means</i> section.
2	Determine if the parent needs an NTA.	
	If the parent...	Then...
	Needs an NTA,	Proceed to step 3.
	Does not need an NTA,	Proceed to step 5.
3	Obtain the parent's A-file.	
4	Review the file with a SISO and proceed accordingly.	
5	Prepare a Prosecutorial Discretion memo indicating that an NTA was not issued because the alien is a juvenile.	
6	Update the NTA Team Action database.	
	NOTE: See the <i>Update NTA Team Action Database</i> section for instructions on how to update the database.	
7	Route the file to Records.	

Continued on next page

Prosecutorial Discretion, Continued

Status Acquired by Other Means

Follow the steps below to determine if the alien qualifies for prosecutorial discretion because he or she will acquire status by other means:

Step	Action	
1	Determine if the alien will acquire status by other means.	
	If the alien will...	Then...
	Acquire status by other means,	Go to step 2.
	Not acquire status by other means,	Go to the <i>Member of the U.S. Armed Forces</i> section.
2	Prepare a Prosecutorial Discretion memo indicating that an NTA was not issued because the alien has a pending or approved application or petition that may lead to valid immigration status.	
3	Update the NTA Team Action database. NOTE: See the <i>Update NTA Team Action Database</i> section for instructions on how to update the database.	
4	Send the file to Records.	

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Prosecutorial Discretion, Continued

Status
Acquired by
Other Means

Follow the steps below to determine if the alien qualifies for prosecutorial discretion because he or she is a member of the U.S. Armed Forces:

Step	Action						
1	<p>Review the file to determine if the alien or alien's spouse is a member of the U.S. Armed Forces. Indicators may include the following:</p> <ul style="list-style-type: none"> • Current address is overseas or an FPO (Fleet Post Office for Navy or Marine Corps) or an APO (Army/Air Force Post Office), • TECS records indicate that the alien or alien's spouse is a member of the U.S. Armed Forces, • Form G-325a or Form W-2 or income tax return indicates that alien or alien's spouse is a member of the U.S. Armed Forces. <table border="1"> <tr> <th>If the alien or alien's spouse...</th><th>Then...</th></tr> <tr> <td>Is a member of the U.S. Armed Forces,</td><td>Go to step 3.</td></tr> <tr> <td>Is not a member of the U.S. Armed Forces,</td><td>Go to <i>Alien is Outside the U.S.</i> section.</td></tr> </table>	If the alien or alien's spouse...	Then...	Is a member of the U.S. Armed Forces,	Go to step 3.	Is not a member of the U.S. Armed Forces,	Go to <i>Alien is Outside the U.S.</i> section.
If the alien or alien's spouse...	Then...						
Is a member of the U.S. Armed Forces,	Go to step 3.						
Is not a member of the U.S. Armed Forces,	Go to <i>Alien is Outside the U.S.</i> section.						
2	Prepare a Prosecutorial Discretion memo indicating that an NTA was not issued because the alien or alien's spouse is a member of the U.S. Armed Forces.						
3	<p>Update the NTA Team Action database.</p> <p>NOTE: See the Update NTA Team Action Database section for instructions on how to update the database.</p>						
4	Route the file to Records.						

Continued on next page

Prosecutorial Discretion, Continued

Alien is Outside the U.S. Follow the steps below to determine if the alien qualifies for prosecutorial discretion because he or she is outside the United States:

Step	Action
1	Prepare a Prosecutorial Discretion memo indicating that an NTA was not issued because the alien appears to be outside the United States. NOTE: If the alien appears to be in the United States go to the <i>Obtain Alien's A-File</i> section.
2	Update the NTA Team Action database. NOTE: See the Update NTA Team Action Database section for instructions on how to update the database.
3	Route the file to Records.

Termination of CPR Status, Continued

Termination of CPR Status

An alien's CPR status will be terminated:

- If the alien fails to file an I-751 within the requisite 90-day period, or
- Upon denial of an I-751.

Although most I-751 petitions are either approved or relocated to a district office for interview, VSC will deny an I-751 when the alien fails to respond to a request for evidence or fails to appear at an Application Support Center (ASC) for collection of biometrics (photograph and fingerprints).

Effective Date of CPR Termination

Use the table below to determine the effective date of the CPR termination:

If the Alien...	Then the Effective Date is...
Failed to file an I-751,	The day after the 2 nd anniversary of the date CPR status was acquired.
Filed a I-751 that was denied,	Date of the denial letter.

Requirement to Issue an NTA

Per regulation, an NTA must be issued after termination of an alien's Conditional Permanent Resident (CPR) status. An alien whose CPR status has been terminated is removable under section 237(a)(1)(D)(i) of the INA.

NOTE: An alien whose CPR status has been terminated should not be charged under section 212 of the INA, even if he or she entered the United States without inspection prior to adjusting status.

File Review Prior to NTA Issuance

Consider the following factors prior to issuing an NTA for termination of CPR status:

- Does the file contain returned mail?
- Has a subsequent I-751 been filed since CPR status was terminated?
- Was the alien's status properly classified as CPR?
- If terminated for failure to appear for biometrics, have biometrics now been received?
- Is alien residing outside of the United States?
- Has alien departed the United States and re-entered as a nonimmigrant?
- Is the alien a member of the U.S. Armed Forces?

These scenarios are discussed in detail in the next section.

Continued on next page

Termination of CPR Status, Continued

VSC Policy Regarding Juveniles

In general, it is only acceptable to issue an NTA to a juvenile (child) when the biological parent is being issued an NTA at the same time.

Juvenile Not Accompanied by Parent's File

If you encounter a juvenile file that is not accompanied by the parent's file, conduct systems checks to determine the parent's status and file location, then proceed as follows:

If the...	Then ...
Parent's CPR status has also been terminated,	Order the parent's A-file and draft NTAs on both the parent and the child.
Parent's I-751 is still pending,	Send the child's A-file to FMU to be matched with the parent's A-file.
Parent's I-751 was approved,	Determine if the child could have been included on the parent's I-751.* <ul style="list-style-type: none">• If child could have been linked, send A-file to I-751 POC with explanation.• If child could not have been linked, complete a Prosecutorial Discretion Memo and send the file to records.
Parent was not required to file an I-751 and is an LPR or USC,	Complete a Prosecutorial Discretion Memo and send the file to records.

* **NOTE:** In general, a child may be included on the parent's petition if the child acquired CPR status on the same day as the parent or within 90 days thereafter.

****NOTE:** If the decision to terminate the child's CPR status appears to be in error, send A-file to I-751 POC with an explanation.

Continued on next page

Termination of CPR Status, Continued

I-360 (VAWA) Filing

Review the file and conduct system queries to determine if the alien has filed a Petition for Special Immigrant (Form I-360). The alien may be seeking a hardship waiver of the removal of the conditional resident status under 216(c)(4)(c) of the INA because the marriage was entered into in good faith and during the marriage the alien spouse or child was the subject of extreme cruelty by his or her spouse or parent.

Follow the steps below to determine if the alien has a pending Form I-360 (VAWA):

Step	Action										
1	<p>Review the file for evidence that alien filed an I-360 (VAWA).</p> <p>Documentary evidence may include the following:</p> <ul style="list-style-type: none"> • A yellow "Form I-360 VAWA" safe address worksheet in the ROP of the file, • Correspondence from attorney or other representative indicating domestic abuse, • Copy of a protection order, police incident report, arrest record, etc. 										
2	Query local and National CLAMS using both A-file number and Name/DOB for I-360 filing.										
3	<table border="1"> <thead> <tr> <th>If an I-360 (VAWA)...</th><th>Then...</th></tr> </thead> <tbody> <tr> <td>Is not found,</td><td>Proceed with NTA process for Conditional Residents.</td></tr> <tr> <td>Is pending,</td><td>Route file to VAWA POC for adjudication.</td></tr> <tr> <td>Was approved,</td><td>Go to step 4.</td></tr> <tr> <td>Was denied,</td><td>Consult with mentor/SISO to determine if NTA should be issued.</td></tr> </tbody> </table>	If an I-360 (VAWA)...	Then...	Is not found,	Proceed with NTA process for Conditional Residents.	Is pending,	Route file to VAWA POC for adjudication.	Was approved,	Go to step 4.	Was denied,	Consult with mentor/SISO to determine if NTA should be issued.
If an I-360 (VAWA)...	Then...										
Is not found,	Proceed with NTA process for Conditional Residents.										
Is pending,	Route file to VAWA POC for adjudication.										
Was approved,	Go to step 4.										
Was denied,	Consult with mentor/SISO to determine if NTA should be issued.										
4	Prepare a Prosecutorial Discretion memo indicating that an NTA was not issued because the alien has an approved I-360.										
5	Update the NTA Team Action database.										
6	Route the file to Records.										

De Novo Review (TPS Cases)

Definition

The De Novo Review process reflects VSC's effort to comply with 8 CFR 244.10(c) and 8 CFR 244.14(b)(3) which stipulate that if the basis for denial or withdrawal of Temporary Protected Status (TPS) constitutes a ground of removal that renders the alien ineligible for TPS, the alien will be issued a charging document (NTA) with the decision. In addition, the alien will be advised that he or she does not have appeal rights, but that he or she has the right to a de novo review determination of TPS eligibility in removal proceedings.

Ground of Inadmissibility for TPS Cases

Section 244(c)(1)(A)(iii) stipulates that an alien must be admissible to the United States as an immigrant to qualify for TPS. However, most grounds of inadmissibility can be, and are routinely waived for TPS purposes. However, the following grounds of inadmissibility cannot be waived:

- 212(a)(2)(A) CIMT and/or Controlled substance violation
- 212(a)(2)(B) Two or more convictions and sentenced to at least 5 years
- 212(a)(2)(C) Controlled substance trafficker
- 212(a)(3)(B) National Security
- 212(a)(3)(C) Adverse foreign policy consequence
- 212(a)(3)(E) Nazi persecution and/or genocide

In addition to the above-mentioned grounds of inadmissibility, an alien is ineligible for TPS if he or she has been convicted of a particularly serious crime, to include an offense that meets the definition of an aggravated felony.

The following are other reasons why an alien might not be eligible for TPS, but these reasons are not grounds of inadmissibility or removability:

- Convicted of one felony committed in the United States,
- Convicted of two misdemeanors committed in the United States,
- Failure to establish residence and physical presence requirements,
- Failure to file for TPS during the initial registration period.

If the TPS application is denied solely for reasons that do not constitute a ground of removal, de novo review is not necessary.

Continued on next page

De Novo Review (TPS Cases), Continued

TPS Processing (Ineligible for TPS, but not Inadmissible or Removable)

In most instances, when an adjudicating officer denies or withdraws an Application for Temporary Protected Status (Form I-821), the officer prepares the notice of decision in Correspondence Generator and the letter is mailed to the alien on the following day. The case file is routed to a TPS denial shelf in FMU where it is held for a period of time to allow for filing of an appeal. If an appeal is not filed, the case file is purged and routed to BCU where it is staged for review by an NTA officer.

TPS Processing (Ineligible for TPS and Inadmissible or Removable)

When an adjudicating officer denies or withdraws an Application for Temporary Protected Status (Form I-821) due to an aggravated felony conviction, or one of the grounds of inadmissibility cited in the *Grounds of Inadmissibility for TPS Cases* section, the case is processed differently. In this scenario, the officer prepares the notice of decision, saves it on the LAN, and routes the case file directly to BCU prior to mailing the notice of decision to the alien. This process is necessary because an NTA must be issued in conjunction with the denial/withdrawal and the alien must be advised that there are no appeal rights, but de novo determination rights.

The burden of proof required to deny an application is less than is required to sustain a removal order. Therefore, it is conceivable that an alien's application for TPS could be denied or withdrawn on a ground of inadmissibility or deportability even though the evidence might not be sufficient to issue an NTA on said ground.

File Review for De Novo Cases

A complete file review should be performed for all de novo review cases. This will ensure that you have a complete picture of the alien's criminal record and immigration history. Pay special attention to evidence showing that the alien:

- Has been convicted of an aggravated felony,
 - Has applied for political asylum,
 - Has been previously issued a charging document or otherwise placed in proceedings.
-

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De Novo Review (TPS Cases), Continued

De Novo Review Process

Follow the steps below to determine if the TPS applicant is not entitled to appeal rights, but has the right to a de novo determination of TPS eligibility:

Step	Action						
1	<p>Review the decision letter to ensure the officer cited inadmissibility or deportability as a reason to deny/withdraw TPS.</p> <table> <tr> <th>If the decision letter is...</th><th>Then</th></tr> <tr> <td>Complete (inadmissibility/deportability properly cited),</td><td>Go to step 2.</td></tr> <tr> <td>Incomplete,</td><td>Return file to TPS POC with explanation of deficiency.</td></tr> </table>	If the decision letter is...	Then	Complete (inadmissibility/deportability properly cited),	Go to step 2.	Incomplete,	Return file to TPS POC with explanation of deficiency.
If the decision letter is...	Then						
Complete (inadmissibility/deportability properly cited),	Go to step 2.						
Incomplete,	Return file to TPS POC with explanation of deficiency.						
2	<p>Verify that the evidence of record supports denial/withdrawal of TPS for inadmissibility/deportability.</p> <table> <tr> <th>If the evidence of record...</th><th>Then</th></tr> <tr> <td>Supports the finding of inadmissibility/deportability,</td><td>Go to step 3.</td></tr> <tr> <td>Does not support the finding of inadmissibility/deportability,</td><td>Return file to TPS POC with explanation.</td></tr> </table> <p>NOTE: This review may include:</p> <ul style="list-style-type: none"> • Review of J&C records (if any) and statute under which alien was convicted, • Consulting precedent decisions, • Seeking advice from VSC Counsel. 	If the evidence of record...	Then	Supports the finding of inadmissibility/deportability,	Go to step 3.	Does not support the finding of inadmissibility/deportability,	Return file to TPS POC with explanation.
If the evidence of record...	Then						
Supports the finding of inadmissibility/deportability,	Go to step 3.						
Does not support the finding of inadmissibility/deportability,	Return file to TPS POC with explanation.						

Continued on next page

De Novo Review (TPS Cases), Continued

De Novo Review Process (continued)

Step	Action	
3	Verify that the evidence is sufficient to support an NTA charge.	
	If the evidence of record is...	Then
	sufficient to support an NTA charge,	Go to step 4.
	insufficient to support an NTA charge,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send the file to BCU Clerical to mail letter and forward the file to Contract Clerical "Await Appeal" section.
4	Conduct systems checks as outlined in the <i>Required System Checks</i> section of this document.	
5	Determine if the alien is currently in removal proceedings with a scheduled hearing date with EOIR.	
	If the alien is...	Then
	Currently in removal proceedings with scheduled hearing date with EOIR,	Go to <i>TPS Applicant Currently in Removal Proceedings</i> section.
	Not in removal proceedings,	Go to step 6.
6	Determine if the alien been convicted of an aggravated felony.	
	If the alien has...	Then
	been convicted of a aggravated felony,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section.
	not been convicted of an aggravated felony,	Go to step 7.

Continued on next page

De Novo Review (TPS Cases), Continued

De Novo Review Process (continued)

Step	Action						
7	<p>Determine if the alien has a pending application for political asylum (Form I-589).</p> <table> <tr> <th>If the alien...</th><th>Then...</th></tr> <tr> <td>Has a pending Form I-589,</td><td> <ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. </td></tr> <tr> <td>Does not have a pending Form I-589,</td><td>Go to step 8.</td></tr> </table>	If the alien...	Then...	Has a pending Form I-589,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. 	Does not have a pending Form I-589,	Go to step 8.
If the alien...	Then...						
Has a pending Form I-589,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. 						
Does not have a pending Form I-589,	Go to step 8.						
8	<p>Determine if the alien is currently under a final order of removal or was previously removed and now subject to reinstatement.</p> <table> <tr> <th>If the alien is...</th><th>Then...</th></tr> <tr> <td>currently under a final order of removal or previously removed and subject to reinstatement,</td><td> <ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. </td></tr> <tr> <td>not currently under a final order of removal or previously removed and subject to reinstatement,</td><td>Go to step 9.</td></tr> </table>	If the alien is...	Then...	currently under a final order of removal or previously removed and subject to reinstatement,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. 	not currently under a final order of removal or previously removed and subject to reinstatement,	Go to step 9.
If the alien is...	Then...						
currently under a final order of removal or previously removed and subject to reinstatement,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. 						
not currently under a final order of removal or previously removed and subject to reinstatement,	Go to step 9.						

Continued on next page

De Novo Review (TPS Cases), Continued

De Novo Review Process (continued)

Step	Action								
9	<p>Determine if alien was previously in removal proceedings that were administratively closed by IJ or BIA</p> <table> <tr> <th>If the alien was...</th><th>Then...</th></tr> <tr> <td>not previously in removal proceedings that were administratively closed by IJ or BIA,</td><td>Go to step 10.</td></tr> <tr> <td>previously in removal proceedings that were administratively closed by IJ or BIA and alien resides outside the jurisdiction of original EOIR court,</td><td>Go to step 10.</td></tr> <tr> <td>previously in removal proceedings that were administratively closed by IJ or BIA and alien resides within the jurisdiction of original EOIR court,</td><td> <ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. </td></tr> </table>	If the alien was...	Then...	not previously in removal proceedings that were administratively closed by IJ or BIA,	Go to step 10.	previously in removal proceedings that were administratively closed by IJ or BIA and alien resides outside the jurisdiction of original EOIR court,	Go to step 10.	previously in removal proceedings that were administratively closed by IJ or BIA and alien resides within the jurisdiction of original EOIR court,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section.
If the alien was...	Then...								
not previously in removal proceedings that were administratively closed by IJ or BIA,	Go to step 10.								
previously in removal proceedings that were administratively closed by IJ or BIA and alien resides outside the jurisdiction of original EOIR court,	Go to step 10.								
previously in removal proceedings that were administratively closed by IJ or BIA and alien resides within the jurisdiction of original EOIR court,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. 								
10	<p>Determine if the alien can be issued an NTA under the same or comparable ground of removal as the one being used to deny/withdraw TPS.</p> <table> <tr> <th>If the NTA can...</th><th>Then...</th></tr> <tr> <td>be issued under the same or comparable ground of removal as the one being used to deny/withdraw TPS,</td><td>Go to <i>NTA Issuance for De Novo Cases</i> section.</td></tr> <tr> <td>not be issued under the same or comparable ground of removal as the one being used to deny/withdraw TPS,</td><td> <ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. </td></tr> </table>	If the NTA can...	Then...	be issued under the same or comparable ground of removal as the one being used to deny/withdraw TPS,	Go to <i>NTA Issuance for De Novo Cases</i> section.	not be issued under the same or comparable ground of removal as the one being used to deny/withdraw TPS,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. 		
If the NTA can...	Then...								
be issued under the same or comparable ground of removal as the one being used to deny/withdraw TPS,	Go to <i>NTA Issuance for De Novo Cases</i> section.								
not be issued under the same or comparable ground of removal as the one being used to deny/withdraw TPS,	<ul style="list-style-type: none"> • Verify the decision letter includes appeal rights, • Send file to BCU Clerical to mail letter and forward file to Contract Clerical "Await Appeal" section. 								

Continued on next page

De Novo Review (TPS Cases), Continued

TPS Applicant Currently in Removal Proceedings

Proceed as follows if the alien is currently in removal proceedings with a hearing date scheduled in EOIR:

Step	Action						
1	<p>Confirm that the decision letter informs the alien of his/her appeal rights.</p> <table> <tr> <th>If appeal rights are...</th><th>Then...</th></tr> <tr> <td>included in letter,</td><td>Go to step 2.</td></tr> <tr> <td>not cited in letter,</td><td>Return file to TPS POC with explanation.</td></tr> </table>	If appeal rights are...	Then...	included in letter,	Go to step 2.	not cited in letter,	Return file to TPS POC with explanation.
If appeal rights are...	Then...						
included in letter,	Go to step 2.						
not cited in letter,	Return file to TPS POC with explanation.						
2	Route the file to BCU Clerical with instructions to mail the letter and return the file to you.						
3	<p>Upon return of file:</p> <ul style="list-style-type: none"> • Ensure all relating receipt files, T-files, and A-files are consolidated into the primary A-file. • Prepare an NTA Transmittal memo to appropriate District Chief Counsel's Office. • Fasten the memo to non-record side of file. • Forward to BCU Clerical for relocation. 						

Continued on next page

De Novo Review (TPS Cases), Continued

NTA Issuance for De Novo Cases

Follow the steps below once you determine that the TPS applicant is not entitled to appeal rights, but has the right to de novo determination of TPS eligibility.

Step	Action
1	Retrieve the denial or withdrawal letter from MS Word (L:\drive).
2	Replace "appeal rights" paragraph with appropriate "de novo review" call-up (5957 for denial & 5958 for withdrawal).
3	Save the revised denial/withdrawal on the LAN.
4	Print a copy for the file and discard the old copy.
5	Ensure that all relating receipt files, T-files, A-files are consolidated.
6	Draft I-213 and I-862 according to standard procedures. Refer to <i>Prepare and Issue NTA</i> section. NOTE: Be certain to charge the alien under the same or comparable ground of removal as the one used to deny/withdraw TPS. In addition, include any other charges that apply.
7	After the NTA has been signed, complete out processing procedures. Refer to <i>NTA Out Processing</i> section. NOTE: Forward the file to BCU Clerical with instructions to mail the denial/withdrawal letter along with the NTA.

Determine Section 212 & Section 237 Charges

Allegations of Criminal Charges for NTA

Follow the steps below to determine if allegations of criminality are present:

Step	Action												
1	<p>Determine if there is evidence of criminality in the file.</p> <table> <tr> <th>If there is evidence in the file of....</th><th>Then...</th></tr> <tr> <td>Criminality,</td><td>Go to step 2.</td></tr> <tr> <td>No criminal activity,</td><td>Go to <i>Allegations of Removability for NTA</i> section.</td></tr> </table>	If there is evidence in the file of....	Then...	Criminality,	Go to step 2.	No criminal activity,	Go to <i>Allegations of Removability for NTA</i> section.						
If there is evidence in the file of....	Then...												
Criminality,	Go to step 2.												
No criminal activity,	Go to <i>Allegations of Removability for NTA</i> section.												
2	<p>Determine if the charges rise to the level of an aggravated felony/EPS.</p> <table> <tr> <th>If the charges...</th><th>Then...</th></tr> <tr> <td>Rise to the level of an aggravated felony/EPS and the underlying form type is TPS or one of the other form types not covered by PM-602-0050,</td><td>Go to <i>Aggravated Felony and EPS Allegations for TPS Cases</i> section.</td></tr> <tr> <td>Rise to the level of an aggravated felony/EPS and the underlying form type is covered by PM-602-0050,</td><td>Refer the case to an officer who has been trained to process a Criminal RTI (Request to Investigate) to ERO.</td></tr> <tr> <td>Render the alien removable on criminal grounds and the underlying form type is covered by PM-602-0050,</td><td>Refer the case to an officer who has been trained to process a Criminal RTI (Request for Investigation).</td></tr> <tr> <td>Do not rise to level of aggravated felony/EPS,</td><td>Go to step 3.</td></tr> <tr> <td>Render the alien removable on criminal grounds and the underlying form type is TPS or one of the other form types not covered by PM-602-0050,</td><td>Go to step 3.</td></tr> </table>	If the charges...	Then...	Rise to the level of an aggravated felony/EPS and the underlying form type is TPS or one of the other form types not covered by PM-602-0050,	Go to <i>Aggravated Felony and EPS Allegations for TPS Cases</i> section.	Rise to the level of an aggravated felony/EPS and the underlying form type is covered by PM-602-0050,	Refer the case to an officer who has been trained to process a Criminal RTI (Request to Investigate) to ERO.	Render the alien removable on criminal grounds and the underlying form type is covered by PM-602-0050,	Refer the case to an officer who has been trained to process a Criminal RTI (Request for Investigation).	Do not rise to level of aggravated felony/EPS,	Go to step 3.	Render the alien removable on criminal grounds and the underlying form type is TPS or one of the other form types not covered by PM-602-0050,	Go to step 3.
If the charges...	Then...												
Rise to the level of an aggravated felony/EPS and the underlying form type is TPS or one of the other form types not covered by PM-602-0050,	Go to <i>Aggravated Felony and EPS Allegations for TPS Cases</i> section.												
Rise to the level of an aggravated felony/EPS and the underlying form type is covered by PM-602-0050,	Refer the case to an officer who has been trained to process a Criminal RTI (Request to Investigate) to ERO.												
Render the alien removable on criminal grounds and the underlying form type is covered by PM-602-0050,	Refer the case to an officer who has been trained to process a Criminal RTI (Request for Investigation).												
Do not rise to level of aggravated felony/EPS,	Go to step 3.												
Render the alien removable on criminal grounds and the underlying form type is TPS or one of the other form types not covered by PM-602-0050,	Go to step 3.												

Continued on next page

Determine Section 212 & Section 237 Charges, Continued

Allegations of Criminal Charges for NTA (continued)

Step	Action	
2	If the charges...	Then...
	Include CIMT or drugs, NOTE: Use the following resources to determine if charge is a CIMT: <i>CIMT Quick Reference Chart - Person</i> <i>CIMT Quick Reference Chart – Property</i> These documents are located on the L:\drive\NTA\SOP Documents\CIMT Resources folder.	Determine if CIMT or first offense exceptions apply. Exceptions include the following: <ul style="list-style-type: none"> • CIMT petty offense (I-212) • Youthful offender (I-212) • First offense for marijuana possession < 30 grams (I-237)
	Do not include CIMT or drugs,	Go to <i>Allegations of Removability for NTA</i> section.
	Do not render the alien removable on criminal grounds,	Go to <i>Allegations of Removability for NTA</i> section.
3	Attempt to obtain Judgment and Conviction (J&C) documents from the internet if they are not in the file, then proceed with NTA (only for TPS cases).	
4	Go to <i>Allegations of Removability for NTA</i> section.	

Continued on next page

Determine Section 212 & Section 237 Charges, Continued

Aggravated Felony and EPS Allegations for TPS Cases

This process pertains only to TPS cases and other form types not covered by PM-602-0050. All other form types will follow the guidance stated in PM-602-0050.

Follow the steps below to process Aggravated Felony and EPS Allegations for TPS cases.

Step	Action
1	<p>Create a TECS record entry with appropriate verbiage.</p> <p>Refer to the <i>Create and Post a TECS Record</i> section of this document for processing instructions and sample remarks.</p>
2	<p>Prepare and print transmittal memo to the ERO having jurisdiction over the alien's place of residence.</p> <p>NOTE: Include the following verbiage in the <i>Additional Comments</i> section: 'Criminal Alien, FBI # 123456'</p>
3	<p>Send an email message to National Operations Center, Immigration and Customs Enforcement (NOC ICE) and include the following:</p> <p>Address: NOC ICE</p> <p>Subject: Potential Lead on Subject of A_____.</p> <p>Body of the message: Include as much of the following information as possible:</p> <ul style="list-style-type: none"> • Subject's name, alias, DOB, COB, nationality, last known address (LKA) • Any numeric identifiers found in system searches, including FBI#, State ID # (SID), State of Massachusetts Probation Court finding # (MA PCF), etc. • A detailed description of the particular criminal charges and/or convictions which led you to send this message. • A summary of the alien's pertinent immigration history, e.g., "Subject entered the U.S. without inspection in (year). Subject's TPS was denied/withdrawn on (date)." • File is en route to (insert ERO of jurisdiction) for appropriate action. <p>Resource link – ICE website, ERO offices: http://www.ice.gov/about/ero/contact.htm</p>

Continued on next page

Determine Section 212 & Section 237 Charges, Continued

Aggravated Felony and EPS Allegations for TPS Cases (continued)

Step	Action
4	Update the NTA Team Action database.
5	Send the file to Clerical.
	NOTE: Clerical will route the file to ERO of jurisdiction.

Allegations of Removability for NTA

Determine the allegations of removability that the alien will be charged with on the NTA. The following allegations are commonly used:

- 212(a)(6)(A)(i) present without admission/inspection (EWI)
- 212(a)(7)(A)(i)(I) intending immigrant
- 237(a)(1)(B) nonimmigrant overstay
- 237(a)(1)(D)(i) conditional resident – status terminated

The following criminal grounds may also apply only to TPS cases:

- 212(a)(2)(A)(i)(I) CIMT
- 212(a)(2)(A)(i)(II) controlled substance violation

Required System Checks & Worksheets

General

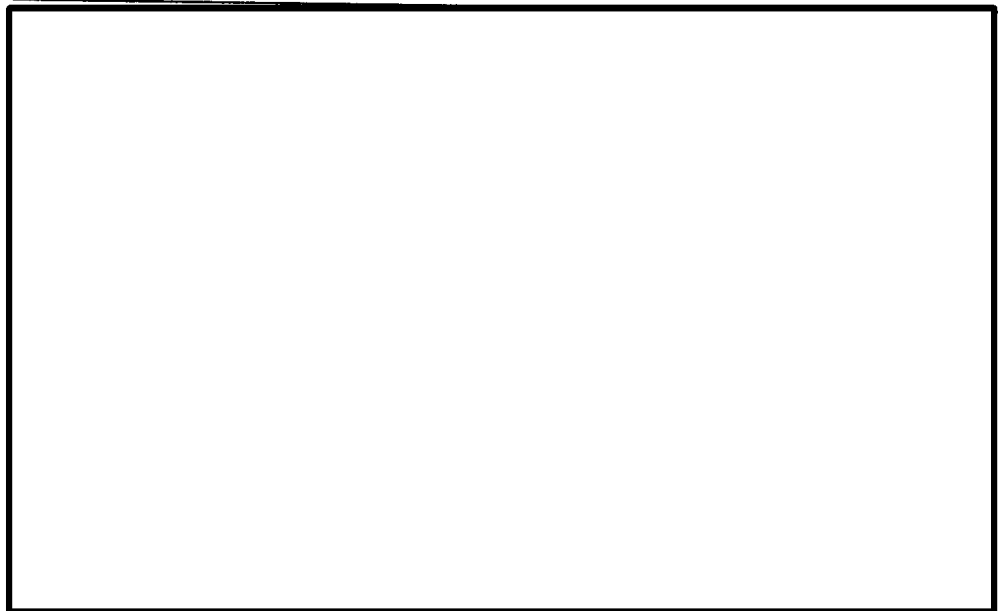
Background

In accordance with the William R. Yates memorandum titled Security Check Requirements Preceding Notice to Appear Issuance, dated March 2, 2004, all required security checks must be initiated prior to issuing an NTA. The required checks include an IBIS query (see note below), fingerprint check and FBI name check. The latter mentioned security checks are required on individuals between the ages of 14-79 years.

NOTE: In March of 2006, VSC received email guidance from SCOPS confirming that IBIS checks are no longer required prior to NTA issuance

List of Required System Checks

(b)(7)(e)



Screen Print Required

Prepare a screen print of each of the required system checks and place it on the non-record side of the file.

(b)(5)

(b)(5)

(b)(5)

Determining when a case should get an NTA Resolution or Relocation Memo.

(November 2012)

Review file and search pertinent systems to determine these two things:

Does subject still have valid status?

Has subject departed the U.S. and appears to remain outside the U.S.?

If the answer to either of these questions is yes, then you will do a resolution memo. If the answer to both of these questions is no, the file is still considered a possible NTA. The gray area between resolution memo and NTA is where most relocation memos derive. If both of these answers is no, but something else is pending outside of the NSC that could give subject status, that may be a relocate memo. Also, if subject has already been ordered removed, that too could be a relocate memo.

First review the file thoroughly. There are some items of documentation to be found in a file that are a red flag that this will not be a standard resolution memo. While reviewing the file, tab relevant documentation, such as the following:

- Prior orders of deport/removal/exclusion by the Immigration Judge
- I-122 Notice for Admission Detained for Hearing Before Immigration Judge
- I-221 Order to Show Cause and Notice of Hearing
- I-851 Notice of Intent to Issue a Final Administrative Deportation Order
- I-851A Final Administrative Removal Order
- I-860 Notice and Order of Expedited Removal
- I-862 Notice to Appear
- I-863 Notice of Referral to Immigration Judge

If you find any of the above, you may be doing a relocation memo. If you do not find any of the above documentation, continue with file review and systems checks to determine if a resolution memo or NTA is appropriate.

As you are reviewing the file, also tab information that will be helpful in determining if you do a resolution memo, relocation memo, or an NTA, such as the following:

- Last entry date (I-94 cards, claimed entry dates on forms, stamps in Visas, etc.)
- Last entry manner (status or claiming to be EWI on an application or petition)
- Extensions/changes of status and validity dates (797 notices)
- Last application or petition denied
- Denial notice of last application or petition denied

After identifying the last application or petition denied in the file, if you did not find prior charging documents or evidence subject has been before an Immigration Judge, check the following systems:

CIS – Always a good place to start. Not only does the 9101 screen show basic Immigration history, status, and consolidated A-files, but 9102 and/or 9103 searches may reveal additional A-files. (See handout titled CIS 9102 / 9103 Queries.)

National CLAIMS (FARES) – You can start searching by A-number(s) to get an idea of subject's filing history and forms that granted Refugee or Asylee status. However, what you may need to see are I-129s, Petitions for Nonimmigrant Workers, and I-539s, Applications to Extend or Change Nonimmigrant Status. These will not be found by A-number. Search by last name and first name without date of birth. This may yield multiple pages of filings for individuals matching subject's first and last name. (See handout titled National CLAIMS / FARES search for Approved Extensions or Changes of Status.)

Status Inquiry / Adjudicate a Case - This may reveal receipt numbers for cases filed very recently at the Nebraska Service Center that may not have shown up on a National CLAIMS search.

GUI – This too may reveal receipt numbers for cases filed very recently at the Nebraska Service Center that may not have shown up on a National CLAIMS search.

SQ94 – Contains information found on an I-94 card, Arrival / Departure Record. (See handout titled Arrival / Departure Record – Current and Archived.)

Crossings and Secondary Inspections – Found in IBIS Standard Production. This search often reveals arrivals and departures documented from passenger manifests that are not reflected in SQ94. If a subject departed the U.S. without turning over their I-94 card, SQ94 will indicate they are still in the U.S., however Crossings and Secondary Inspections may have a record that states "Outbound" dated after the I-94 dated entry, indicating subject is actually out of the U.S. (See separate hand out titled Crossings and Secondary Inspections Queries in TECS II.)

It is also possible to find that a subject departed the U.S. according to SQ94, but then has a more recent record in Crossings that says "Inbound", indicating they are back in the U.S.

NOTE: Because Crossings and Secondary Inspections are done using SQ11, you may get an IBIS hit. If you get an IBIS hit that was already resolved or does not relate, refresh the prior IBIS memo or ROIQ. If you get a new IBIS hit, route to EX0731 with purple ½ sheet titled **IBIS REFERRAL**. Samples are included. If you need to make more copies use purple paper. Put your name, NFTS code, and cubicle location on the sheet so BCU can return this to you.

Once the file is returned to you determine whether the new IBIS memo provides information that helps determine whether an NTA resolution memo, relocation memo, or an NTA is appropriate. At very least the new memo should resolve any IBIS hits.

Other things to look for:

Frequent Filers - If you see a denial that has not yet been date stamped, or appears to be awaiting release in Letters Express (no date at the top above supervisor's signature), this is a Frequent Filer. Denials done in MSWord will have two copies of the denial in the file and they will not be date stamped. The Adjudication Officer or Supervisor is requesting that the NTA Team update the denial at the same time as any action we take regarding an NTA. If you see a denial like this, leave the adjudicator's routing sheet on top of the file when routing to your supervisor so they know further action is required on the denial in addition to the rest of NTA processing.

HRIFA cases – These should already be sorted into their own location on the shelves, at IJ0010. On occasion they slip into the boxes of regular work. If you get an I-485 based on HRIFA (Haitian Refugee Immigration Fairness Act), route to the shelf code IJ0010. You will know an I-485 is a HRIFA case by the first line on the denial decision, which states, "This notice refers to the Form I-485...under section 902 of the Haitian Refugee Immigration Fairness Act...". Do not check any systems or do a memo. Just route it directly to IJ0010.

Multiple A-files (consolidated): If CIS shows A-files already consolidated be sure to print 9101 for all consolidated A-numbers. Check systems by both A-numbers too. If you determine this case will be a resolution or relocation memo, put a post-it flag on each additional 9101 screen print to alert your supervisor. *Supervisor: When you are reviewing the file, please verify that the subject has not been previously deported, etc under either A-number.*

Multiple A-files (not consolidated): You may discover other possible A-files (through 9102, 9103 or other means) for this subject that are not consolidated. These might be found in CIS or other systems, but you may also find other A-numbers during A-file review. If found during A-file review tab the source of alternate A-numbers. If found in an electronic system, and the names and date of birth match, print the screen. Unless the file is at a District Office or with the Law Enforcement Support Center (LESC) you should order the additional A-file. When it arrives you need to compare the files to be sure they are the same person. Once established that they are the same person send them for A-file consolidation (Pam Connelly, cubicle SE2343, NFTS code MG0399). If A-files do not belong to the same person, send additional A-file back to where you got it from or to NRC.

Fraud Verification Memo (FVM) or Statement of Findings (SOF): If you find a Fraud Verification Memo or Statement of Findings (see attached examples of FVM and SOF) read thoroughly. Determine what impact, if any, the FVM has on your NTA case.

Decision Time

After checking these systems, decide whether the subject **still has valid status or if they have departed the U.S.** If systems listed thus far do not clarify status or presence in the U.S., check additional systems such as SEVIS, ADIS, USVisit, CCDI, etc.

If they have valid status or remain outside the U.S., go to Creating a Resolution Memo in USL BCU & NTA Program. Completed and signed memos go to HN0000 (*See routing sheet at back of training manual*).

If they have been previously removed or deported, or have something pending at another location, go to Creating a Relocation Memo in USL BCU & NTA Program. Completed relocation memos will go through your supervisor, but include a yellow OF-41 (buck slip) and a routing sheet to LR0025.

If you determine this is an NTA-able case, figure out these four things before you even draft your I-213 narrative:

- 1.) What is subject's last known address (LKA)
- 2.) Based on LKA what is the base court where subject is to be put into proceedings?
- 3.) Also based LKA what is the DRO where A-file is to be sent to await proceedings?
- 4.) What charge will you be using on the NTA?

You will save yourself headaches if you answer these questions before you ever get into ENFORCE.

(b)(7)(e)

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Notice to Appear Issuance Process

HRIFA I-485 Denied at NSC

Subject Never Been In Proceedings

Overview

Introduction

Service Centers are to issue Notice to Appear (Form I-862) if grounds of deportability or inadmissibility are identified with aliens encountered during routine adjudications and it is determined that the alien is amenable to removal as an inadmissible or deportable alien.

When seeking an immigration or non-immigrant benefit, the person is referred to as an Applicant or Beneficiary. At the point in which the sought after benefit is denied and he or she is identified as inadmissible or deportable, the person is referred to as a Subject. In order to have referral consistency throughout this guide, the word Alien is used.

Objectives

The objectives of the denial and update and the Notice to Appear (NTA) preparation and update are:

1. Identify grounds and write a legally sufficient document denying the adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act (HRIFA).
2. File a legally sufficient charging document with the Immigration Court to initiate removal proceeding for the identified Alien.
3. Serve Alien with copy of charging document and route file to hearing location.

In this Training Guide

This training guide is divided into the following sections.

For information on...	See section...
HRIFA Adjudicator Procedures	A
HRIFA SAO Procedures	B
Clerical Denial Procedures	C
NTA Clerical Procedures – Part 1	D
NTA Officer Procedures	E
NTA SAO Procedures – Part 1	F
Legal Counsel Procedures	G
NTA SAO Procedures – Part 2	H
NTA Clerical Procedure – Part 2	I
Appendix	J

Continued on next page

(07/13/2007)

This training guide is NOT part of the National I-862 (NTA) SOP.

This Training Guide should be used in conjunction with the National I-862 (NTA) SOP.

Section A, HRIFA Adjudicator Procedures

Introduction

Section A details the responsibilities of the HRIFA adjudicating officer in initiating or confirming the denial of the Application to Register Permanent Resident or Adjust Status benefit, Form I-485, and the issuance of the Notice to Appear (NTA).

The following items are detailed in this section:

- Determining History of Deportation, Exclusion or Presence in the Immigration Court
 - Identifying the Immigration Benefit Denying Authority
 - Reviewing Electronic Records
 - Determining if Currently Present in the United States
 - Reviewing for Alternative Avenues for Immigration Status
 - Preparing the File for Denial and/or Notice to Appear
 - Routing the File
-

Determining History of Deportation, Exclusion or Presence in the Immigration Court

In order to determine if initiating an I-862, Notice to Appear, is appropriate for the Alien, a review of all associated A-File and/or Temporary files and electronic systems must be completed. Review the file and electronic systems to see if U.S. Citizenship and Immigration Services (USCIS) has previously issued charging documents, offered voluntary departure, or if the Alien has been in exclusion, deportation or removal proceedings in the Immigration Court System.

Examples of previously issued charging documents include, but are not limited to:

- I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge
 - I-221, Order to Show Cause and Notice of Hearing
 - I-851, Notice of Intent to Issue a Final Administrative Deportation Order (Notice of Intent)
 - I-851A, Final Administrative Removal Order
 - I-860, Notice and Order of Expedited Removal
 - I-862, Notice to Appear
 - I-863, Notice of Referral to Immigration Judge
 - I-205, Issuance of an Arrest Warrant
-

Continued on next page

Section A, HRIFA Adjudicator Procedures Continued

Present in the United States

A review of the file and electronic systems must be completed in order to determine if the applicant is physically in the United States at the current time. If the Alien has left the U.S. and not returned, then issuing an I-862, Notice to Appear, is not necessary.

Step	Action								
3.1	<p>Complete a review of the file contents and electronic systems to compare address locations and changes with correlating effective dates.</p> <table> <tr> <th>If....</th><th>Then....</th></tr> <tr> <td>Applicant is currently present in the U.S.</td><td>Continue with this process.</td></tr> <tr> <td>Applicant is no longer in the U.S. AND the case is pending</td><td>Proceed with the denial process; but do NOT proceed with NTA process. Route file as appropriate based on denial procedures.</td></tr> <tr> <td>Applicant is no longer in the U.S. AND the case was previously denied at NSC</td><td>Discontinue process and route file as appropriate based on denial procedures.</td></tr> </table>	If....	Then....	Applicant is currently present in the U.S.	Continue with this process.	Applicant is no longer in the U.S. AND the case is pending	Proceed with the denial process; but do NOT proceed with NTA process. Route file as appropriate based on denial procedures.	Applicant is no longer in the U.S. AND the case was previously denied at NSC	Discontinue process and route file as appropriate based on denial procedures.
If....	Then....								
Applicant is currently present in the U.S.	Continue with this process.								
Applicant is no longer in the U.S. AND the case is pending	Proceed with the denial process; but do NOT proceed with NTA process. Route file as appropriate based on denial procedures.								
Applicant is no longer in the U.S. AND the case was previously denied at NSC	Discontinue process and route file as appropriate based on denial procedures.								
3.2	<p>While reviewing file and electronic databases, determine the most current address provided to USCIS by the applicant.</p> <table> <tr> <th>If....</th><th>Then....</th></tr> <tr> <td>NO new address is found</td><td>Continue process</td></tr> <tr> <td>A NEW address is found</td><td> <ul style="list-style-type: none"> Discontinue process and resend the RFE if denied for abandonment and/or reschedule applicant for fingerprints if failure to appear is denial reason. Continue process if denied for another reason. </td></tr> </table>	If....	Then....	NO new address is found	Continue process	A NEW address is found	<ul style="list-style-type: none"> Discontinue process and resend the RFE if denied for abandonment and/or reschedule applicant for fingerprints if failure to appear is denial reason. Continue process if denied for another reason. 		
If....	Then....								
NO new address is found	Continue process								
A NEW address is found	<ul style="list-style-type: none"> Discontinue process and resend the RFE if denied for abandonment and/or reschedule applicant for fingerprints if failure to appear is denial reason. Continue process if denied for another reason. 								
3.3	Produce a screen print of the most current address and identify the date and source in which it's found on the screen print and secure to the non-record side of the file.								

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Section A, HRIFA Adjudicator Procedures Continued

Alternative Avenues for Immigration Status

Denying the Application to Register Permanent Resident or Adjust Status, Form I-485, benefit may lead to the issuance of a Notice to Appear (NTA); however prior to initiating issuance, all associated files and electronic systems require a review to determine if the Alien has another avenue to acquire immigration status.

Step	Action						
4.1	<p>Review the file and electronic systems, including family members, to determine if applicant has some other avenue to adjust status.</p> <table border="1"> <tr> <th>If....</th><th>Then....</th></tr> <tr> <td>No other avenues for acquiring status exist</td><td>Continue with this process.</td></tr> <tr> <td>Applicant has an avenue for acquiring immigration status</td><td>Deny the HRIFA I-485 and locally route or relocate the file as appropriate based on findings and procedures.</td></tr> </table> <p>NOTE: Consider if there any violations or other reasons why an NTA would be appropriate when processing those files with other avenues for status and process accordingly.</p>	If....	Then....	No other avenues for acquiring status exist	Continue with this process.	Applicant has an avenue for acquiring immigration status	Deny the HRIFA I-485 and locally route or relocate the file as appropriate based on findings and procedures.
If....	Then....						
No other avenues for acquiring status exist	Continue with this process.						
Applicant has an avenue for acquiring immigration status	Deny the HRIFA I-485 and locally route or relocate the file as appropriate based on findings and procedures.						

Preparing the File for Denial and/or Notice to Appear

Correspondence to the Alien will identify the legally sufficient grounds for denying the adjustment of status of certain Haitian nationals under the Haitian Refugee Immigration Fairness Act (HRIFA). Contents may include criminal activity or other grounds of inadmissibility or deportability if relevant.

Step	Action
5.1	<p>Prepare two (2) copies of Form I-291, Decision on application for Status as Permanent Resident, to notify Alien that if the Alien fails to depart the United States, proceedings will be instituted to enforce departure.</p> <p>NOTE: If language similar to Title 8, Code of Federal Regulations, Part CFR 245.15(r)(2) is incorporated into the denial letter, then a Form I-291 cover letter would not be necessary.</p>
5.2	Prepare two (2) copies of an appropriate denial as an attachment to the Form I-291 if this format is used.
5.3	Stamp the Form I-485 action block DENIED and sign.
5.4	Prepare the file by securing appropriate documents and making file annotations in accordance with standard denial checklist. (Letters to be mailed will remain loose.)

Continued on next page

Section B, HRIFA SAO Procedures

Introduction Section B details the responsibilities of the HRIFA Supervisor in reviewing the Alien's file, the Form I-291 and denial of the Application to Register Permanent Resident or Adjust Status benefit, Form I-485, prior to routing for issuance of the Notice to Appear (NTA).

HRIFA SCAO Review Once the adjudicator completes Form I-291 and denial the file will be assembled in record of proceeding order and submitted to the supervisor for review and authorization signature.

Step	Action
1.1	Review the file contents to verify that the denial and NTA issuance are appropriate.
1.2	Review the denial for content and accuracy.
1.3	Verify the Form I-485 action block has been stamped denied and signed by the adjudicator.
1.4	Verify the file has been prepared in accordance with standard denial checklist.
1.5	Authorize the denial and NTA issuance process by initialing the denial.
1.6	Verify a NTA Post Adjudication Referral Sheet is attached to the file.
1.7	Verify a NSC11 worksheet is attached to the file.
1.8	Route to clerical Signed Denials (EX571) for processing.

*End of HRIFA SAO Procedures
NTA Process continued on the next page*

Section E, NTA Officer Procedures

Introduction Section E details the responsibilities of the NTA Officer reviewing the Alien file and preparing charging documents which may result in the issuance of a the Notice to Appear (NTA) before the Executive Office for Immigration Review (EOIR) Court.

The following items are detailed in this section:

- Reviewing Compiled Electronic Record Prints
 - Comparing Electronic and File Record
 - Determining History of Deportation, Exclusion or Presence in the Immigration Court
 - Reviewing for Alternative Avenues for Immigration Status
 - Determining if Currently Present in the United States
 - Establishing Notice to Appear (NTA) Charges
 - Determining Jurisdiction
 - Preparing the Notice to Appear (I-862) and Record of Deportable/Inadmissible Alien (I-213)
 - Assembling Documents in Record of Proceeding Order
 - Requesting Fingerprints using the Scheduling Notification for Applicant Processing (SNAP) system
 - Routing the File
-

**Reviewing
Compiled
Electronic
Record Prints** The NTA Officer must review the file and all electronic records associated with the Alien that are available to U.S. Citizenship and Immigration Services (USCIS) when determining if initiating an NTA is appropriate. Screen prints provide a method of comparison and evidence supporting the Notice to Appear (NTA) issuance in court proceedings. Automated batch screen prints are populated and pre-screened; additional screen prints are generated manually by clerical. Throughout this training guide multiple steps will indicate the NTA Officer must review electronic records. A summary of the systems are described below.

Out-of-Scope



Continued on next page

Section E, NTA Officer Procedures

Determining History of Deportation, Exclusion or Presence in the Immigration Court

In order to determine if initiating an I-862, Notice to Appear, is appropriate for the Alien, a review of all associated A-File and/or Temporary files and electronic systems must be completed. Review the file and electronic systems to see if U.S. Citizenship and Immigration Services (USCIS) has previously issued charging documents, offered voluntary departure, or if the Alien has been in exclusion, deportation or removal proceedings in the Immigration Court System.

Step	Action												
2.1	<p>Review to identify if the Alien has prior removal proceedings/ final order of deportation, failed to depart timely after granted voluntary departure, or presence before a judge in Immigration Court.</p> <table border="1"> <thead> <tr> <th>If....</th><th>Then....</th></tr> </thead> <tbody> <tr> <td>No history AND the NSC denied HRIFA I-485 WAS updated in GUI</td><td>Continue with this process.</td></tr> <tr> <td>No history AND the NSC denied HRIFA I-485 was NOT updated in GUI</td><td>Take file to an SEC for expeditious updating before continuing the process.</td></tr> <tr> <td>No history AND the HRIFA I-485 was denied at another location</td><td>Discontinue this process and refer to NTA Process Denied at other than NSC.</td></tr> <tr> <td>Yes AND proceedings were admin closed, pending HRIFA or other status decision</td><td>Discontinue this process and refer to the Re-Calendar - Currently Being Denied at NSC Process.</td></tr> <tr> <td>Yes AND the Alien has an outstanding order of deportation or removal, failed to depart timely after being granted voluntary departure in proceedings, or has previously been physically removed/excluded/ etc.</td><td>Discontinue this process and refer to the Certification HRIFA Currently Being Denied at NSC Process.</td></tr> </tbody> </table> <p>NOTE: Proceedings initiated prior to April 1, 1997 that did NOT result in a final order need to have an I-862, Notice to Appear, reissued. NOTE: IIRAIRA replaced the I-221, Order to Show Cause, with the I-862, Notice to Appear. NOTE: A new I-862, Notice to Appear, will need to be initiated when an I-221, Order to Show Cause, is located in the file.</p>	If....	Then....	No history AND the NSC denied HRIFA I-485 WAS updated in GUI	Continue with this process.	No history AND the NSC denied HRIFA I-485 was NOT updated in GUI	Take file to an SEC for expeditious updating before continuing the process.	No history AND the HRIFA I-485 was denied at another location	Discontinue this process and refer to NTA Process Denied at other than NSC.	Yes AND proceedings were admin closed, pending HRIFA or other status decision	Discontinue this process and refer to the Re-Calendar - Currently Being Denied at NSC Process.	Yes AND the Alien has an outstanding order of deportation or removal, failed to depart timely after being granted voluntary departure in proceedings, or has previously been physically removed/excluded/ etc.	Discontinue this process and refer to the Certification HRIFA Currently Being Denied at NSC Process.
If....	Then....												
No history AND the NSC denied HRIFA I-485 WAS updated in GUI	Continue with this process.												
No history AND the NSC denied HRIFA I-485 was NOT updated in GUI	Take file to an SEC for expeditious updating before continuing the process.												
No history AND the HRIFA I-485 was denied at another location	Discontinue this process and refer to NTA Process Denied at other than NSC.												
Yes AND proceedings were admin closed, pending HRIFA or other status decision	Discontinue this process and refer to the Re-Calendar - Currently Being Denied at NSC Process.												
Yes AND the Alien has an outstanding order of deportation or removal, failed to depart timely after being granted voluntary departure in proceedings, or has previously been physically removed/excluded/ etc.	Discontinue this process and refer to the Certification HRIFA Currently Being Denied at NSC Process.												

Continued on next page

Section E, NTA Officer Procedures

Alternative Avenues for Immigration Status

Prior to initiating issuance of a Notice to Appear, all associated files and electronic systems require a review to determine if the Alien has another avenue to acquire immigration status.

Step	Action						
3.1	<p>Review the file and electronic systems, including family members, to determine if applicant has some other avenue to adjust status.</p> <table border="1"> <thead> <tr> <th>If....</th><th>Then....</th></tr> </thead> <tbody> <tr> <td>No other avenues for acquiring status exist</td><td>Continue with this process.</td></tr> <tr> <td>Applicant has an avenue for acquiring immigration status</td><td> <ul style="list-style-type: none"> • Write a resolution memo indicating reason NTA is inappropriate and obtain the NTA Supervisor's authorization and signature. • Route locally using IBIS Routing Sheet or relocate the file to a field office as appropriate based on findings and procedures. </td></tr> </tbody> </table> <p>NOTE: Identify if the spouse and dependent children are also eligible for acquiring status.</p> <p>NOTE: Consider if there are any violations or other reasons why an NTA would be appropriate when processing those files with other avenues for status and process accordingly.</p> <p>NOTE: If at anytime prior the Enforce entry, an address provided to USCIS is found that is more current than the denial address, stop the process for supervisory review to determine if continued adjudication can occur.</p>	If....	Then....	No other avenues for acquiring status exist	Continue with this process.	Applicant has an avenue for acquiring immigration status	<ul style="list-style-type: none"> • Write a resolution memo indicating reason NTA is inappropriate and obtain the NTA Supervisor's authorization and signature. • Route locally using IBIS Routing Sheet or relocate the file to a field office as appropriate based on findings and procedures.
If....	Then....						
No other avenues for acquiring status exist	Continue with this process.						
Applicant has an avenue for acquiring immigration status	<ul style="list-style-type: none"> • Write a resolution memo indicating reason NTA is inappropriate and obtain the NTA Supervisor's authorization and signature. • Route locally using IBIS Routing Sheet or relocate the file to a field office as appropriate based on findings and procedures. 						

Continued on next page

Section E, NTA Officer Procedures

Present in the United States

A review of the file and electronic systems must be completed in order to determine if the applicant is physically in the United States at the current time. All electronic systems and screen prints are specified in the Compiling Electronic Record Prints section. If the Alien has left the U.S. and not returned, then issuing an I-862, Notice to Appear, is not necessary.

Step	Action								
4.1	<p>Complete a review of the file contents and electronic systems to compare address locations and changes with correlating effective dates.</p> <table> <tr> <th>If....</th><th>Then....</th></tr> <tr> <td>Alien is currently present in the U.S.</td><td>Continue with this process.</td></tr> <tr> <td>Alien is no longer in the U.S.</td><td> <ul style="list-style-type: none"> Write a resolution memo indicating reason NTA is inappropriate and obtain the NTA Supervisor's authorization and signature. Route locally using IBIS Routing Sheet or relocate the file to a field office as appropriate based on findings and procedures. </td></tr> </table>	If....	Then....	Alien is currently present in the U.S.	Continue with this process.	Alien is no longer in the U.S.	<ul style="list-style-type: none"> Write a resolution memo indicating reason NTA is inappropriate and obtain the NTA Supervisor's authorization and signature. Route locally using IBIS Routing Sheet or relocate the file to a field office as appropriate based on findings and procedures. 		
If....	Then....								
Alien is currently present in the U.S.	Continue with this process.								
Alien is no longer in the U.S.	<ul style="list-style-type: none"> Write a resolution memo indicating reason NTA is inappropriate and obtain the NTA Supervisor's authorization and signature. Route locally using IBIS Routing Sheet or relocate the file to a field office as appropriate based on findings and procedures. 								
4.2	<p>While reviewing file and electronic databases, determine the most current address provided to USCIS by the Alien.</p> <table> <tr> <th>If....</th><th>Then....</th></tr> <tr> <td>NO new address is found</td><td>Continue process</td></tr> <tr> <td>A NEW address is found</td><td>Produce a screen print with the new address and source with the active date.</td></tr> <tr> <td>Multiple addresses exist</td><td>Annotate on the I-213 and on page two of the NTA Processing Worksheet for NSC. Appendix F</td></tr> </table> <p>NOTE: Additional I-862s may be sent to alternative addresses. NOTE: If the alien has moved frequently, you may consider sending certified mail to document receipt of the NTA. NOTE: Alternative addresses may be found in Lexis Nexus or Auto Tracks. Include a labeled screen print in the file. NOTE: If an address provided to USCIS is found that is more current than the denial address, stop the process for supervisory review to determine if continued adjudication can occur.</p>	If....	Then....	NO new address is found	Continue process	A NEW address is found	Produce a screen print with the new address and source with the active date.	Multiple addresses exist	Annotate on the I-213 and on page two of the NTA Processing Worksheet for NSC. Appendix F
If....	Then....								
NO new address is found	Continue process								
A NEW address is found	Produce a screen print with the new address and source with the active date.								
Multiple addresses exist	Annotate on the I-213 and on page two of the NTA Processing Worksheet for NSC. Appendix F								

Continued on next page

Section E, NTA Officer Procedures

Present in the United States (Continued)

Step	Action
4.3	Identify a preprinted or produce a new screen print of the most current address and identify the date and source in which it's found on the screen print and secure to the non-record (right) side of the file.

Establishing NTA Charges

In order to establish whether an Alien is inadmissible or removable and if it is appropriate to initiate removal proceedings against the Alien, the NTA Officer must review records from courts and law enforcement for any criminal or non-criminal charges, arrests, or convictions in order to determine whether an Notice to Appear (NTA) should be issued.

The following 212 grounds for inadmissibility charges do NOT apply under the Haitian Refugee Immigrant Fairness Act (HRIFA); however, once the Application to Register Permanent Resident or Adjust Status benefit, Form I-485, is denied, these charges may apply an Alien's inadmissibility or removeability.

212(a)(4)(A), Public Charge
212(a)(4)(C), No Affidavit of Support – Family Based Immigration
212(a)(4)(D), No Affidavit of Support – Employment Based Immigration

212(a)(5)(A), No Labor Certification
212(a)(5)(B), Unqualified Physicians
212(a)(5)(C), No Health Care Worker Certification

212(a)(6)(A)(i), Aliens Present Without Being Admitted

212(a)(7)(A)(i)(I), Immigrant Without Documents
212(a)(7)(A)(i)(II), Immigrant Visa Improperly Charged

212(a)(9)(B)(i)(I), Unlawfully Present in U.S. 180-364 days and
Voluntarily Departed Prior to Commencement of Removal Proceedings

212(a)(9)(B)(i)(II), Unlawfully Present in U.S. for One Year or More

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Section E, NTA Officer Procedures

Establishing NTA Charges Continued

Step	Action								
5.1	Review the Alien's records to determine if the Alien has an FBI Number and/or criminal conviction record.								
5.2	<p>Determine if the criminal convictions add to the charges under 212 grounds of inadmissibility or 237 grounds for removal.</p> <table> <tr> <th>If....</th><th>Then....</th></tr> <tr> <td>NO criminal record</td><td>Proceed with NTA based on non-criminal charges; Administrative Non-Criminal Individual (ANC).</td></tr> <tr> <td>Criminal record AND convictions add to 212/237 charges</td><td> <ul style="list-style-type: none"> • Proceed with NTA as an Administrative Non-Criminal Individual (ANC) annotating the criminal convictions within the I-213 for conviction by the court if desired UNLESS the Service is allowed to NTA for criminal charges. If allowed, proceed with the NTA as Administrative Criminal Alien (ACA). • Secure certified copies of Judgments/ Conviction records from courts or law enforcement, etc. to NTA. </td></tr> <tr> <td>Criminal record BUT convictions do NOT add to 212/237 charges</td><td>Convictions MAY not need to be addressed on the Record of Deportable / Inadmissible Alien, I-213. Determination is derived from the criminal history or escalation of behavior and officer safety.</td></tr> </table> <p>NOTE: Certain inadmissibility charges do NOT apply to HRIFA adjudications; however once denied, may apply to the Alien's inadmissibility or removeability.</p>	If....	Then....	NO criminal record	Proceed with NTA based on non-criminal charges; Administrative Non-Criminal Individual (ANC).	Criminal record AND convictions add to 212/237 charges	<ul style="list-style-type: none"> • Proceed with NTA as an Administrative Non-Criminal Individual (ANC) annotating the criminal convictions within the I-213 for conviction by the court if desired UNLESS the Service is allowed to NTA for criminal charges. If allowed, proceed with the NTA as Administrative Criminal Alien (ACA). • Secure certified copies of Judgments/ Conviction records from courts or law enforcement, etc. to NTA. 	Criminal record BUT convictions do NOT add to 212/237 charges	Convictions MAY not need to be addressed on the Record of Deportable / Inadmissible Alien, I-213. Determination is derived from the criminal history or escalation of behavior and officer safety.
If....	Then....								
NO criminal record	Proceed with NTA based on non-criminal charges; Administrative Non-Criminal Individual (ANC).								
Criminal record AND convictions add to 212/237 charges	<ul style="list-style-type: none"> • Proceed with NTA as an Administrative Non-Criminal Individual (ANC) annotating the criminal convictions within the I-213 for conviction by the court if desired UNLESS the Service is allowed to NTA for criminal charges. If allowed, proceed with the NTA as Administrative Criminal Alien (ACA). • Secure certified copies of Judgments/ Conviction records from courts or law enforcement, etc. to NTA. 								
Criminal record BUT convictions do NOT add to 212/237 charges	Convictions MAY not need to be addressed on the Record of Deportable / Inadmissible Alien, I-213. Determination is derived from the criminal history or escalation of behavior and officer safety.								

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Section E, NTA Officer Procedures

Determining Jurisdiction

In order to properly execute the issuance of the Notice to Appear (NTA), the charging documents must be mailed to the appropriate Executive Office for Immigration Review (EOIR) and the Alien file forwarded to the correct Detention and Removal Office (DRO) based on jurisdiction. Determining jurisdiction for both EOIR and DRO is based on the most current address provided to U.S. Citizenship and Immigration Services (USCIS) by the Alien.

Step	Action
6.1	<p>Determine the Alien's most current address provided to the USCIS.</p> <p>NOTE: If a change of address has been recently submitted by the Alien, this address will be used for the NTA and jurisdiction.</p> <p>NOTE: Addresses found that are not provided directly to USCIS cannot be used to determine EOIR or DRO jurisdiction.</p>
6.2	<p>Determine the Executive Office for Immigration Review (EOIR) jurisdiction by using the EOIR Immigration Court website- Administrative Control List found at www.usdoj.gov/eoir/.</p> <p>The EOIR Court address will be used on the Notice to Appear (NTA), Form I-862. The court's city and state location will be indicated on page one of the NTA processing worksheet for clerical reference.</p> <p>NOTE: Once at the EOIR website, select Immigration Courts Nationwide, then select List of Administrative Control Court to find the Administrative Control List.</p> <p>NOTE: The Administrative Control List can also be accessed through the Virtual Law Library site by clicking on Administrative Control List under the Immigration Court section. http://www.usdoj.gov/eoir/vll/libindex.html</p>
6.3	<p>Determine the Detention and Removal Office (DRO) jurisdiction using the current list of Detention and Removal Operation Offices http://www.ice.gov/about/dro/contact.htm</p> <p>The DRO will be indicated on the NTA processing worksheet for clerical reference when transferring the file to the DRO.</p> <p>NOTE: The Detention and Removal Operations is located at http://powerport.ice.dhs.gov/dro/index.htm The list of DROs can be accessed by selecting Field Offices in the left column.</p> <p>NOTE: Relocation Table Zip Codes Update Excel spreadsheet is found at J:/IBIS/Tools/Relocation Table Zip Code Update.xls</p>

Continued on next page

Section E, NTA Officer Procedures

Preparing Charging Documents

Using the collected information about the Alien and identified jurisdiction, the NTA Officer will prepare the Notice to Appear (I-862) and Record of Deportable/Inadmissible Alien (I-213) using the system Enforce. Additional memorandums may need to be prepared for the court and file, while a Voluntary Legal Aid List (volag list) and Alien's Change of Address, Form EOIR33 are prepared for the Alien.

Step	Action
7.1	Using the Enforce system, enter data into the appropriate fields regarding the Alien. NOTE: It is recommended to annotate on paper the Enforce Record Number when it populates on the screen in case of a system crash prior to printing the document. NOTE: If at anytime prior to the Enforce entry, an address provided to USCIS is found that is more current than the denial address; stop the process for supervisory review to determine if continued adjudication can occur.
7.2	Create the Notice to Appear (I-862) by entering the allegations into the appropriate fields in Enforce. NOTE: If sending NTA by certified mail, electronically check the appropriate box. NOTE: See Appendix C.
7.3	Print a <u>minimum</u> of three (3) copies of the NTA (I-862). One for the Alien, a second for EOIR court, and the third for the file. NOTE: Additional copies may be needed; one for a recognized representative (G-28), one for the officer's own record (if applicable).
7.4	Create the Record of Deportable/Inadmissible Alien (I-213) by entering explanation of source for most current address, a narrative of immigration history and any amenability to INA charges into the appropriate fields in Enforce. NOTE: See Appendix D.
7.5	Sign all copies of the Record of Deportable/Inadmissible Alien (I-213) in BLUE ink.

Continued on next page

Section E, NTA Officer Procedures

Preparing Charging Documents Continued

Step	Action
7.6	<p>Print a minimum of four (4) copies of the I-213. Two for the file to be used in court and one for the officer completing the Maintenance System (MS92) TECS entry.</p> <p>NOTE: Additional copies may be needed if the officer retains for his/her own record.</p>
7.7	<p>Print a current list of Free (Pro Bono) Legal Service Providers to be provided to the Alien. (AKA: Volag List)</p> <p>NOTE: Go to the following web site to print a list for the alien's state of residence. http://www.usdoj.gov/eoir/probono/states.htm</p> <p>NOTE: If no list available, create memo.</p>
7.8	<p>Print one, or more, EOIR 33/IC, Alien's Change of Address. (Additional copies needed for attorney or additional addresses.) See Appendix E. http://www.usdoj.gov/eoir/eoirforms/eoir33/EOIR33ICEastMesa.pdf</p>
7.9	<p>Print a prepared NTA Processing Worksheet with the following annotations:</p> <ul style="list-style-type: none">• Correct A-Number at the top, left corner.• Correct Form Type at the top, left corner.• Correct Receipt Number for the denied HRIFA I-485.• Alternative address(es) indicated on page two if applicable.

Continued on next page

Section E, NTA Officer Procedures

Document and File Assembly

Forms, memos and documents supporting the issuance of the NTA must be assembled into the file according to Record of Proceeding (ROP) Order in order to provide the Immigration Court documentation in the case for removing the Alien. Items being mailed to the Alien and EOIR Court Clerk for hearing scheduling will be assembled in an identified manner for the NSC clerk issuing the NTA.

Step	Action																		
8.1	<p>Assemble and Acco fasten the following items into the file according to Record of Proceeding Order (ROP Order):</p> <table border="1"> <thead> <tr> <th>Record Side (left)</th><th>Non-Record Side (right)</th></tr> </thead> <tbody> <tr> <td>I-862 Notice to Appear (NTA) <i>One (1) Copy</i></td><td>NTA Processing Worksheet</td></tr> <tr> <td>G-28 <i>(If applicable)</i></td><td>I-213 Record of Deportable/ Inadmissible Alien <i>Two (2) Copies</i></td></tr> <tr> <td>Denial / Abandonment Letter</td><td>Documentation of current address(es), status/ lack thereof, and if applicable, criminal convictions.</td></tr> <tr> <td>Intent to Deny/RFE <i>(If Applicable and No Response)</i></td><td>Scheduling Notification for Applicant Processing (SNAP) system (AKA, Fingerprint Scheduling Notice) OR copy of the reply email message.</td></tr> <tr> <td>Application / Petition</td><td> <ul style="list-style-type: none"> Screen Prints (vary on each file) Conviction Records (3 copies) </td></tr> <tr> <td></td><td>IBIS ROIQ</td></tr> <tr> <td></td><td>IBIS Memo (if applicable)</td></tr> <tr> <td></td><td>Other items related to form.</td></tr> </tbody> </table>	Record Side (left)	Non-Record Side (right)	I-862 Notice to Appear (NTA) <i>One (1) Copy</i>	NTA Processing Worksheet	G-28 <i>(If applicable)</i>	I-213 Record of Deportable/ Inadmissible Alien <i>Two (2) Copies</i>	Denial / Abandonment Letter	Documentation of current address(es), status/ lack thereof, and if applicable, criminal convictions.	Intent to Deny/RFE <i>(If Applicable and No Response)</i>	Scheduling Notification for Applicant Processing (SNAP) system (AKA, Fingerprint Scheduling Notice) OR copy of the reply email message.	Application / Petition	<ul style="list-style-type: none"> Screen Prints (vary on each file) Conviction Records (3 copies) 		IBIS ROIQ		IBIS Memo (if applicable)		Other items related to form.
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	IBIS ROIQ																		
	IBIS Memo (if applicable)																		
	Other items related to form.																		

Continued on next page

Section E, NTA Officer Procedures

Document and File Assembly (Continued)

Step	Action
8.2	<p>Place the following items into a red colored, NTA Folder:</p> <ul style="list-style-type: none">• I-213 Record of Deportable/ Inadmissible Alien. <i>Two (2) copies</i> (One for the officer completing the Maintenance System (MS92) TECS entry, and one for the NTA SAO.• I-862 Notice to Appear (NTA) <i>Two (2) or more copies</i> (One for the Alien, one for the EOIR Court and if applicable, one for the attorney/representative and one for each alternative address.)• EOIR-33/IC Alien's Change of Address <i>One (1) or more copies</i> (One for each address and attorney.)• Free Legal Service Providers (AKA Volag List) <i>One (1) or more copies</i> (One for each address.)
8.3	Place the NTA Folder inside the A-File

Continued on next page

Section E, NTA Officer Procedures

Requesting Fingerprint Scheduling

Aliens being issued a Notice to Appear I-862 who have expired fingerprints results or no posted results in FTRK will be scheduled for fingerprinting using the Scheduling Notification for Applicant Processing (SNAP) system.

Step	Action
9.1	Open an email and address to <i>SCOT NSC FD258</i> .
9.2	In the subject line type, <i>NTA FP Scheduling</i> .
9.3	Request the individual be fingerprinted for one of the following reasons: <ul style="list-style-type: none"> • Subject has never been fingerprinted • Subject has been fingerprinted, but the fingerprints have since expired
9.4	Provide the following information about the Alien: <ul style="list-style-type: none"> • A-Number • LAST NAME, First Name • DOB • SSN <i>(If available)</i> • Address(es) <p>NOTE: Identify the form type, filing date and signature date for each USCIS address. If referencing addresses found in other systems, identify and note the date it was found.</p>
9.5	Only ONE alien per email unless family members are being issued a Notice to Appear together, then include all family members on one email request.
9.6	Send the receipted email and wait for a scheduling notice response.
9.7	When a response is received from the Fingerprint Point of Contact, print and secure in the file. NOTE: Replies are typically received within a day.

Continued on next page

Section E, NTA Officer Procedures

Routing Files

Following the completion of the Notice to Appear, the file will be routed to the NTA SAO for review and authorization signature.

Step	Action
10.1	Verify file is assembled correctly.
10.2	RAFACS the file to the NTA SAO (IJ005) and place in the designated location in the office for review and signature.

G-22 Recording Record the Officer preparation as follows:

When entering data into Enforce and preparing the NTA I-862 for issuance the NTA Officer should record as follows;

- LINE 1 - Under the Form Column, enter " NTA I862"
Action Column, enter "Officer" and enter the
Number of hours on the process in appropriate hour column.
- LINE 2 - Under the Form Column, enter "NTA I862",
Action Column enter "Issued" and enter the
Number of NTAs completed in the number column.

When reviewing and preparing cases for NTA Issuance, Resolution or Relocation; NOT actual time spent creating NTA or Memo, NTA officers should record as follows;

- LINE 1 - Under the Form Column, enter " NTA Off Review"
Action Column, enter "Officer" and enter the
Number of hours on the process in appropriate hour column.

*End of NTA Officer Procedures
NTA Process continued on the next page*

Section F, NTA SAO Procedures – Part 1

Introduction Section F details the responsibilities of the NTA Supervisor in reviewing the Alien's file, Notice to Appear (I-862), Record of Deportable/ Inadmissible Alien (I-213), and all other associated items prior to routing for legal sufficiency for issuance of the Notice to Appear (NTA).

NTA SCAO Review Once the NTA Officer completes the Notice to Appear and all other associated Forms, the file will be assembled in record of proceeding order and submitted to the supervisor for review.

Step	Action						
1.1	Review the file contents to verify that the NTA issuance is appropriate.						
1.2	Review the NTA for content.						
1.3	Verify all copies of the Form I-213 have been signed by the NTA Officer in BLUE ink.						
1.4	Enter the case into the BCU/NTA Database and indicate if legal sufficiency review is needed.						
1.5	<p>Determine if a sufficiency review is needed from legal counsel for the charges and form type related to the NTA, then route the file accordingly.</p> <table> <tr> <th>If....</th><th>Then....</th></tr> <tr> <td>A sufficiency review is needed by legal counsel</td><td>Route to Legal Counsel, GC000.</td></tr> <tr> <td>A sufficiency review is NOT needed by legal counsel</td><td> <ul style="list-style-type: none"> • Review charging documents for legal sufficiency for issuance of the NTA • Continue process with NTA SAO Procedures – Part 2 at Step 2.2. </td></tr> </table>	If....	Then....	A sufficiency review is needed by legal counsel	Route to Legal Counsel, GC000.	A sufficiency review is NOT needed by legal counsel	<ul style="list-style-type: none"> • Review charging documents for legal sufficiency for issuance of the NTA • Continue process with NTA SAO Procedures – Part 2 at Step 2.2.
If....	Then....						
A sufficiency review is needed by legal counsel	Route to Legal Counsel, GC000.						
A sufficiency review is NOT needed by legal counsel	<ul style="list-style-type: none"> • Review charging documents for legal sufficiency for issuance of the NTA • Continue process with NTA SAO Procedures – Part 2 at Step 2.2. 						

*End of NTA SAO Procedures-Part 1
NTA Process continued on the next page*

Section G, Legal Counsel Procedures

Introduction Section G details the responsibilities of Legal Counsel in reviewing the Alien's file, Notice to Appear (I-862), Record of Deportable/ Inadmissible Alien (I-213), and all other associated items for legal sufficiency for issuance of the Notice to Appear (NTA).

1.1	Legal Counsel will review the file contents for legal sufficiency for issuance of the Notice to Appear.	
	If	Then
	Legal sufficiency found	Initial and date the NTA Processing Worksheet OR create a Record of Action (I-703) to be secured on the non-record side of the file under the NTA Processing Worksheet. Continue with the process.
	Legal sufficiency NOT found	Return the file to the NTA SAO (IJ005) for corrections or modifications to be completed and returned to legal counsel.
1.2	Route the file back to the NTA SAO (IJ005).	

*End of Legal Counsel Procedures
NTA Process continued on the next page*

Section H, NTA SAO Procedures – Part 2

Introduction

Section H details the responsibilities of the NTA Supervisor in reviewing the Alien's file after legal counsel's review in order to authorize the issuance of the Notice to Appear (NTA).

Step	Action	
2.1	Review for Legal Counsel's sufficiency authorization. (if required)	
	If	Then
	Found NOT sufficient	Review comments provided by legal counsel and return to officer for correction. Repeat process by returning to legal counsel.
	Found sufficient	Continue with the process.
2.2	Review the file and red, NTA folder contents.	
2.3	Verify the Form I-213 Record of Deportable / Inadmissible Alien has been signed by the NTA Officer in BLUE ink.	
2.4	Update the BCU/NTA database as issued.	
2.5	Sign all copies of the Notice to Appear (NTA) Form I-862 and the Record of Deportable/Inadmissible Alien, Form I-213 in BLUE ink.	
2.6	Remove ONE copy of the I-213 from the red-folder for record keeping purposes. NOTE: There will be one copy remaining in the red folder and two copies in the A-File.	
2.7	Initial the NTA Processing Worksheet in SAO areas. NOTE: If Legal Counsel review is waived, indicate and initial this section of the processing worksheet.	
2.8	Route to the NTA Clerk(s), IJ000	

*End of NTA SAO Procedures- Part 2
NTA Process continued on the next page*

(b)(5)

(b)(6)

(b)(5)

(b)(6)



U.S. Citizenship and Immigration Services

Nebraska Service Center

Notice to Appear (NTA)

INSTRUCTOR GUIDE

SYLLABUS**COURSE TITLE:** Notice to Appear**DESCRIPTION:**

This course provides a brief overview and introduction to the Notice to Appear (NTA), Form I-862, which is the charging document to initiate a removal proceeding against an alien. This course will discuss the preparation of a Notice to Appear according to the Standard Operating Procedure (SOP). This course will identify those not eligible for removal proceedings and it will set the groundwork for Service Center training in the mechanics of drafting an NTA which is consistent with legal and procedural requirements that includes USCIS Policy Memorandum 602-0050 and SOP.

TERMINAL PERFORMANCE OBJECTIVE (TPO):

Given a situation involving the preparation and filing of an NTA, the Officer will be able to identify the process of drafting an NTA which is consistent with the NTA SOP and legal and procedural requirements.

ENABLING PERFORMANCE OBJECTIVES (EPOs):

EPO #1: Identify the general circumstances and exceptions under which an NTA is issued.

EPO #2: Identify the preparatory concepts to the initiation of the removal process.

EPO #3: Identify the types of specified individuals for the preparation of an NTA consistent with the provisions of USCIS Policy Memorandum 602-0050.

EPO #4: Identify the mechanics of preparation of an NTA consistent with the policies outlined in the Domestic Operations Standard Operating Procedures (SOP).

EPO #5: Identify the proper way to prepare and issue an NTA consistent with the SOP.

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I. INTRODUCTION

This course provides an overview of the preparation of an NTA and a discussion of who is and is not entitled to a removal hearing. The basic mechanics and practical considerations of drafting an NTA will be discussed in order to be consistent with the Domestic Operations Standard Operating Procedure, as well as legal and procedural requirements.

II. PRESENTATION

EPO #1: Identify the general circumstances and exceptions under which an NTA is issued.

ACRONYMS

Traditionally, the following acronyms have been commonly used to identify certain entities, documents, and individuals by the agencies within DHS that handle immigration related matters. They will be used throughout the course. They are:

- a. CAT – Convention against Torture
- b. CBP – Customs and Border Protection
- c. ERO – Enforcement and Removal Operations
- d. ICE – Immigration and Customs Enforcement
- e. INA – Immigration and Nationality Act
- f. LPR – Lawful Permanent Resident
- g. NTA – Notice to Appear (Form I-862)
- h. POE – Port of Entry
- i. VWPP – Visa Waiver Permanent Program

BEGINNING THE REMOVAL PROCESS

The removal process begins with an NTA (Form I-862), the charging document issued under the authority of INA § 240. CBP, ICE and USCIS all have the authority to issue an NTA. The filing of an NTA with the Immigration Court commences the removal proceedings under 8 C.F.R. § 1003.14. Once a removal order is final, it gives DHS the authority to remove the alien from the United States.

REASONS TO INITIATE REMOVAL

There are several reasons to issue an NTA and initiate a removal proceeding. They include, but are not limited to:

- a. There is no alternate method of removal available.

- b. The exercise of prosecutorial discretion is not warranted.
- c. The alien is inadmissible or deportable.
- d. Removal proceedings are necessary to secure the alien's removal from the United States.

ALTERNATE MEANS OF REMOVAL

Alternate means of removal should be employed, but only if appropriate, to remove the alien as opposed to the time-consuming process of preparing the NTA. Those methods include:

- a. Voluntary Departure – INA § 240B
This method allows the alien to leave the United States voluntarily within a specified period of time.
- b. Withdrawal of Application for Admission – INA § 235(b)(4)
This method generally occurs at a port of entry, but also may occur in conjunction with the denial of adjustment of status if the alien is an applicant for admission.

NOTE: Generally, there is a requirement that no fraud be involved in order for this method of removal to be employed.

- c. Reinstatement of Removal – INA § 241(a)(5)
This method of removal is limited to aliens previously removed from the United States who are again found in the United States without "admission".
- d. Administrative Removal – INA § 238(b)
This method of removal is used for aggravated felons who are not LPRs.
- e. Expedited Removal – INA § 235(b)(1)
This method of removal occurs at the port of entry for those inadmissible to the United States under INA §§ 212(a)(6)(C), Fraud Misrepresentation or False Claim to US Citizenship, and 212(a)(7), Immigrant without Documents, only.

ALIENS NOT ENTITLED TO PROCEEDINGS

Some classes of aliens are *generally* not entitled to removal proceedings. Those classes of aliens are:

- a. Crewman – INA § 252

- 1) A crewman granted a conditional landing permit *prior* to 4/1/97, who fails to depart with his/her vessel *should be served with an NTA* alleging deportability pursuant to INA § 237(a)(1)(B), in United States in Violation of INA or Other US law.
 - 2) A Crewman issued a permit *on or after* 4/1/97 who fails to depart shall be removed from the United States, without a hearing, pursuant to INA § 252(b). The exception to this is if the alien claims asylum after admission.
- b. Stowaways
- c. Visa Waiver Entrants – INA § 217
- 1) As a condition of admission, an alien under VWPP is required to waive his/her right to a removal hearing [contained on the Form I-94W]. The exception to this is if the alien claims asylum after admission.
 - 2) A VWPP alien attempting to enter the United States may be refused entry at a POE or be found to have violated his or her status after admission into the United States. *Refusal at the POE does not constitute removal.* If encountered after admission and in violation of status or out of status, refer case to Enforcement and Removal Operations (ERO) for removal. *An alien's removal after admission pursuant to this process has the same effect as an order of removal.*
- d. An alien subject to expedited removal – § 235(b)(1) An alien (other than an alien who is a native or citizen of a country in the Western Hemisphere with whose government the US does not have full diplomatic relations and who arrives by aircraft at a port of entry) who is arriving in the US and is inadmissible under 212(a)(6)(C) or 212(a)(7) unless the alien indicates an intention to apply for asylum or a fear of persecution.
- e. Aliens subject to summary removal at POE who are threats to national security – INA § 235(c)

EPO #2: Identify the preparatory concepts to the initiation of the removal process.

SITUATIONS WHERE USCIS WILL ISSUE AN NTA

Generally, USCIS will only issue NTAs on cases in which an alien was encountered during the application process, and USCIS has determined that the alien is present in the United States unlawfully. As will be discussed later, not all such aliens encountered by USCIS will be issued an NTA. The removal process for USCIS only begins if USCIS has denied the alien a benefit such as adjustment of status, naturalization or political asylum. ICE and CBP officers may initiate removal proceedings at any time to include the period while USCIS is considering an application for a benefit.

An alien's "status" determines whether he or she is subject to full removal proceedings under INA § 240, or whether there are alternate methods of removal. The first step is to determine the alien's status with a query of whether the alien has been admitted or not.

DEFINITION OF "ADMISSION"

The definition of "admission" can be found in INA § 101(a)(13). "The terms 'admission' and 'admitted' mean ... the lawful entry of the alien into the United States after inspection and authorization by an immigration officer."

EXCEPTIONS TO ADMISSION

INA § 101(a)(13)(B) provides that aliens paroled under INA § 212(d)(5) have not been admitted. Such aliens are considered to be arriving aliens and subject to grounds of inadmissibility under INA § 212. This includes aliens who have traveled outside the United States on Form I-512 (advance parole).

DETERMINING IF AN ALIEN IS SUBJECT TO REMOVAL

If and how the alien has been admitted determines whether grounds of inadmissibility under INA § 212 or grounds of deportability under INA § 237 apply.

- 1) Arriving aliens, including paroled aliens, who are inadmissible are subject to INA § 212.
- 2) Aliens present without inspection (PWI) are subject to INA § 212.
- 3) Admitted aliens who have violated the terms of admission are subject to INA § 237.

C. EPO#3: Identify the types of specified individuals within the provisions of USCIS Policy Memorandum 602-0050 for the preparation of the NTA.

AUTHORITY TO ISSUE NTA

An NTA is issued under the authority delegated to USCIS and ICE by DHS. The regulatory authority regarding who may issue an NTA is found at 8 C.F.R. § 239.1.

USCIS POLICY MEMORANDUM 602-0050

The issue of who USCIS processes for an NTA is clarified in USCIS Policy Memorandum 602-0050, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible or Removable Aliens*, was issued on November 7, 2011. It is available on the USCIS intranet under "Policy Memos". The purpose of PM 602-0050 is to clarify the involvement of USCIS and ICE in the NTA process when USCIS encounters aliens amenable to removal proceedings during the adjudication process. This policy memorandum describes when USCIS will issue an NTA, and when USCIS will refer a matter to ICE to determine whether an NTA should be issued. PM 602-0050 guidance applies to cases adjudicated on or after November 7, 2011.

The decision to issue an NTA also involves the exercise of discretion; *See* Memorandum "Exercising Prosecutorial Discretion" dated November 17, 2000.

WHAT IS NOT AFFECTED BY PM 602-0050

Policy Memo 602-0050 does not affect:

- a) National Security cases (guidance from FDNS continues to govern the definition of these cases and the procedures for resolution and NTA issuance);
- b) NTA procedures for Temporary Protected Status (TPS) cases;
- c) NTA procedures for cases processed by the Asylum Division, including asylum applications, NACARA 203, and "credible and reasonable fear" screening
- d) VAWA (Violence Against Women Act) cases (which should continue to be processed under existing protocols)

SITUATIONS COVERED BY PM 602-0050

There are five categories of cases covered by PM 602-0050 which will be covered in depth below. They are:

Egregious Public Safety Cases

Other criminal cases

Cases where an NTA is prescribed by regulation

Cases denied by USCIS based on fraud

Other applicable cases

Exceptions

Egregious Public Safety (EPS)

A case is considered to be an Egregious Public Safety (EPS) case if the alien:

- a. Is under investigation for a specified offense
- b. Has been arrested, without disposition, for a specified offense
- c. Has been convicted of a specified offense

The following are the enumerated EPS offenses listed in PM 602-0050 as ICE priorities:

- a. Murder, rape or sexual abuse of a minor [INA §101(a)(43)(A)]
- b. Illicit trafficking in firearms or destructive devices as defined in INA § 101(a)(43)(C)
- c. Offenses relating to explosive materials or firearms as defined in INA § 101(a)(43)(E)
- d. Crimes of violence for which the term of imprisonment imposed is at least one year [INA § 101(a)(43)(F)]
- e. An offense related to the demand for or receipt of ransom [INA § 101(a)(43)(H)]
- f. An offense relating to child pornography [INA § 101(a)(43)(I)]
- g. An offense relating to peonage, slavery, involuntary servitude, and trafficking in persons [INA § 101(a)(43)(K)]
- h. An offense relating to alien smuggling [INA § 101(a)(43)(N)]

- i. Human rights violators
- j. Known or suspected gang members
- k. Interpol hits
- l. Re-entry after exclusion, deportation or removal subsequent to conviction for a felony (8 U.S.C. § 1326(b)(1), 1326(b)(2)) *if* advance permission to reapply (Form I-212) has not been granted
- m. Cases as may be added by the ICE Special Agent in Charge, Field Office Director, or USCIS District/Service Center Director. However, pursuant to Policy Memo 602-0050, USCIS offices must coordinate any expanded application of referral with USCIS and ICE Headquarters.

Specific EPS Issues

- 1) Per PM 602-0050, a conviction is not required for a case to be considered to be EPS. If charges are still pending and the case involves an EPS offense, the provisions of PM 602-0050 apply. However, if charges have been dropped, then referral as an EPS case does NOT apply. If an arrest occurred for an EPS offense, but conviction is for a lesser, non-EPS offense, then an EPS referral does not apply.
- 2) All EPS cases must be referred to Homeland Security Investigations (HSI) through ICE's Benefit Fraud Unit (BFU) according to PM 602-0050. The case will be referred as soon as identified, even if adjudication is not complete. USCIS will interrupt adjudication and refer case to ICE BFU so that ICE has an opportunity to determine if, when and how it will issue an NTA and/or detain the alien.
- 3) If an alien is arrested during his/her encounter with USCIS, the case referral process through ICE BFU continues as described, but the process is expedited as a result of the arrest by ICE.
- 4) EPS cases are priority to ICE. Therefore, referring these cases to ICE as soon as identified allows ICE to gather relevant evidence and obtain conviction records, monitor pending criminal cases for immediate processing, and make an immediate detention decision. A Referral to ICE (RTI) at this stage gives ICE the opportunity to determine the appropriate course of action before USCIS adjudicates the case.

What Happens Following Referral to ICE

ICE may respond to the referral by requesting an immediate interview by USCIS or by issuing an NTA. If there is no response from ICE within 60 days, USCIS may proceed

with adjudication. If the case is approvable, USCIS will notify ICE in advance. USCIS will advise ICE of any and all decisions made on the case.

EPS cases referred to ICE prior to adjudication should be called up and reviewed no later than 60 days after referral. If ICE requires the original A-file, the BCU ISO or FDNS IO will promptly ship the file to them.

USCIS will not issue an NTA in EPS cases if ICE declines to issue an NTA. If some other basis unrelated to the EPS concern becomes apparent during the course of adjudication, an NTA may be issued in accordance with PM 602-0050.

Service Center Processes

In cases that are adjudicated by Service Centers and the National Benefits Center the following procedures apply.

- 1) Adjudication will be suspended and the case will immediately be sent to the appropriate Service Center Background Check Unit (BCU).
- 2) The BCU will refer the case to Homeland Security Investigations (HSI) through the ICE Benefit Fraud Unit (BFU) via an RTI.
- 3) A hard copy of the RTI will be placed in the A-file and/or receipt file.
- 4) The BCU will retain the file unless ICE requests it or the 60 days expires.

Field Office Processes

In cases that are adjudicated by Field Offices the following procedures apply.

- 1) The Immigration Services Officer (ISO) will suspend adjudication and the case will immediately be referred to the local ICE Special Agent in Charge (SAC) via an RTI.
- 2) A hard copy of the RTI will be placed in the A-file and/or receipt file. A copy of the RTI must also be sent to the ICE BFU.
- 3) USCIS will retain the file unless ICE requests the file for their review.

Other Criminal Cases – Non-Egregious Public Safety Cases

In all cases in which it appears that the alien is inadmissible or removable for a criminal offense not included on the EPS case list, USCIS will complete the adjudication *before* referring the case to ICE Enforcement and Removal Operations (ERO). These types of

criminal offenses are generally classified as Crimes Involving Moral Turpitude (CIMT's) that are not aggravated felonies.

Actions Related to these Criminal Cases

- a. ICE will determine if and how it will institute the proceedings and if the alien will be detained. USCIS will not prepare or issue NTA in such case.
- b. In referring criminal cases under this section, ICE will make the determination to issue an NTA considering the totality of the case.

Cases adjudicated by Service Centers and the National Benefits Center

Once adjudication is completed, including any administrative appeals, if the alien is removable on a criminal charge, regardless of the reason for the denial, the file will be referred to the BCU. The BCU will refer the case, along with the A-file and/or receipt file, to the appropriate Detention and Removal Office (DRO) Field Office Director (FOD) via an RTI.

Cases adjudicated by Field Offices

Once adjudication is completed, including any administrative appeals, if the alien is removable on a criminal charge, regardless of the reason for the denial, USCIS will prepare an RTI and refer the case, along with the A-file and/or receipt file, to the local DRO FOD.

Cases Where An NTA Is Prescribed By Regulation

Instances where the issuance of an NTA is required by regulation are:

- 1) Denial of Petitions to Remove Conditions on Residence (Form I-751);
- 2) Denial of Petitions by Entrepreneur to Remove Conditions (Form I-829);
- 4) Denial of Applications for Family Unity Benefits (Form I-817);
- 5) Termination by a District Director of refugee status (USCIS will issue the requisite NTA as part of completing the adjudication);
- 6) Denial/withdrawal of Temporary Protected Status rendering alien inadmissible under 8 C.F.R. § 244.3(c) or removable/excludable. NTA is issued concurrently with decision, and subject to appeal rights. *See* 8 CFR 244.10(c)(1) and 244.14(b)(3) and also the September 12, 2003 internal memo, *Service Center Issuance of Notice to Appear (Form I-862)*
- 7) Denials of NACARA 202 adjustments (8 CFR 245.13(m)) and HRIFA adjustments (8 CFR 245.15@2)(i))

Cases Denied by USCIS Based on Fraud

In all pending cases where there is suspicion of fraud USCIS, through CFDO or FDNS IO, may refer the case to ICE pursuant to current procedure.

Where fraud has been verified in a Statement/Summary of Findings and the denial is at least in part based on a finding of fraud, USCIS will issue an NTA upon denial of the case and will include the appropriate fraud charge(s).

Other Applicable Cases

- 1) USCIS will refer all cases in which an application is denied based on an NSEERS violation to ICE for possible NTA issuance.
- 2) An alien may request NTA issuance to renew an application for adjustment or in certain cases with a denied N-400. **The request must be made in writing.** USCIS retains discretion to deny a request. USCIS should consider ICE actions and determinations when making an NTA issuance decision under this section.
- 3) An asylum applicant issued an NTA may request NTA issuance for family members not included on the asylum application as dependents for family unification purposes. **The request must be made in writing.** USCIS retains discretion to deny a request.

Exceptions

Exceptions to the guidance in this PM require concurrence from Regional or Center Directors, who will consult with ICE before issuing an NTA.

ADDITIONAL CONSIDERATIONS UNDER PM 602-0050

- a. ICE has the primary role with respect to removal priorities. USCIS will generally defer to ICE on EPS and criminal case referrals.
- b. Calendaring a USCIS-issued NTA with EOIR will be accomplished based on local procedures, but must include an IBIS record.
- c. District Offices must report to Domestic Operations any backlog with respect to NTA preparation. The case is not counted for statistical purposes as a denial until the NTA is forwarded to EOIR.

USCIS Counsel

USCIS counsel will be available for assistance. Many cases involve special circumstances, and USCIS counsel is available to review NTAs. However, the procedure for NTA review should be set at the local level. Counsel review is encouraged for all fraud charges.

Sensitive Information

Sensitive information is to be protected. Remember that 8 U.S.C. § 1367 prohibits release outside of DHS of *any information* relating to aliens who are seeking or have been approved for the following:

- a. Immigrant status under the provisions for battered spouses and children in the Violence Against Women Act (VAWA)
- b. Nonimmigrant status under INA § 101(a)(15)(T)
- c. Nonimmigrant status under INA § 101(a)(15)(U) [with limited exceptions]

DOJ (such as the Immigration Court) and DHS are also prohibited from making adverse determinations of inadmissibility/deportability using information provided *solely* by the abusive spouse/parent/member of household.

Other confidentiality provisions may come into play such as:

- a. Legalization and SAW cases are covered under the confidentiality provisions of INA §§ 245A(c)(5) and 210(b)(6)
- b. LIFE legalization provisions are also covered by confidentiality

In general, NTAs cannot be issued based on information obtained from legalization applications or supporting documents.

- D. EPO #4: Identify the mechanics of preparation of an alien registration file and NTA consistent with the policies outlined in the National NTA SOP.

STANDARD OPERATING PROCEDURES

The “*Domestic Operations Standard Operating Procedure – Form I-862, Notice to Appear*” (SOP) dated September 8, 2006 was designed to standardize the preparation of NTAs by USCIS components across the country. The SOP details Service Center and Local Office procedures, and includes Appendices containing forms and policy memos pertinent to Notices to Appear.

The purpose of the SOP is to:

- a. Standardize operational policies and procedures in the processing and issuance of the Form I-862 (Notice to Appear) by USCIS
- b. Provide minimum standard procedures that must be followed by all USCIS offices (Local Offices, National Benefits Center and Service Centers), without invalidating local procedures not in conflict with the SOP
- c. Assist sister DHS agencies in identifying and removing ineligible aliens
- d. Provide clarity on the use of prosecutorial discretion

The scope of the SOP applies to NTA issuance by: Service Centers; District Offices; Field Offices; and the National Benefits Center

PROSECUTORIAL DISCRETION

Prosecutorial discretion is defined as the authority of an agency to decide whether or not to enforce the law against someone. The decision whether or not to issue an NTA involves the exercise of discretion, as there is no legal obligation to issue an NTA on all denied applications. Prosecutorial discretion is not, however, the decision to affirmatively grant a benefit where the person is otherwise ineligible. The exercise of discretion is a means to use USCIS resources in a way that best accomplishes the mission of the agency. See Memorandum “*Exercising Prosecutorial Discretion*” dated November 17, 2000, and Adjudicator’s Field Manual (AFM 10.15) *Exercise of Discretion; Uniformity of Decisions*.

WHAT THE SOP DOES NOT AFFECT

The SOP does NOT affect the way cases with identified national security concerns are handled. Existing policies and procedures, as issued by the Fraud Detection and National Security Directorate (FDNS), are controlling in all national security cases. If a matter involves national security, transfer the file to USCIS CFDO/FDNS following established procedures.

The SOP does NOT affect the manner in which an NTA is issued for cases involving asylum or Temporary Protected Status (TPS).

SPECIFIC TOPICS COVERED BY THE SOP

Please refer to the SOP for step-by-step instructions in creating the IBIS/TECS record in conjunction with processing an alien for an NTA.

Please refer to the SOP with respect to relating files; locating and obtaining all associated A-files; T-files and/or related applications/petitions.

PROCEDURES

Local District/Field Office and Service Center procedures are very similar when a determination may result in the preparation of an NTA. First, determine from available information whether the NTA is warranted, and the basis on which it should be issued. Second, ensure all required documentation is contained in the A-file prior to issuance of the NTA.

PREVIOUS REMOVAL PROCEEDINGS

- a) If an alien is in proceedings, determine if USCIS has jurisdiction over the pending application. If jurisdiction exists, proceed with adjudication per form type SOP.
- b) If the documentation shows an EOIR-issued removal order, reinstatement, expedited removal, administrative removal or visa waiver removal, adjudicate the case as appropriate, update CLAIMS as appropriate, transfer the file to the FOD of ICE ERO per local procedures, and update national systems.
- c) If case was terminated by EOIR, adjudicate case if appropriate and update CLAIMS and any other systems as appropriate.
- d) If criminal charges make alien amenable to removal, refer case to ICE BFU for referral to HSI (EPS cases) or DRO (non-EPS criminal Cases).
- e) If EOIR proceedings were administratively closed, consult with the SISO and/or local counsel for follow-up action, adjudicate the case if appropriate and update CLAIMS/ICMS as appropriate.
- f) If the charging document was never served on EOIR, refer the case to the Supervisory Immigration Services Officer (SISO) for cancellation of charging document as appropriate.

E. EPO #5: Preparing and issuing the NTA consistent with the SOP.

FACTUAL ALLEGATIONS

The allegations on the NTA must prima facie (sufficient to establish a fact unless disproved) establish the charge(s) on the NTA. Each NTA should contain the following under the allegations section:

- a. That alien is not a citizen or national of the United States;
- b. The alien is a native of [country] and citizen of [country];
- c. The date and place of entry or arrival into the United States;
- d. The manner of arrival;
- e. Any allegation(s) of violations of immigration law.

The charges must be supported by factual allegations listed under the allegations section. The factual allegations must be such that the alien can admit or deny the entire sentence in the factual allegation. Therefore, only one factual element should be contained in each sentence. The reasoning behind this is if an allegation contains two factual elements and the alien can disprove one of the elements, the court removes the entire sentence thereby eliminating the provable second element along with the disproved one.

Check to ensure that there is a corresponding allegations element for each charging element. The charges listed on the NTA must agree with the "box" checked, i.e. you cannot charge the alien with an INA § 237 charge if the alien is a parolee (parolees only receive INA § 212 charges). All charges listed on the NTA must be supported by evidence contained in the alien file (e.g., conviction records, birth certificate, passport, and computer printouts) and listed in the I-213, Record of Sworn Statement.

Check the Appropriate Box (See page 28)

The appropriate box designating the status of the alien should be checked.

U.S. Department of Justice Immigration and Naturalization Service		Notice to Appear	
In removal proceedings under section 240 of the Immigration and Nationality Act			
File No.:			
In the Matter of:			
Respondent:		currently residing at:	
(Print last, first, middle, and ZIP code)		(Print last, first, middle, and ZIP code)	
<input type="checkbox"/> 1. You are an arriving alien. <input type="checkbox"/> 2. You are an alien present in the United States who has not been admitted or paroled. <input type="checkbox"/> 3. You have been admitted to the United States, but are deportable for the reasons stated below.			

- a. Only one of the following boxes should be checked on the NTA:
- b. Box 1 applies to those who are arriving aliens (paroled) INA § 212 charges;
- c. Box 2 applies to those who are present in the United States without being admitted or paroled (PWI) INA § 212 charges or;
- d. Box 3 applies to those who have been admitted to the United States, but are deportable (nonimmigrants, LPRs) INA § 237 charges.

Charges

The NTA must specify all legally sufficient INA § 212 or § 237 grounds and the charges must be written out.

- a. Charge all applicable criminal grounds
- b. Charge stacking involves lodging all possible grounds of inadmissibility or deportability rather than picking just 1 or 2. One example is if an alien is convicted of armed trafficking in cocaine (with a firearm) for which he received a sentence of 1 year in prison and the subject was originally admitted as a visitor and overstayed.

Charge stacking would include all: overstay, CIMT if within 5 yrs of admission, aggravated felony drug trafficking, aggravated felony crime of violence, controlled substance conviction, and a firearms offense. Selective charging might only charge aggravated felony for drugs. The danger of selective charging is that intervening case law can undermine and negate your selected charge. By adding multiple charges you have a fall back position in the event one or more of the charges may not hold up in court.

- c. The inclusion of all charges reduces the need for ICE counsel to prepare additional or "lodged" charges on Form I-261.

Other Charging Issues

Other charging issues may come into play:

- a. If the charge is INA § 237(a)(2)(A)(iii) for an aggravated felony, cite the INA § 101(a)(43) subsection.
 - "Section 237(a)(2)(A)(iii) of the INA in that you are an alien who has been convicted of an aggravated felony at any time after admission is deportable; to wit, Section 101(a)(43)(B) of the INA, illicit trafficking in a controlled substance."

- b. If the charge is INA § 237(a)(1)(A) for inadmissible at adjustment of status or admission, cite the INA § 212(a) subsection.
 - “Section 237(a)(1)(A) of the INA in that you are an alien who at the time of entry or admission was within one or more of the classes of aliens inadmissible by law existing at the time; to wit, Section 212(a)(7)(A)(i)(I) of the INA, in that you were not in possession of valid unexpired immigrant visa or other valid entry document. “

Overview of Steps

The steps to serve an NTA are:

- a. Draft the NTA in accordance with the NTA SOP and Policy Memorandum 602-0050.
- b. Complete the Form I-213, Record of Deportable/Inadmissible Alien. This form records all the required biological information in reference to the alien to include: how the alien was located/apprehended; time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. This document is what the Immigration Judge reviews, so it is very important to include as much information as possible on the form. Per the SOP, an I-213 is not required for Local Office cases, but is recommended each time an NTA is drafted.
- c. If possible use ENFORCE, the web based system ICE uses not only to draft NTAs, but also to track alien apprehensions and to manage some of their job functions. Some USCIS offices may not have access to ENFORCE due to the fact that the majority of the PICS (Password Issuance and Control System) officers are ICE officers instead of USCIS officers. PICS officers control access to our national computer systems. If your office does not have access to ENFORCE check with your supervisor to see if they will allow you to partner with ICE to get you and your coworkers access to the system.

Many offices without access to ENFORCE use Excel programs to draft their NTAs. The shortcoming of using these Excel programs is the information used to draft the NTA is not captured in any national database until the alien's case is scheduled with the immigration court. If the alien is later encountered by ICE, they may not be able to determine if the alien should be immediately detained for criminal reasons or for serious immigration violations.

- d. Route the completed, original NTA and Duplicate Original to the signatory authority. The signatory authority will provide their signature in blue ink. The blue ink is for clarity for the immigration court to be able to determine which document is the original signed copy.

- e. After the procedures of PM 602-0050 have been met in reference to forwarding the file to FDNS then ICE, NTAs with fraud charges should generally be routed to local USCIS counsel for legal review prior to issuance. If any additional questions arise during the NTA preparation, consult with local USCIS counsel.
- f. All Forms I-751 Petition to Remove the Conditions of Residence and I-829 Petition by Entrepreneur to Remove Conditions must be updated in Marriage Fraud Amendment System (MFAS) on the IDEC screen as "OSC."
- g. Create Maintenance System (MS92) TECS record to document in IBIS that an NTA has been issued. Use the following language: "NTA has been served on alien on <INSERT DATE>. Form(s) <SPECIFY FORM(S)> denied for (if applicable) <STATE REASON(S)>."

For Local Offices an IBIS lookout record must also be created for any EPS-referred cases to ICE. If ICE declines the case, it is incumbent upon the owner of the record to update or delete the lookout record as appropriate. An IBIS Record must also be created when Form I-485 is denied based on criminality.

- h. Physically and electronically transfer and route the file through appropriate channels to ICE.

Required Documents

The documents required to be in the A-file in accordance with the SOP are:

- a. For Local Offices, the SOP requires the A-file contain the original, "Duplicate Original", and a photocopy of the NTA.
- b. Service Centers are required to include the "Duplicate Original" and a photocopy of the NTA, Form I-213 and Form I-703 if sufficiency of legal review was required for the case.
- c. The original, "Duplicate Original", and a photocopy of the NTA should all be two-hole punched and stapled.
- d. Although the SOP does not require local offices to include Form I-213, it is recommended that all cases include this document for review by the immigration court.

While the above listed documents are the only "required" documents that must be contained in the A-file, it is recommended that all offices follow the Record of Proceeding order listed on page 8 of the SOP. See below:

Record (Top/Bottom)	Non-Record (Top/Bottom)
<ul style="list-style-type: none"> • Copy of original Form I-862 (if appropriate) • Duplicate original Form I-862 • Decision letter • G-28 • Application/Petition • Supporting Documentation • Request for Evidence (RFE)/Intent to Revoke (ITR)/Intent to Deny (ITD) • Response to RFE/ITR/ITD (including Judgment and Conviction Documents (J&Cs)/Charging documents submitted by alien) • Return Address portion of the original envelope 	<ul style="list-style-type: none"> • NTA Transmittal Memo • Form I-213 • Counsel sufficiency sign-off (I-703)* • Judgment and Conviction Documents (J&Cs)/Charging documents • NTA processing Worksheet • G-28 (if unacceptable) • Adjudicative notes • Systems information/ANSIR scheduling printout • Law Enforcement systems information (if appropriate) • Application/Petition worksheets <p>* Used in conjunction with Form I-862 issued by Service Centers.</p>

COMPLETION OF CERTIFICATE OF SERVICE

The completion of certificate of service on the NTA is extremely important. See the NTA SOP for specific considerations on the method of service, whether it be in person or by mail, or by a Local Office or Service Center. Note that there is a change to the SOP for service by mail from a Local Office. The change was made in an April 4, 2007 memorandum titled, *Amendment to Standard Operating: Procedures for Form I-862. Notice to Appear*. The memo changed the procedure from requiring certified mail with return receipt requested to service by regular mail. If there is a G-28, Notice of Appearance on file, the adjudicator must also serve the attorney/representative in addition to the alien.

The authority of the issuing officer includes any other officer delegated authority as provided by 8 C.F.R. § 2.1. The authority includes any officer "acting in such capacity." The issuing officer should also write his/her name and title in a legible manner. Any officer authorized to issue an NTA may cancel it prior to filing the NTA at the immigration court. See 8 C.F.R. § 239.2.

Once the court has accepted the NTA, it has officially been considered to be served on the court and the issuing officer is no longer authorized to cancel it in accordance with 8 C.F.R. § 239.2. After service on the court, ICE counsel must request that the court terminate the proceedings which the court may or may not grant. Removal proceedings are officially initiated upon service on the court.

III. SUMMARY

The issuance of an NTA and the forwarding of the NTA to the Immigration Court begin the removal process. The removal process is necessary to remove an alien unlawfully in the United States from the country, although not all aliens are entitled to removal proceedings. USCIS issues NTAs based on USCIS Policy Memorandum 602-0050, and based on the Standard Operating Procedure (SOP). Standard factual allegations and charges exist and the SOP provides step-by-step instructions and guidance regarding preparation of an NTA. USCIS counsel is available to provide legal advice.

(b)(7)(e)

US Citizenship and Immigration Services I-862, Notices to Appear (NTA) FY 2008 to FY 2012				
Fiscal Year	NTA's Issued by FOD	NTA's Issued by RAIO	NTA's Issued by SCOPS	Service-wide
2008	15,314	33,309	7,633	56,256
2009	23,558	27,107	11,308	61,973
2010	21,345	27,151	11,617	60,113
2011	14,781	33,133	6,147	54,061
2012	5,768	36,720	1,357	43,845
TOTAL	80,766	157,420	38,062	276,089

Data Based on September 2012 Final Data

Source: Performance Analysis System (PAS) & RAIO Performance Reports

Report Date: February 14, 2013

Report Frequency: Annually

By: Data Analysis and Reporting Branch (DARB) - MR

Data Date(s): FY2008 to FY2012

Data Type(s): NTA's Issued

Form Type(s): I-862

USCIS Asylum Offices, Field Offices & Service Centers: Service-wide

US CITIZENSHIP AND IMMIGRATION SERVICES					
I-862, Notices to Appear - by Category					
Fiscal Year 2012					
Form Type	Count of Monthly NTA Issuances	Regulatory / Statutory	Fraud	Customer Request	Other
NTAs Issued from October 2011 to January 2012*	13,175**				
I-485 Asylee Adjustment	4	3	1	-	-
I-485 Refugee Adjustment	6	2	4	-	-
I-485 Employment Adjustment	53	18	22	13	-
I-485 Family Adjustment	978	293	626	76	-
I-485 Cuban Refugee Adjustment	11	4	7	-	-
I-485 All Other Adjustments	23	12	8	6	-
N-400 Natz	338	217	121	6	-
N-400 Mil Svc	3	2	1	-	-
I-751 Re.C/S.J	1,127	1,006	122	2	-
I-751 Re.C/S.W	499	453	45	5	-
I-829 Re.C/Inv	12	12	-	-	-
I-539 Forms Filed	5	5	-	-	-
I-129 Forms Filed	2	2	-	-	-
I-130 Immediate Relative	81	69	12	-	-
I-130 All Other Relative (Pref.)	8	4	-	-	4
I-360 Special Immigrant Petition	5	5	-	-	-
I-90 Repl Perm. Res. Card	1	1	-	-	-
I-90 Renewals	9	9	-	-	-
I-765 EAD	3	3	-	-	-
I-821 TPS	225	223	1	1	-
N-600 Certif Citz	5	4	1	-	-
I-589 Asylum	18,652	18,494	-	158	-
Credible Fear	8,593	8,593	-	-	-
No Form Type	27	7	17	3	-
TOTAL	43,845	29,441	988	270	4

*USCIS does not have the number of category based I-862 (NTAs), issued prior to February 2012, that were categorized by the USCIS Memorandum, "Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens," PM-602-0050(November 7, 2011).

**Out of a total of 13,175 NTAs, issued from October 2011 to January 2012, there were 9,475 NTAs that were issued by RAO; 5,768 issued by FOD and 1,357 issued by SCOPS.

Data Based on September 2012 Final Data

Source: Performance Analysis System (PAS) & RAO Performance Reports

Report Date: February 26, 2013

Report Frequency: Monthly

By: Data Analysis and Reporting Branch (DARB) - MR

Data Date(s): Fiscal Year 2012

Data Type(s): NTA's Issued by Category

Form Type(s): I-862

USCIS Asylum Offices, Field Offices & Service Centers: Service-wide

US CITIZENSHIP AND IMMIGRATION SERVICES

I-862, Notices to Appear - by Office

Fiscal Year 2012

Office	TOTAL	Regulatory or Statutory	NTA Fraud	Customer Request	NTA Other
NTAs Issued from October 2011 to January 2012*	13,175**				
ABQ	5	3	0	2	0
AGA	4	3	0	1	0
ALB	5	1	4	0	0
ANC	2	2	0	0	0
ATL	39	35	2	2	0
BAL	37	30	8	0	0
BOI	7	6	2	0	0
BOS	95	83	10	2	0
BUF	1	1	0	0	0
CHA	2	2	0	0	0
CHI	224	102	122	0	0
CHL	12	4	8	0	0
CHR	3	3	0	0	0
CIN	18	8	10	0	0
CLE	23	3	20	0	0
CLM	24	12	13	0	0
CLT	11	5	6	0	0
CVC	42	19	20	3	0
DAL	87	27	59	1	0
DEN	34	14	15	7	0
DET	49	47	2	1	0
DSM	6	1	5	0	0
ELP	31	7	24	0	0
FRE	16	13	3	0	0
FSA	3	0	3	0	0
HAR	12	9	1	1	0
HEL	1	1	0	0	0
HHW	7	5	1	1	0
HIA	7	6	0	1	0
HLG	3	1	0	2	0
HOU	104	36	68	0	0
IMP	1	0	0	1	0
INP	21	14	7	0	0
JAC	29	21	7	1	0

KAN	32	6	26	0	0
KND	28	22	4	2	0
LAC	28	1	27	0	0
LAW	59	46	13	0	0
LNK	22	14	8	0	0
LOS	53	22	31	0	0
LOU	25	21	6	1	0
LVG	123	104	19	0	0
MAN	6	1	5	0	0
MEM	7	5	2	0	0
MIA	7	4	3	0	0
MIL	11	8	6	0	0
MTL	48	48	19	1	0
NEW	123	63	48	12	0
NOL	5	4	1	0	0
NOR	14	12	0	2	0
NYC	331	288	24	19	0
OKC	3	2	1	0	0
OMA	3	3	0	0	0
ORL	129	108	21	0	0
PHI	21	7	14	0	0
PHO	31	15	6	10	0
PIT	5	0	5	0	0
POM	2	2	0	0	0
POO	9	3	1	4	0
PRO	19	19	0	0	0
QNS	21	10	9	2	0
RAL	6	4	2	0	0
REN	15	0	15	0	0
SAA	80	57	23	0	0
SAC	26	9	17	0	0
SBD	18	15	3	0	0
SEA	19	11	5	0	3
SFR	116	51	65	0	0
SFV	21	6	15	0	0
SLC	4	4	0	0	0
SNA	28	23	4	1	0
SND	27	8	11	8	0
SNJ	10	4	6	0	0

SPM	62	11	48	3	0
SPO	1	0	1	0	0
STA	3	3	0	0	0
STL	6	4	2	0	0
TAM	80	41	33	11	0
TUC	1	1	0	0	0
WAS	37	25	6	3	1
WPB	3	3	0	0	0
YAK	2	0	2	0	0
NBC	16	0	9	7	0
ESC	363	363	0	0	0
NSC	14	14	0	0	0
SSC	13	11	2	0	0
WSC	324	324	0	0	0
ZAR	1,225	1,218	0	7	0
ZCH	1,359	1,357	0	2	0
ZHN	7,468	7,461	0	7	0
ZLA	5,751	5,646	0	105	0
ZMI	1,601	1,578	0	23	0
ZNK	2,932	2,932	0	0	0
ZNY	5,497	5,493	0	4	0
ZSF	1,412	1,402	0	10	0
Grand Total	43,845	29,441	988	270	4

*USCIS does not have the number of category based I-862 (NTAs), issued prior to February 2012, that were categorized by the USCIS Memorandum, "Revised Guidance for the Referral Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens," PM-602-0050(November 7, 2011).

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Data Based on September 2012 Final Data

Source: Performance Analysis System (PAS) & RAIO Performance Reports

Report Date: February 26, 2013

Report Frequency: Monthly

By: Data Analysis and Reporting Branch (DARB) - MR

Data Date(s): Fiscal Year 2012

Data Type(s): NTA's Issued by Category

Form Type(s): I-862

USCIS Asylum Offices, Field Offices & Service Centers: Service-wide

OFFICE CODE	OFFICE LOCATION / DESCRIPTION
ABQ	ALBUQUERQUE NM
AGA	AGANA GUAM
ALB	ALBANY NY
ANC	ANCHORAGE AK
ATL	ATLANTA GA
BAL	BALTIMORE MD
BOI	BOISE ID
BOS	BOSTON MA
BUF	BUFFALO NY
CHA	CHARLOTTE AMALIE
CHI	CHICAGO IL
CHL	CHARLESTON SC
CHR	CHRISTIANSTED VI
CHS	CHARLESTON WV
CIN	CINCINNATI OH
CLE	CLEVELAND OH
CLM	COLUMBUS OH
CLT	CHARLOTTE NC
CVC	CHULA VISTA CA
DAL	DALLAS TX
DEN	DENVER CO
DET	DETROIT MI
DSM	DES MOINES IA
DVD	DOVER DE AFB
ELP	EL PASO TX
ESC	Vermont Service Center
FRE	FRESNO CA
FSA	FORT SMITH AR
GCU	GARDEN CITY NY
GRR	GREER SC
HAR	HARTFORD CT
HEL	HELENA MT
HHW	HONOLULU HI
HIA	HIALEAH FL
HLG	HARLINGEN TX
HOU	HOUSTON TX
IMP	IMPERIAL CA
INP	INDIANAPOLIS IN
JAC	JACKSONV'L FL
KAN	KANSAS CITY MO
KND	KENDALL FL
LAC	LOS ANGELES COUNTY
LAW	LAWRENCE MA
LNY	LONG ISLAND NY

LOS	LOS ANGELES CA
LOU	LOUISVILLE KY
LVG	LAS VEGAS NV
MAN	MANCHESTER NH
MEM	MEMPHIS TN
MIA	MIAMI FL
MIL	MILWAUKEE WI
MTL	MOUNT LAUREL NJ
NBC	Missouri Service Center / National Benefits Center
NEW	NEWARK NJ
NOL	NEW ORLEANS LA
NOR	NORFOLK VA
NSC	Nebraska Service Center
NYC	NEW YORK NY
OKC	OKLAHOMA CITY OK
OKL	OAKLAND PARK FL
OMA	OMAHA NE
ORL	ORLANDO FL
PHI	PHILADELPHI PA
PHO	PHOENIX AZ
PIT	PITTSBURGH PA
POM	PORTLAND ME
POO	PORTLAND OR
PRO	PROVIDENCE RI
QNS	Queens NY
RAL	RALEIGH NC
REN	RENO NV
SAA	SANTA ANA CA
SAC	SACRAMENTO CA
SAJ	SAN JUAN PR
SBD	SAN BERNADINO CA
SEA	SEATTLE WA
SFR	SAN FRAN. CA
SFV	SAN FERNANDO VALLEY CA
SLC	SALT LAKE CITY UT
SNA	SAN ANTONIO TX
SND	SAN DIEGO CA
SNJ	SAN JOSE CA
SPM	ST PAUL MN
SPO	SPOKANE WA
SSC	Texas Service Center
STA	ST ALBANS VT
STL	ST LOUIS MO
TAM	TAMPA FL
TUC	TUCSON AZ/SUB

WAS	WASHINGTON DC
WIC	WICHITA KS
WPB	WEST PALM BEACH FL
WSC	California Service Center
YAK	YAKIMA WA
ZAR	Arlington Asylum Office
ZCH	Chicago Asylum Office
ZHN	Houston Asylum Office
ZLA	Los Angeles Asylum Office
ZMI	Miami Asylum Office
ZNK	Newark Asylum Office
ZNY	New York Asylum Office
ZSF	San Francisco Asylum Office



November 7, 2011

PM-602-0050

Policy Memorandum

SUBJECT: Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens

Purpose

This Policy Memorandum (PM) establishes new USCIS guidelines for referring cases and issuing Notices to Appear (NTAs) in a manner that promotes the sound use of the resources of the Department of Homeland Security and the Department of Justice to enhance national security, public safety, and the integrity of the immigration system. This PM supersedes Policy Memorandum No. 110, *Disposition of Cases Involving Removable Aliens*, dated July 11, 2006.

Scope

This PM applies to and is binding on all USCIS employees unless otherwise specifically provided in this PM.

Authority

Immigration and Nationality Act (INA) sections 101(a)(43), 103(a), 239, 240 and 318; Title 8, Code of Federal Regulations (8 CFR) parts/sections 2.1, 103, 204, 207.9, 208, 216.3(a), 216.6(a)(5), 236.14(c), and 239; Adjudicator's Field Manual Chapter 10.11(a).

Background

U.S. Citizenship and Immigration Services (USCIS) has authority, under the immigration laws, *see, e.g.*, INA §§ 103(a), 239; 8 CFR §§ 2.1, 239.1, to issue Form I-862, Notice to Appear, to initiate removal proceedings.¹ U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) also have authority to issue NTAs. Accordingly, USCIS must ensure that its issuance of NTAs fits within and supports the Government's overall removal priorities, while also ensuring that its NTA policies promote national security and the integrity of the nation's immigration system.

To those ends, this PM identifies the circumstances under which USCIS will issue an NTA, or will refer the case to ICE for NTA issuance, in order to effectively handle cases that involve public safety threats, criminals, and aliens engaged in fraud.

¹ *Delegation by the Secretary of the Department of Homeland Security to the Bureau of Citizenship and Immigration Services*, Delegation Number 0150.1; Paragraph 2(N). However, international District Directors and officers are not authorized to issue NTAs.

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Policy

I. National Security Cases

This PM does not affect the handling of cases involving national security concerns.² Guidance from the Fraud Detection and National Security Directorate (FDNS)³ will continue to govern the definition of these cases and the procedures for resolution and NTA issuance.

II. NTA Issuance Required by Statute or Regulation

USCIS will issue an NTA in the following circumstances:⁴

- A. Termination of Conditional Permanent Resident Status and Denials of Form I-751, Petition to Remove the Conditions of Residence (8 CFR 216.3, 216.4, 216.5)⁵
- B. Denials of Form I-829, Petition by Entrepreneur to Remove Conditions (8 CFR 216.6)
- C. Termination of refugee status by the District Director (8 CFR 207.9)
- D. Denials of NACARA 202 and HRIFA adjustments
 - 1. NACARA 202 adjustment denials (8 CFR 245.13(m));
 - 2. HRIFA adjustment denials (8 CFR 245.15(r)(2)(i)).
- E. Asylum⁶, NACARA 203, and Credible Fear cases:
 - 1. Asylum referrals (8 CFR 208.14(c)(1));
 - 2. Termination of asylum or termination of withholding of removal or deportation (8 CFR 208.24(e));⁸
 - 3. Positive credible fear findings (8 CFR 208.30(f));
 - 4. NACARA 203 cases where suspension of deportation or cancellation of removal is not granted, and the applicant does not have asylum status, or lawful immigrant or non-immigrant status (8 CFR 240.70(d)).

This PM does not apply to, or change, NTA or notification procedures for Temporary Protected Status cases.⁹ Further, Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, processed under the Violence Against Women Act (VAWA), should continue to

² National Security Cases include cases involving Terrorist Related Grounds of Inadmissibility (TRIG) pursuant to sections 212(a)(3)(B) and 212(a)(3)(F) of the INA.

³ See, e.g., *Policy for Vetting and Adjudicating Cases with National Security Concerns* (April 11, 2008).

⁴ If any Form I-751 or I-829 cases are also Egregious Public Safety cases, they will be referred to ICE in accordance with Section IV.A.1 of this PM.

⁵ See the October 9, 2009 internal memo, *Adjudication of Form I-751, Petition to Remove Conditions on Residence Where the CPR Has a Final Order of Removal, Is in Removal Proceedings, or Has Filed an Unexcused Untimely Petition or Multiple Petitions*. See also the April 3, 2009 memo, *I-751 Filed Prior to Termination of Marriage*.

⁶ USCIS may issue an NTA when an asylum applicant withdraws his or her asylum application.

⁷ This memo does not apply to the Asylum Division's issuance of Form I-863, Notice of Referral to Immigration Judge, to certain stowaways, crewmembers, and VWP individuals who are requesting asylum or withholding of removal; reasonable fear screenings and negative credible fear screenings.

⁸ See also section 208(c)(3) of the INA describing removal when asylum is terminated.

⁹ See the September 12, 2003 internal memo, *Service Center Issuance of Notice to Appear (Form I-862)*.

be processed under existing protocols. If the VAWA applicant's Form I-485 is denied, this memorandum is applicable in terms of NTA issuance.¹⁰

III. Fraud Cases with a Statement of Findings Substantiating Fraud

To protect the integrity of the immigration system and address fraud, USCIS will issue NTAs when a Statement of Findings (SOF) substantiating fraud is part of the record.¹¹ An NTA will be issued upon final adjudicative action on the petition and/or application or other appropriate eligibility determination.¹² NTAs will be issued even if the petition and/or application is denied for a ground other than fraud, such as lack of prosecution or abandonment, is terminated based on a withdrawal by the petitioner/applicant, or where an approval is revoked, so long as an SOF substantiating fraud is in the record.

The NTA should include the charge of fraud or misrepresentation, if possible. The appropriate charge(s) will be determined on a case-by-case basis. Consultation with local USCIS counsel to determine the appropriate charge(s) is recommended.

IV. Cases to be Referred to ICE for a Decision on NTA Issuance

A. **Criminal Cases:** Criminal aliens are a top immigration enforcement priority for the government. The following guidance recognizes the prioritization and requires USCIS to refer criminals to ICE for action or issue an NTA in accordance with this PM.

1. Egregious Public Safety (EPS) Cases

USCIS will refer all EPS cases, including cases with pending N-400s, to ICE prior to adjudicating the case even if USCIS can deny the petition and/or application on its merits. An EPS case is defined by USCIS and ICE as a case where information indicates the alien is under investigation for, has been arrested for (without disposition), or has been convicted of, any of the following:

- a. Murder, rape, or sexual abuse of a minor as defined in section 101(a)(43)(A) of the INA.
- b. Illicit trafficking in firearms or destructive devices as defined in section 101(a)(43)(C) of the INA.
- c. Offenses relating to explosive materials or firearms as defined in section 101(a)(43)(E) of the INA.

¹⁰ When making determinations, employees must keep in mind USCIS's obligations under 8 USC § 1367, which prohibits the release of any information, outside of DHS, relating to aliens who are seeking or have been approved for immigration benefit(s) under the provisions for battered spouses, children, and parents in the Violence Against Women Act.

¹¹ Alternatively, ICE will determine whether to issue the NTA if a criminal investigation is conducted, fraud is found, and the investigation results in criminal prosecution.

¹² This includes, but is not limited to, aliens that were granted asylum status by USCIS, adjusted to Lawful Permanent Resident status, presented fraud indicators, were subject to the Post Adjustment Eligibility Review (PAER) process in an Asylum Office, and met the PAER criteria for NTA issuance.

- d. Crimes of violence for which the term of imprisonment imposed, or where the penalty for a pending case, is at least one year as defined in section 101(a)(43)(F) of the INA.
- e. An offense relating to the demand for, or receipt of, ransom as defined in section 101(a)(43)(H) of the INA.
- f. An offense relating to child pornography as defined in section 101(a)(43)(I) of the INA.
- g. An offense relating to peonage, slavery, involuntary servitude, and trafficking in persons as defined in section 101(a)(43)(K)(iii) of the INA.
- h. An offense relating to alien smuggling as described in section 101(a)(43)(N) of the INA.
- i. Human Rights Violators, known or suspected street gang members, or Interpol hits.
- j. Re-entry after an order of exclusion, deportation or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal, has not been approved.

All EPS cases must be referred to ICE using the procedures outlined below. The case will be referred as soon as it is identified. ICE will have an opportunity to decide if, when, and how to issue an NTA and/or detain the alien. USCIS will not issue an NTA in these cases if ICE declines to issue an NTA. If some other basis unrelated to the EPS concern becomes apparent during the course of adjudication, an NTA may be issued in accordance with this memo.

Referral Process

This referral process is utilized in order to give ICE the opportunity to determine the appropriate course of action before USCIS adjudicates the case. A decision to issue an NTA may directly affect the processing of the pending petition and/or application. Upon issuing the Referral to Immigration and Customs Enforcement (RTI), USCIS will suspend adjudication for 60 days, or until ICE provides notification of its action on the case, whichever is earlier.

In response to the RTI –

1. ICE may issue an NTA. ICE's issuance of an NTA allows USCIS to proceed with adjudication (unless jurisdiction transfers to EOIR or the pending application is an N-400), taking into account the basis for the NTA.
2. If ICE does not issue an NTA or otherwise provide notification of its action on the case within 60 days of the RTI, USCIS may resume its adjudication of the case, taking into account the referral grounds.

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- a. If the case is approvable, USCIS will consult with ICE prior to adjudication.
- b. Once adjudicated, regardless of the decision, USCIS will notify ICE of the result by sending a copy of the original RTI to ICE with a cover memorandum advising of the outcome of the case.

EPS cases referred to ICE prior to adjudication should be called up and reviewed no later than 60 days after referral. Normally, the case should be adjudicated by USCIS. However, USCIS retains discretion to place the case on hold for more than 60 days if ICE requests additional time to conduct an investigation.¹³

Office-Specific Processes

1. Cases to be adjudicated by Service Centers and the National Benefits Center. Adjudication will be suspended and the case will immediately be sent to the appropriate Service Center Background Check Unit (BCU). The BCU will refer the case to the ICE Benefit Fraud Unit (BFU) via an RTI. A hard copy of the RTI will be placed in the A-file and/or receipt file. The BCU will retain the file unless ICE requests it or the 60 days expire.
2. Cases to be adjudicated by Field Offices. The Immigration Services Officer (ISO) will suspend adjudication and the case will immediately be referred to the local ICE Special Agent in Charge (SAC) via an RTI. A hard copy of the RTI will be placed in the A-file and/or receipt file. A copy of the RTI must also be sent to the ICE BFU. USCIS will retain the file unless ICE requests the file for their review.

An RTI should include any relevant attachments that USCIS has at the time, such as a copy of the RAP sheet and a copy of the petition and/or application.

2. Non-Egregious Public Safety Criminal Cases

If it appears that the alien is inadmissible or removable for a criminal offense not included on the EPS list, USCIS will complete the adjudication and then refer the case to ICE. This section applies to N-400 cases if the N-400 has been denied on good moral character (GMC) grounds based on the criminal offense.¹⁴ ICE will decide if, and how, it will institute removal proceedings and whether or not it will detain the alien. USCIS will not issue an NTA if ICE declines to issue an NTA.

¹³ Pursuant to 8 CFR 274a.13(d), USCIS must complete processing of an Employment Authorization Document (EAD) within 90 days or issue an interim EAD card valid up to 240 days. Officers should be mindful of this regulatory timeframe when cases with a pending Form I-765, Application for Employment Authorization, are referred to ICE.

¹⁴ See Section V of this memo addressing N-400 cases.

If some other basis unrelated to the criminal offense becomes apparent upon return of the case to USCIS, an NTA may be issued in accordance with this memo.

Referral Process

The referral process is used to allow ICE to make a determination whether to issue an NTA, based on the totality of circumstances and its priorities. ICE will determine the appropriate grounds for removal if an NTA is issued.

Once adjudication is complete, USCIS will send an RTI to ICE. USCIS will concurrently transmit a copy of the RTI to ICE Headquarters (HQ) Enforcement and Removal Operations (ERO) Criminal Alien Division for statistical monitoring purposes. If there is any confusion or uncertainty about classifying a case as egregious versus non-egregious, the USCIS ISO should refer the matter as an EPS case using the process described above.

The accompanying A-file will be referred to ICE with the RTI, if the file is in the possession of the referring USCIS office or center. If the file is not at the referring USCIS office or center, the RTI should include any relevant attachments that USCIS has, such as a copy of the RAP sheet and a copy of the petition and/or application. Where USCIS obtained certified conviction records through normal processing of the case, USCIS will include the records with the RTI, but it will not hold the RTI on a completed case solely to obtain disposition records. Instead ICE will decide whether, and how, it will obtain such records as part of its decision to issue an NTA.

Office-Specific Processes

1. Cases adjudicated by Service Centers and the National Benefits Center. Once adjudication is completed, if the alien is removable on a criminal charge, regardless of the reason for the denial, the file will be referred to the BCU. The BCU will refer the case, along with the A-file and/or receipt file, to the appropriate ERO Field Office Director (FOD) via an RTI.
2. Cases adjudicated by Field Offices. Once adjudication is completed, if the alien is removable on a criminal charge, regardless of the reason for the denial, USCIS will prepare an RTI and refer the case, along with the A-file and/or receipt file, to the local ERO FOD.

B. National Security Entry Exit Registration System (NSEERS) Violator Cases

USCIS will refer all cases in which an application is denied based on an NSEERS violation to ICE for possible NTA issuance.

V. Cases Involving Form N-400. Application for Naturalization

The following guidance applies to the issuance of NTAs in cases in which applicants for naturalization are removable. There are two primary situations in which NTAs may be issued in connection with a filed Form N-400. If the N-400 case involves fraud (documented in the SOF) the procedures found in this section must be followed, rather than the procedures found in Section III (Fraud Cases with a Statement of Findings Substantiating Fraud). However, the below guidance does not apply to EPS cases. EPS cases must be referred in accordance with Section IV.A.1 (Egregious Public Safety Cases) of this memo. Additionally, the below guidance does not apply to non-EPS criminal cases when the N-400 can be denied on GMC grounds based on the criminal act. These cases must be denied and referred in accordance with Section IV.A.2 (Non-Egregious Public Safety Criminal Cases).

- A. The first situation occurs when the applicant may be eligible to naturalize but is also deportable under section 237 of the INA. Examples include applicants convicted of aggravated felonies prior to November 29, 1990, or applicants convicted of deportable offenses after obtaining Lawful Permanent Resident (LPR) status that do not fall within the GMC period. The ISO should:
1. Make a written recommendation on the issuance of an NTA through a review of the totality of the circumstances to include factors such as: severity of crime, time since crime committed, other criminal conduct, reformation, immigration history including method of entry, length of presence in the U.S., and prior immigration violations, and contributions to society to include the pursuit of education and military service.¹⁵
 2. Once the ISO has made a recommendation on whether or not to issue an NTA, the case should be forwarded to the N-400 NTA Review Panel (Review Panel), along with the written recommendation. A Review Panel must be formed in each Field Office and include a local Supervisory Immigration Services Officer (SISO), a local USCIS Office of Chief Counsel attorney, and a district representative. An attorney from ICE's local Office of Chief Counsel will be invited to participate and will have an advisory role on the panel. The Review Panel will make the final determination on NTA issuance. If consensus cannot be reached by the Review Panel, the case will be elevated to the District Director, through the district representative, for a final decision.
 3. If the Review Panel decides to issue an NTA, place the N-400 on hold until removal proceedings have concluded. Once proceedings have concluded, or if the Review Panel declines to issue an NTA, adjudicate the case appropriately.

¹⁵ Additional factors to be taken under consideration can be found in the June 17, 2011 ICE memo, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*.

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B. The second situation occurs when it is determined that the applicant was inadmissible at the time of adjustment or admission to the United States, thus deportable under section 237 of the INA and not eligible for naturalization under section 318 of the INA.¹⁶ The ISO should:

1. Make a written recommendation on the issuance of an NTA through a review of the totality of the circumstances to include factors such as: willfulness of actions, fraud factors, length of LPR status, criminal history, and officer error at time of adjustment.
2. Once the ISO has made a recommendation on the issuance of the NTA, the case should be forwarded to the Review Panel (see Section V.A.2), along with the written recommendation. The Review Panel will make the final determination on NTA issuance. If consensus cannot be reached by the Review Panel, the case will be elevated to the District Director, through the district representative, for a final decision.
3. If the Review Panel decides to issue an NTA, place the N-400 on hold until removal proceedings have concluded. Once removal proceedings have concluded, adjudicate the case appropriately. If the Review Panel declines to issue an NTA, deny the case under section 318 of the INA.

VI. Other Cases

- A. An alien may request NTA issuance to renew an application for adjustment or in certain cases with a denied N-400. The request must be made in writing.¹⁷
- B. An asylum applicant issued an NTA may request NTA issuance for family members not included on the asylum application as dependents for family unification purposes. The request must be made in writing.¹⁸

VII. Exceptions

Exceptions to the guidance in this PM require concurrence from Regional or Center Directors, who will consult with ICE before issuing an NTA.

¹⁶ In the Third Circuit *only* (Pennsylvania, New Jersey, Delaware, and the U.S. Virgin Islands), based on the holding in *Garcia v. Att'y Gen.*, 553 F.3d 724 (3d Cir. 2009), if the alien has been an LPR for at least five years, the alien cannot be placed in removal proceedings for fraud or willful misrepresentation of a material fact at time of adjustment, if USCIS could have learned of the fraud or misrepresentation through reasonable diligence before the five year rescission period expired. Please consult with USCIS counsel if there are questions regarding the applicability of this precedent.

¹⁷ USCIS retains discretion to deny a request. USCIS should consider ICE actions and determinations when making an NTA issuance decision under this section.

¹⁸ USCIS retains discretion to deny a request.

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VIII. Coordination with ICE

According to the June 2011 ICE memo regarding the exercise of prosecutorial discretion consistent with priorities,¹⁹ USCIS will receive notice before an ICE attorney exercises prosecutorial discretion and dismisses, suspends, or closes a case. The local N-400 NTA Review Panel will work with ICE to come to a resolution if USCIS does not agree with ICE's use of prosecutorial discretion in a particular case. If concurrence cannot be reached, the case should be elevated to the USCIS Office of Chief Counsel in headquarters.

Implementation

Each field office must form an N-400 NTA Review Panel and create a process to complete RTIs and refer EPS and non-EPS criminal cases to ICE. A written list enumerating the members of the Review Panel and a document outlining the process of referral must be sent to the appropriate district office within 30 days of the issuance of this memorandum.

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 the Field Operations Directorate, Service Center Operations Directorate, or the Refugee, Asylum, and International Operations Directorate.

¹⁹ *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, signed June 17, 2011.