

LOS ANGELES ASYLUM OFFICE - AILA LIAISON MEETING QUESTIONS

Wednesday, May 14, 2008

10:00 –12:20 p.m.

1585 S. Manchester Ave., Anaheim

ZLA Conference Room

Attendees:

Los Angeles Asylum Office

George Mihalko – Director

David Radel – Deputy Director

Supervisors and their Collateral Duties:

Ira Aspiz (not present) – Nunc Pro Tunc coordinator

Barbara Avery (not present) – ABC/NACARA coordinator

Dennis Butler – Interpreter/Monitor issues; APSO backup

Tonya Burdine – Courtesy NTA; Motions to Reopen and Reconsider

Mark Farfaglia (not present) – APSO coordinator

Patricia Franks – Fraud Prevention coordinator

Karin Hooks – Grant Room

Richard Levine – EAD issues

William Lowe – Health/Safety coordinator

Joan Petrie (not present) – ABC/NACARA coordinator; CSC Liaison

Charles Phillips – Terminations, Rescissions, Problem cases; Nunc Pro Tunc backup

Gary Rimmel – Post-NOID Room

Sarah Shergill (not present) – Post-NOID backup

Stephen Ulloa – Security/Background Checks coordinator

Richard Victorio – AILA/EOIR Liaison

AILA – Southern California

Akram Abusharar

Todd Becraft

Estella Karla Carrillo

Mia Cohen-Rennod

Nashwa Eisner

Deborah Karapetian

Andrew Knapp

Joseph Porta

Sergei Shevchenko

Judith Wood

AILA Questions and Los Angeles Asylum Office's Responses

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1. Please provide statistics for asylum processing, when possible comparing this year with last.

FY08 (1st and 2nd Quarters):	5,842	I-589 Completions
	2,312	I-881 Completions
FY07:	15,856	I-589 Completions
	5,799	I-881 Completions

2. How many officers are currently on staff at the Los Angeles Asylum Office?

63 AOs; 15 SAOs

3. How many new officers were hired last year? The year before that?

2008: 11 AOs, 3 AOs with future EODs

2007: 12 AOs

2006: 15 AOs

4. How many officers per day are conducting interviews?

Varies, based on AO appearance rate; generally 35-45 AOs per day conduct I-589 interviews; approximately 10 AOs per day conduct I-881 interviews

5. Have there been any changes at the management level within the last year?

SAOs: Sarah Shergill, Richard Victorio, Karin Hooks (all internal promotions)

### **Scheduling and Facilities**

6. Many members still report that asylum interviews scheduled for 6:30 a.m. are not actually called for interviews until 10:00 a.m. Is there any way to ensure that appointment times are respected? To compound on this problem, there are no vending machines or possibility for applicants and counsel to have refreshments during these long delays. If appointment times are not conducted in a timely manner is there a procedure for applicants and counsel to request that they be interviewed or rescheduled? While AILA understands that the problem is due to partly to the flex schedule, is there any way to at least inform an applicant after intake that their officer will not arrive until several hours later and allow the opportunity for a reschedule?

At the Los Angeles Asylum Office (ZLA), most cases are automatically scheduled by computer 21 days in advance. ZLA does not pre-assign cases to asylum officers. Each interviewing day, ZLA opens the maximum number of interview slots based on projected AO availability, which are filled in by the computer or manually with cases ready for interview. After an applicant checks in, an applicant's case is randomly assigned, in the order of arrival, to the first available AO.

In addition to the flex schedule (Note: All AOs must report for work by 9:00 A.M.), factors that affect the number of AOs available to interview on a given day are: the number of AOs on sick or annual leave; the number of AOs out of the office on detail; and the number of AOs in training status.

Unfortunately, this combination of factors makes it difficult to predict AO arrival times on a given interview day. In order to minimize applicant waiting time, ZLA has recently staggered its affirmative interview schedule so that fewer cases are scheduled for early morning and more cases are scheduled for mid- to late-morning. If an applicant, interpreter, or representative is unable to wait until they are called for the interview, they may seek a reschedule of the case at the applicant's behest.

7. What is the asylum office's policy regarding cell phones and/or camera phones in the office? If camera phones are not allowed, is it possible to make an exception for attorneys, since often times they may have other business to attend to during the delay between checking in and actually being interviewed?

Cell phones are allowed, but may be used in the waiting room only. Cell phones must be turned off before entering the interviewing area.

Camera phones are not allowed in any part of the building occupied by ZLA. The primary reason is for the protection of the privacy of asylum applicants. Second, security at ZLA falls under the purview of the General Services Administration (GSA) and the Federal Protective Service (FPS). FPS, in compliance with FMR Title 41, Code of Federal Regulations, Part 102-74.420, Subpart C, has prohibited the taking of photographs.

8. Rescheduling Saturday and Sunday Natz interviews in the Asylum Office: As many attorneys work in excess of 60 hours per week, what procedure will the Asylum Office make available to quickly and easily reschedule these weekend N-400 interviews to during the week so that applicants may attend with counsel?

The Los Angeles District Office (LADO) is responsible for rescheduling N-400 interviews for interview dates during the week. When our office receives a request to reschedule, we forward the request and the A-file to the Los Angeles District Office for rescheduling. The LADO has indicated that it will prioritize requests to reschedule the Los Angeles Asylum Office N-400 interviews. ZLA does not conduct N-400 interviews during the week. Rescheduled interviews will take place at the LADO. As of this date, ZLA has conducted about 1700 interviews and approved more than 1500 cases. If a case cannot be approved on the day of their interview for whatever reason, the file is forwarded to LADO for their action. Approximately 25 AOs have volunteered for this project. ZLA conducts 140-160 N-400 interviews on Saturdays, and about half that number on Sundays.

## Asylum

9. What is the Los Angeles Asylum Office's policy of allowing non-attorney and non-interpreter personnel to accompany applicants to the Asylum Office? AILA members have seen individuals who are neither attorneys nor interpreters roaming around in the office. Those people are usually notarios. Notarios should not be allowed in the office, rather only attorneys and interpreters, applicants and their derivative family members. Is there a way to discreetly and effectively report this type of behavior?

Only people directly linked to a scheduled interview would normally be allowed in the waiting area: principal applicants, dependents, attorneys, interpreters, and witnesses, plus possibly immediate family members not part of the application. On occasion, an applicant may be here making an inquiry into the

status of a case on a day when he or she does not have an interview. Preparers may be here functioning as interpreters, but otherwise they would not be permitted into the building. If any AILA members suspect someone has entered the waiting area despite not being the interpreter on a scheduled case, they should notify a guard, contact representative, or duty officer.

10. Many times, AOs utilize a Telephonic Interpreter Monitor to ensure the accuracy of translation during asylum interviews. Is this decision left to the discretion of AOs or are all asylum interviews that require an interpreter monitored by a telephonic monitor? What circumstances would allow an AO to NOT use the telephonic interpreter monitor service?

It is nationwide Asylum Division policy to use interpreter monitors for affirmative asylum interviews. The use of an interpreter monitor is not discretionary. However, an asylum officer would not use a monitor if no interpreter is needed (i.e., the applicant speaks English or the officer speaks the applicant's language), if the monitor service does not have a monitor for a particular language, if no monitor is available at that particular time, or if there are technical problems.

For credible fear and reasonable fear interviews, however, an active interpreter is required in cases where the applicant does not speak English and the officer does not speak the applicant's language.

11. If documents (i.e. passports, birth certificates, etc.) are suspected to be non-genuine, are AOs instructed and/or required to take the original documents from applicants during the asylum interviews? How often does this happen? Under what conditions do AO's take original biographical documents from asylum applicants during interviews in order to send to forensics?

(See Affirmative Asylum Procedures Manual, pp 27-28, November 2007)

**If documents (i.e. passports, birth certificates, etc.) are suspected to be non-genuine, are AOs instructed and/or required to take the original documents from applicants during the asylum interviews?**

If an AO, in consultation with the fraud coordinator, *believes* a document is fraudulent or was fraudulently obtained, the AO may request the applicant's permission to retain the document(s) in question for further analysis. When an applicant admits that a document is fraudulent or fraudulently obtained, the Asylum Officer takes a sworn statement detailing the applicant's admission. Document analysis may be undertaken by in-house fraud prevention officers. If a document in question may affect the outcome of the decision on the case, the document may be forwarded to the Forensic Document Lab (FDL) for analysis. At the interview, an applicant will be issued a "Retention of Original Documents" letter that lists each document retained by the Asylum Officer. A valid, original passport issued to an applicant will not be retained. If the applicant refuses to turn over a document for further analysis, a copy of the document is made for the file and the AO may take such refusal into account when weighing the evidentiary value of the document. The AO also prepares a memorandum to the file explaining the circumstances and the reasons the document was suspected to be fraudulent. The original documents retained by the Asylum Officer may be returned to the applicant at the time he or she picks up the decision or may be mailed to the applicant at a later date.

**How often does this happen?**

AOs retain documents as often as the need arises. There are no statistical data available on the frequency of retention of documents by Asylum Officers.

**Under what conditions do AOs take original biographical documents from asylum applicants during interviews in order to send to forensics?**

As indicated above, an Asylum Officer may retain original documents, with the applicant's permission if the AO *believes*, in consultation with the FPO, that a document is fraudulent or was fraudulently obtained, or if the applicant *admits* to the AO that the document is fraudulent or was fraudulently obtained. In the event documents are submitted to FDL, the AO will follow the procedures outlined above. Documents determined to be fraudulent will not be returned to the applicant. If the Asylum Office returns the document to the applicant in person, the applicant should sign on the file copy of the document that he or she received the original. If the Asylum Office mails the document, it must be sent via certified mail with a return receipt requested.

12. Is Mary Winkler still the person to contact to request an interview extension? Would the AO consider changing the current procedure given that oftentimes confirmation of a reschedule request is not received until after the original interview date has passed?

All attorney inquiries and reschedules are sent to Mary Winkler, fax 714-635-9136, <mary.winkler@dhs.gov>. Requests to reschedule must be made in writing, and any written request must be received within 15 days after the interview date. You may request rescheduling confirmation from Ms. Winkler. If there is no response, you may contact the Deputy Director or Director at the same fax number.

Many times, attorneys contact Ms. Winkler after the interview date or she does not receive the reschedule request until after the interview date. As long as the request is received less than 15 days after the interview date, Ms. Winkler can reschedule the interview. If a case gets referred to court because a reschedule request was directed to somewhere at the Asylum Office other than her fax or email, the file can be recalled if the attorney can demonstrate that a request was sent in a timely manner.

As a reminder of our rules for re-scheduling, please see Affirmative Asylum Procedures Manual, pp. 137-38, November 2007.

“As a matter of Asylum Division policy, the Asylum Office reschedules an interview if it is the applicant's first request for a rescheduling, and the request is received prior to the interview date. If a request to reschedule an interview is made on or after the interview date, or if the interview has already been rescheduled on one (1) occasion, the applicant must establish that the request for a rescheduling is due to “good cause.” “Good cause” may be defined as a “reasonable excuse for being unable to appear for an asylum interview.” What may be a reasonable excuse for one applicant may not be reasonable when looking at the circumstances of another applicant.” Excuses and requests for a rescheduling will be examined on a case-by-case basis before determining whether the request to reschedule will be honored.

The Asylum Office will reschedule an asylum interview if the applicant presents exceptional circumstances for his or her inability to appear or the interview notice was not mailed to the most recent address provided by the applicant and received by USCIS prior to the issuance of the interview notice, regardless of any previous reschedule requests.

13. Are NOIDs routinely issued to asylum applicants in lawful status? In what circumstances would/could an Asylum Officer NOT send an NOID before terminating and/or referring an application for asylum?

NOIDs are routinely issued to asylum applicants that are in a legal status.

The rule of thumb is:

If the applicant will be in a legal status on the date of the decision pick-up date (also known as the "PUSH" date), a Mail Out Notice rather than a PUSH notice is given at the interview and a NOID is subsequently prepared if the case will not be granted.

At the time of Final Denial, if the applicant is still in a legal status, no NTA will be issued.

If the applicant later falls out of status and wants to be referred to the court, the attorney can submit a Courtesy NTA Request. A written request can be left with the Duty Officer or faxed to 714-635-9136, ATTN: SAO Tonya Burdine. This is the collateral duty for this particular SAO. She will make certain the request is completed. She will first have to locate and request the file in order to proceed.

14. Where and to whom are Motion to Reconsider asylum referrals sent? Under what circumstances will AOs reconsider and re-interview an asylum applicant that has already been issued an NTA?

An Asylum Office Director need only consider a motion to reopen or reconsider for a case that has received a Final Denial from an Asylum Office. The motion must be submitted within 30 days of the decision that the motion seeks to reopen or reconsider. Failure to submit the motion to reopen before the 30-day period expires may be excused in the discretion of the Asylum Office Director where it is demonstrated that the delay was reasonable and was beyond the control of the applicant. (8 CFR 103.5) Motions to Reopen or Reconsider Final Denials may be submitted directly to the Asylum Office, ATTN: SAO Tonya Burdine.

Because referred cases have not received a final decision, they are not entitled to reconsideration; however, an Asylum Office Director may seek to terminate an NTA that was served on the Immigration Court if he or she believes an egregious error may have been committed. Applicants and/or counsel who believe an NTA should be terminated due to an egregious error that is prejudicial to the applicant may direct such requests to the Director or Deputy Director.

15. Members report several instances where applicants were referred to court because the notice of interview was mailed to the wrong address. Is there a procedure to follow to revert back to an affirmative interview? This has led to applicants not being afforded an administrative interview as envisioned by the regulations. How is this accomplished?

As noted in the instructions for completing both Asylum (Form I-589) and NACARA (Form I-881) applications, the home address provided on the application, or the last change of address submitted by the applicant, is the applicant's address of record and will be used by USCIS for mailing. If an applicant moves while an Asylum or NACARA application is pending, **the applicant is required** to notify USCIS, in writing, within ten (10) days of moving to the applicant's new address.

While an application (Asylum or NACARA) is pending before an asylum office, **an applicant must notify the USCIS Asylum Office of any change of address.** This notification may be made via either the submission of Form AR-11 (Alien's Change of Address Card), or by a signed and dated letter. Submission may be done in person, by mail, or by fax.

If there is evidence that the applicant timely notified ZLA of an address change, and ZLA sent the interview notice to the incorrect address, the referral may be recalled. A request to recall the case must be made, in writing, to the Director or Deputy Director. The decision to recall a case will be made on a case-by-case basis, at the Director's discretion.

A referral to court caused by an applicant's failure to notify ZLA of an address change will not be recalled. When an interview notice is sent to an applicant, an interview notice is also sent to the applicant's attorney of record. If an interview notice is sent to an applicant's attorney of record, and the case is referred to court because the applicant failed to appear for the interview, the referral will not be recalled.

## **Nunc Pro Tunc**

16. What is the specific procedure and how long does it take to adjudicate nunc pro tunc asylum requests? Members report that asylum officers are conducting nunc pro tunc asylum interviews in the same fashion as affirmative asylum applications. This appears to be unfair given that the aged out children may not be familiar with the exact basis for which their parents were granted asylum or left at too tender of an age to remember specific details. Is there a contact person to inquire when the incorrect procedures for a nunc pro tunc asylum interview are being used?

### **What is the specific procedure for obtaining Nunc Pro Tunc (NPT) interviews?**

The best way to be assured of having a NPT case scheduled for interview is to send a completed I-589 and a written request for interview to the Nunc Pro Tunc coordinator at the Los Angeles Asylum Office. Please indicate on the outside of the envelope, "Attention: Nunc Pro Tunc Coordinator". Interviews will be scheduled when the Asylum Office receives the requested A-files.

### **How long does it take to adjudicate Nunc Pro Tunc asylum requests?**

We have been catching up with a significant backlog of NPT cases, and trying to process them in the order they were filed. A substantial part of the backlog has already been eliminated. It is anticipated that, if cases continue to be processed at the current rate, there will be a short turnaround time for newly received NPT filings.

### **Why have Nunc Pro Tunc Cases received Affirmative Asylum interviews?**

This has occurred because the California Service Center receives undifferentiated I-589 applications which appear to be new receipts. Then, the cases are automatically scheduled at the Los Angeles Asylum Office—sometimes with Asylum Officers who are not familiar with the NPT processing procedures. In order to prevent the recurrence of this problem, there has been and will be ongoing training. If you and/or the applicant have received an affirmative asylum interview notice in error, please contact the Asylum Office as soon as possible.

### **Is there a contact person for inquiries when incorrect procedures are applied?**

Please direct your inquiries to the attention of SAO Ira Aspiz, the Nunc Pro Tunc Coordinator, 714-808-8003 (phone), 714-635-9136 (fax). Contact by mail or fax is preferred.

17. In a nunc pro tunc case for an age out, where an applicant files for adjustment before turning 21, then ages-out while the case is pending, the Asylum Office has suggested that the applicant file a nunc pro tunc asylum application. However, this has led to the adjustment applications losing their place in the queue and being subjected to undue delay. Is there a way to rectify this problem?

If the Applicant is protected by the Child Status Protection Act, there is no need to file an application for a Nunc Pro Tunc filing. Otherwise, it is appropriate to contact the NPT Coordinator to transfer the file from the Service Center to avoid the possibility of a denial from the Service Center on the I-485.

### **PLEASE NOTE SERVICE CENTER PROCEDURE CHANGE**

The Service Centers are no longer sending files to the Asylum Office which contain unadjudicated I-589 applications for derivatives. If the Applicant has not maintained derivative eligibility at the time of

adjudication of the I-485 by the Service Center, that application will be denied. A new I-485 application and filing fees will be required by the Service Center. It is therefore beneficial to either:

- (a) Arrange for the Los Angeles Asylum Office to obtain the file before the Service Center adjudicates the I-485; **or**
- (b) File the I-589 prior to filing the I-485

### **NACARA**

18. Is it possible to file I-881 applications for derivatives a few months in advance of their 7 years in US, given that it takes several months to process/schedule interviews? How far in advance would be acceptable?

It is possible to file I-881 applications for derivatives in advance of their meeting the seven year continuous physical presence requirement. Service Centers will receive and receipt Form I-881 provided the individual establishes their eligibility to file the I-881. Although the Service Centers are responsible for making initial checks to ensure the individual has established eligibility to apply, Service Centers do not review applications for continuous physical presence in the United States as this is a statutory element required to establish eligibility for a grant of relief under NACARA.

It is the decision of the applicant and his/her representative as to when to file Form I-881. Once received at the Asylum Office, cases are scheduled as soon as they are ready for interview (i.e., completed security checks, file consolidation, RAP sheets interfiled). A mixture of old and new receipts are currently being scheduled for interview, based on interview readiness. Once an interview is scheduled, the Asylum Office will move forward on making a decision on eligibility for NACARA, including the determination of whether the applicant has met the continuous physical presence requirement. Cases will not be placed on HOLD to wait until an applicant may become eligible for a prospective benefit. Therefore, it is encouraged that an applicant file Form I-881 when they have met the continuous physical presence requirement.

19. While it appears that USCIS Information Officers working InfoPass appointments at the local Field Offices have access to RAPS, most Information Officers are unable to correctly interpret the data listed in RAPS. Complicating matters is the fact that the information provided by the clerks at the window at the Asylum Office during in-person inquiries on Wednesdays varies from clerk to clerk. For example, some clerks advise attorneys that they cannot disclose such basic information as the applicant's I-589 filing date or the applicant's "Special Group" listing, and one clerk advised that she could not even confirm whether a particular attorney was even the applicant's attorney of record unless the attorney knew his G-28 identification number. Are the clerks at the window limited in what screens in RAPS, CLAIMS, and CIS they can access? Alternatively, are they limited in what information from these screens which they can disclose to an applicant's attorney who presents a properly executed G-28? If so, how can attorneys obtain basic information about their clients' cases?

Asylum Clerks do have general access to USCIS computer systems such as RAPS, CLAIMS, and CIS. Wednesday's inquires at window 1 are conducted by Contact Representatives (CRs) who are all the same grade level. Page 69 of the November 2007 Affirmative Asylum Procedures Manual states that, "Information contained in or pertaining to any asylum application shall not be disclosed without the written consent of the applicant, except as permitted by 8 C.F.R. 208.6 or at the discretion of the Secretary of

Homeland Security. This includes neither confirming nor denying that a particular individual filed for asylum.” The CRs will verify that someone claiming to be the applicant’s attorney is listed as the applicant’s attorney in RAPS. There are occasions when an attorney will submit a G–28 at window 1 unsigned by the applicant and ask for information. On other occasions an attorney will assert that he or she faxed the G–28 or that they sent it to Mary Winkler and she put it into the system. In such situations, the attorney is asked to submit a “properly executed” form G-28 and told that case information will not be disclosed until the G-28 information is entered in RAPS.

Page 24 of the November 2007 Affirmative Asylum Procedures Manual states that, “A Form G-28, Notice of Entry or Appearance as Attorney or Representative must be properly executed. “Properly executed” is defined as follows: [For a Form G-28 filed on or after February 10, 1994] The signatures of the applicant and the representative are required on the form. If both signatures are not present, USCIS does not recognize that the applicant is represented.”

What information is disclosed depends on what is being asked and what information is available to the CR. CRs can provide the following information to attorneys:

1. The status of an applicant’s I–589 and or I–881 applications.
2. The date and time of a scheduled interview and which application their client will be interviewed for (I–589 or I-881).
3. An informal FOIA can be provided, when the attorney submits an inquiry requesting one. The informal FOIA will provide filing date, date of entry, status of entry, dependents listed on the case and any other information listed on the I–589 application.
4. If the case has been granted this information can only be given out if the Grant letter and I–94 has been issued and RAPS is updated (GLET). The case history screen (CHIS) is also checked to see what type of service was provided to the applicant in person or by mail. This information will let us know if the applicant or attorney has the correct address on file. If the address is inaccurate in RAPS the attorney must submit a change of address signed by his client. The applicant’s signature can be verified by the I–589 application.
5. If the case has been Denied or Referred to the IJ this information can only be given out if the NTA or Denial letter has been updated in RAPS (OSSE, DENY screens). The case history screen (CHIS) is also checked in the same manner as #4 to ensure that the correct address is on file.
6. If the case has a Recommend Approval or NOID it will be treated in the same manner as the Grant, Denial and Referral, as outlined in #4 and #5.
7. CLAIMS information can be given out if it pertains to an asylum application. The reason for this is that we are an Asylum Office and not a full service office. Any information we provide regarding other applications and CIS benefits may be wrong or incomplete.
8. CIS information can be given out if it pertains to an asylum application, the same as CLAIMS.
9. Other people may make inquiries on the applicant’s behalf who are not the applicant’s attorney of record, such as an applicant’s interpreter. No information can be provided if the applicant is not present at the time of the inquiry. If the applicant is not present, we do not know who we are providing information to so we don’t provide it.

An attorney may ask for more information than what is available to the CR at the computer screen. As a result, written inquiries remain the best option for a comprehensive, responsive answer. All attorney inquiries should be sent to Mary Winkler, fax 714-635-9136. If there is no response, you may contact the Deputy Director or Director at the same fax number.

20. Lately mailed written inquiries have gone unanswered or have been returned with non-responsive answers (i.e. "Your case is pending"). Unfortunately, in person inquiries by attorneys at the window on Wednesdays don't fare much better, as attorneys are directed to leave their inquiries in writing and are not referred to the duty supervisor in the way that unrepresented applicants who appear on Wednesdays frequently are. The explanation given at the window for this disparate treatment is that attorneys are permitted to inquire directly with Congressional Liaison Mary Winkler by phone, fax, and/or e-mail. However, Mary Winkler is only one person who at the present time is overburdened with routine matters such as rescheduling requests. Also, it is unclear whether Mary Winkler has the authority to evaluate claims of Asylum Officer error or to seek to have a case reconsidered or re-interviewed. Therefore, in cases where supervisory review is required for action to be taken, could the Asylum Office please consider allowing attorneys access to speak with the duty supervisor in person on Wednesdays or by some other means?

Mary Winkler does not have the authority to review claims of error, reconsideration, or reinterview. Written inquiries are forwarded to the supervisor of the officer who handled the case. It is the supervisor's responsibility to respond to such inquiry, as his/her duties allow. Attorneys may ask to speak with a duty supervisor in person on Wednesdays, but as that supervisor may not be the supervisor of the officer who handled the case, there may be some delay in responding to an in-person inquiry, as that duty supervisor must consult with the actual supervisor in charge of the case. Thus, written inquiries remain the best option for a comprehensive, responsive answer. If you feel that your inquiries are not being responded to in a timely manner or that the responses are non-responsive, please contact the Deputy Director or Director.

21. What can be done if anything when background checks are pending for over a year? Would the asylum office consider utilizing the same procedure that has been used recently by the District Office for applications for adjustment of status (i.e., approving case due to delayed background checks and then rescinding the decision if something adverse later surfaces)?

On April 2, 2008, USCIS and FBI announced a joint plan to eliminate the backlog of FBI name checks. Their case completion goals are as follows\*:

May 2008	Process all name checks pending more than three years
July 2008	Process all name checks pending more than two years
Nov. 2008	Process all name checks pending more than one year
Feb. 2009	Process all name checks pending more than 180 days
June 2009	Process 98 percent of all name checks within 30 days and process the remaining two percent within 90 days.

(\*Information obtained from the USCIS.gov web site)

#### **NACARA Cases**

As a reminder, NACARA procedures state that a definitive "no record" response or a resolution of any positive response is required for the primary name, and the resolution of any positive response is required for all aliases, prior to the issuance of a NACARA 203 approval. The Asylum Office does have a system in place to monitor those cases where the primary name is pending a final name check result.

#### **Affirmative Asylum Cases**

##### Recommended Approvals

Recommended approvals are issued for those cases where the FBI name check response is “IP” (pending) for the Principal Applicant or one or more of the family members. The Asylum Office must wait for a definitive “no record” response or a resolution of any positive response for the primary name and all aliases before the issuance of a final approval. The Asylum Office does have a system in place to monitor these pending name checks on a weekly basis. Unfortunately, in some cases the name check process can take a considerable amount of time. The Asylum Office has no control over this timeframe and there are only limited circumstances where an expedited name check can be requested. The Asylum Office is only allowed to request an expedited name check if the case involves one or more of the following issues:

military deployment;  
age-outs of dependents not covered under the Child Status Protection Act (CSPA) and applications affected by sunset provisions such as Diversity Visas (DVs); or  
Loss of Social Security benefits.

An applicant or his/her representative may make an inquiry on their case at any time to follow up on whether they are eligible for a final approval. The applicant will be sent to an Application Support Center (ASC) for updated fingerprints if, at the time their final name check response is received, their most recent FBI fingerprint check is “non-ident” and more than 15 months old.

#### Referrals to Immigration Court

For cases that are not recommended for approval, asylum procedures do allow for these cases to be referred to the Immigration Court before receiving a final result of the FBI Name Check or with a positive response. If you have information on any cases that should have been referred to the Immigration Court but are being held by the Asylum Office because of a pending name check, please submit the A-numbers of these cases to SAO Stephen Ulloa at fax (714) 635-9136.

The suggestion to adopt the District Office’s policy regarding pending background checks for applications for adjustment of status and apply it to pending background checks for applications for NACARA and affirmative asylum would have to come from HQASM and be applied nationwide. At this time, HQASM has not indicated an intention to follow the approach currently in effect at the USCIS District Offices.

22. An interpretation of NACARA is that a person apprehended at entry only loses NACARA eligibility if it is based on ABC class membership. But if they are a qualifying relative or someone with a pre-April 1990 asylum application, it should not matter. Moreover, the LIFE Act amendments clarified that reinstatement does not apply to NACARA-eligible people. So, if someone who was deported in the mid-1990s, re-enters EWI & now has 7+ yrs CPP can now apply as a qualifying relative, the question is whether the Asylum Office agrees & whether they will adjudicate the application or refer to Court?

The LIFE Act specifically provides that an individual who may be subject to reinstatement of a prior order but is otherwise eligible for relief under NACARA shall not be barred from applying for such relief. This means that a NACARA applicant who was deported, excluded or removed from the United States, or otherwise left the United States while under a final order, and then reentered the United States illegally, may still apply for and be granted relief under NACARA 203, if eligible. The Asylum Office will adjudicate the I-881 of such applicant(s).

23. Are the April 23, 2007 amendments to the ABC-NACARA Procedures Manual available to the public on-line? If not, would the Asylum Office consider releasing these amendments?

The ABC/NACARA Procedures Manual remains in draft form and will not be made available to the public. Similarly, the memos that amend/update the manual will not be made available to the public.

24. The latest statistics on NACARA adjudications by the Asylum Offices reveal that the percentage of cases dismissed, denied, and/or referred to EOIR has increased. The impression is that due to the ever increasing workload Asylum Officers who previously would examine and weigh multiple factors in rendering a complex judgment are now quick to prematurely terminate an interview and find an applicant "ineligible to apply" at the first indication that the applicant might not qualify. Considering this reality borne out by the statistics, could the Los Angeles Asylum Office please institute a quick and effective "Service Motion to Reopen" process for NACARA cases while the applicant's I-589 still remains pending? Common examples of possible erroneous ineligibility findings include: 1) the applicant is still on probation for a single misdemeanor offense (but a careful review of the court disposition would reveal that the applicant timely complied with all the Court's orders and successfully completed all conditions of probation except remaining time); 2) the applicant served in the Salvadoran or Guatemalan military or security forces during his country's civil war (but an in depth interview would reveal that the applicant, as a result of his particular duties, had no personal involvement in human rights violations and/or gave no purposeful assistance in furthering such violations); 3) the applicant overstayed an order of voluntary departure issued by an Immigration Judge in deportation proceedings (but the Asylum Officer failed to consider whether the voluntary departure period was tolled by the ABC Settlement Agreement and/or whether the applicant's passport and/or the Service's own records establish that the applicant's deportation proceedings were terminated by the applicant's departure from the U.S. over 7 years ago); and/or 4) the applicant's name is not listed in the ABC database (but a closer review of the case might reveal that the applicant first applied for asylum with INS or EOIR as a principal or dependent by April 1, 1990, or that the applicant can (pursuant to the June 8, 2006 memorandum from Asylum Director Joseph E. Langlois entitled "Making ABC Determinations") credibly establish that he or she timely mailed the ABC registration form, and/or the applicant can (pursuant to the 9th Circuit Court of Appeals decision in Chaly-Garcia v. U.S., 508 F.3d 1201 (9th Cir.(Or.), Nov 29, 2007)) credibly establish that he or she timely indicated to the INS in writing by some other means his or her intent to receive the benefits of the ABC settlement agreement).

In comparison with FY07, there has been an approximately 2% decrease in the number of NACARA approvals. In all cases, AOs are tasked with examining and properly weighing all relevant factors before rendering a decision; if there is evidence that an AO "prematurely terminated an interview" and pre-terminated a pending application, please contact ZLA Management for follow-up inquiry. There is no formal procedure for handling an MTR based on an I-881 ineligibility finding. If the I-881 ineligibility finding was based on an ABC ineligibility determination, the applicant or his representative can ask for a re-determination of ABC eligibility via written response to the Notice of ABC Ineligibility. If there is evidence of a clear AO error (such as a finding of ineligibility because of one domestic violence conviction after 9/30/96 for an applicant who is inadmissible and whose conviction met the mild penalty exception) in a case that is otherwise grantable, the Asylum Office may entertain a request to reconsider a clearly erroneous I-881 ineligibility determination. If a NACARA ineligibility determination resulted from a weighing of evidence, then the NACARA decision probably would not be reconsidered. Please direct any requests in writing to the attention of ABC/NACARA Coordinator Joan Petrie or Barbara Avery.

25. Would the Asylum Office consider reopening cases that are no longer pending (and possibly request cases back from EOIR) where an applicant has become eligible for NACARA relief as a result of Chaly-Garcia v. U.S., 508 F.3d 1201 (9th Cir.(Or.), Nov 29, 2007) (i.e. the applicant's I-881 was denied, dismissed, or referred because the applicant failed to timely submit the formal ABC registration form to the ABC Project's Post Office Box in Washington D.C., but the applicant instead timely indicated to the INS in writing his or her intent to receive the benefits of the ABC settlement agreement by filing an I-589 asylum application during the ABC registration period)?

Once EOIR assumes jurisdiction over a case, the Los Angeles Asylum Office may request that the case be returned to USCIS jurisdiction if there is clear evidence of an Asylum Office error that has prejudiced the applicant. We are unaware of any cases in which, since the issuance of the Chaly-Garcia decision, an otherwise eligible ABC class member has been found ineligible for ABC benefits due to a failure to timely submit an ABC registration form, despite having filed an I-589 during the applicable ABC registration period. Our office will entertain requests to reconsider ABC ineligibility determinations that were, subsequent to the issuance of Chaly-Garcia, erroneously based on this ground. Please direct your requests in writing to the attention of ABC/NACARA Coordinator Joan Petrie or Barbara Avery.

HQASM is currently reviewing the status of cases that were dismissed, denied, or referred on this ground prior to the issuance of Chaly-Garcia. We are awaiting nationwide policy guidance on what reconsideration, if any, will be provided for these cases.

26. Would the Asylum Office consider reopening cases that are no longer pending (and possibly request cases back from EOIR) where an applicant has become eligible for NACARA relief as a result of the September 6, 2007 memorandum from USCIS Asylum Division Chief, Joseph E. Langlois (clarifying that a single misdemeanor domestic violence conviction on or after September 30, 1996 shall no longer be considered by the Asylum Offices a bar to the granting 7 year NACARA § 203 relief to inadmissible applicants)?

As mentioned previously, once jurisdiction passes to EOIR, the Los Angeles Asylum Office may request return of the case in limited situations where there is clear evidence of Asylum Office error that has prejudiced an applicant. While there is no formal procedural mechanism through which to seek a reopening of a NACARA application, we will, on a case-by-case basis, entertain requests to reconsider NACARA applications that were, subsequent to the issuance of the September 6, 2007 memorandum, erroneously dismissed or referred based on the aforementioned ground, if the applicant appears otherwise eligible for NACARA relief. Please note that for those NACARA applicants who are subject to the grounds of inadmissibility, a crime of domestic violence, stalking, or child abuse as described in INA Section 237 must still be considered in the assessment of good moral character and the applicability of any other provisions of Section 212, as well as the exercise of discretion.

Please direct your requests for reconsideration in writing to the attention of the ABC/NACARA Coordinators.

27. Would the Asylum Office consider reopening cases that are no longer pending where a NACARA applicant was found ineligible to apply as a result of an outstanding voluntary departure order but the Asylum Officer failed to consider the June 2005 Asylum Officer

Training Lesson Plan on NACARA Suspension of Deportation section II.F.4., page 13 (which states that if "an ABC class member was given Voluntary Departure, and the Voluntary Departure period extended beyond the date the ABC Settlement Agreement was signed (December 14, 1990), the Voluntary Departure period was in effect tolled by the Settlement Agreement... [and] the applicant is eligible to apply for NACARA 203 relief, and the USCIS Asylum Program has jurisdiction over the case")?

Yes, if there is clear evidence of Asylum Office error that is prejudicial to the applicant and the applicant's case appears otherwise approvable. Please direct your requests in writing to the ABC/NACARA Coordinator.

28. Page 15 of the Asylum Division's ABC/NACARA Procedures Manual states that "[u]nder the BIA decision Matter of Gutierrez, 21 I&N Dec. 479 (BIA 1996), [ABC] class members in proceedings (either administratively closed or active) can go forward on non-asylum applications for relief without waiving any rights under the settlement agreement". However, this often proves to be a meaningless right due to the near impossibility of getting the Asylum Office to forward to ICE the A-files of applicants whose ABC asylum applications are still pending adjudication by the Asylum Office. While in such cases the Asylum Office is not literally preventing the applicant from pursuing other relief before EOIR, the practical effect is the same because ICE will not permit the case before EOIR to go forward until it obtains the applicants' A-file. Even where an applicant may only be seeking administrative closure of Immigration Court proceedings to permit the Asylum Office to accept and adjudicate the applicant's I-881 NACARA § 203 application, the Asylum Office's refusal to release the applicant's A-file creates a frustrating Catch-22 situation (i.e. the Asylum Office will release the applicant's A-file to permit ICE to agree to administrative closure of deportation proceedings only after the Asylum Office completes its adjudications of the applicant's ABC asylum case, but after such adjudication the Asylum Office will no longer have jurisdiction to adjudicate the applicant's NACARA application). Therefore, what can be done to get the Asylum Office to lend an ABC asylum applicant's A-file to ICE before the Asylum Office completes adjudication of the applicant's ABC asylum application?

In order to avoid an increase of ABC asylum applications that cannot be readily adjudicated because the Asylum Office no longer has possession of the A-files, the Asylum Office will generally not prematurely release an A-file before the ABC asylum adjudication is complete. Currently, there are fewer than 100 local ABC asylum applications without I-881s pending at ZLA. For the exceptional case where the transfer of the A-file to another agency despite the open ABC asylum application is deemed the best course of action (particularly in those cases where an applicant is seeking administrative closure of Immigration Court proceedings to permit the Asylum Office to accept and adjudicate the applicant's I-881 NACARA § 203 application), please contact the ABC/NACARA coordinators.

29. As a result of the sometimes unexplainable nature of the reasons for which the Asylum Office refers NACARA applications to EOIR, ICE trial attorneys and Immigration Judges often incorrectly assume that the Asylum Office must have found that the applicant failed to timely register for ABC (especially in cases where the applicant first filed for asylum after 1991). Since, at least in the asylum context, EOIR believes that the

Asylum Branch has exclusive, unreviewable jurisdiction over ABC registration determinations (*see* Matter of Morales, 21 I&N Dec. 130, Int. Dec. 3259 (BIA *En Banc* 1996)), could the Asylum Office therefore please indicate its ABC registration determination in its referral notice or in its filings with the EOIR?

The Asylum Office includes a written decision in the A-file for all interviewed and adjudicated cases, and issues NACARA decision letters to applicants which summarize the basis of any ineligibility determinations. Furthermore, any Asylum Officer who adjudicates an ABC asylum or a NACARA "A" or "B" case is required to complete and include in the A-file an ABC checklist that indicates the disposition of the applicant's ABC benefits eligibility. If an applicant is found ineligible for ABC benefits, the applicant will be issued an ABC Ineligibility letter that specifies the basis for the ineligibility determination. ICE attorneys have access to all documents in an applicant's A-file, and the IJ has access to all applications (and supporting documentation) that have been referred to EOIR. If there is any question regarding an applicant's eligibility for ABC benefits, please contact the ABC/NACARA coordinators.

30. Considering the fact that the Asylum Office's "guilt by association" policy regarding suspected military persecutors ("bad unit + bad place + bad time = referral to EOIR") runs afoul of 9th Circuit case law (e.g. Vukmirovic v. Ashcroft, 362 F.3d 1247 (9th Cir. April 4, 2004) and Miranda Alvarado v. Gonzales, 449 F.3d 915, 927 (9th Cir. 2006)), could ZLA please at least hold referral of these cases to EOIR in abeyance until the Supreme Court issues its decision in Negusie v. Mukasey, No. 07-499? The question presented in Negusie is: "Whether the "persecutor exception" prohibits granting asylum to, and withholding of removal of, a refugee who is compelled against his will by credible threats of death or torture to assist or participate in acts of persecution." Holding off on such referrals would also be consistent with the March 27, 2008 memo from USCIS Deputy Director Jonathan Scharfen entitled "Withholding Adjudication and Review of Prior Denials of Certain Category of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups".

**Does the Asylum Office have a "guilt by association" policy, regarding suspected military persecutors such that "bad unit + bad place + bad time = referral to EOIR"?**

The Los Angeles Asylum Office does not maintain any "guilt by association" policies regarding possible persecutors.

According to the NACARA Lesson Plan, p.70, "Evidence the applicant participated in persecutory acts may include information from country conditions reports or the El Rescate or Guatemalan Military Database, indicating the applicant served with a "bad unit," at a "bad time," and in a "bad place." In other words, there is evidence the applicant's military, guerrilla, or security force unit committed serious abuses at a time when and location where the applicant served. If there is evidence the applicant participated in the persecution of others on account of a protected characteristic, the applicant bears the burden of clearly establishing otherwise. The applicant may meet this burden by providing detailed, credible testimony, explaining how he or she was able to avoid assisting in the persecution of others, given the circumstances.

Second, "guilt by association" is not true for all cases we adjudicate on the persecutor issue. Some applicants testify to individual acts of persecution. Others testify to belonging to "a particular unit at a particular place at a particular time" that resources, such as the El Rescate database, indicate was engaged in persecutory activities, but they do not testify to committing individual acts of persecution. Some will deny any knowledge of the persecutory acts found in the databases, which will give rise to

credibility issues. The two 9<sup>th</sup> Circuit cases (Vukmirovic and Miranda Alvarado) hold that “it is not enough that an alien is a member of a group that engaged in persecution; individual accountability must be established.” Credibility issues and “line-drawing problems” notwithstanding, the cited cases provide an analytical framework to apply to applicant testimony regarding “assistance/participation,” “personal culpability,” and nexus, and do not conflict with Asylum Office policy.

**Could ZLA please hold referral of these [suspected military persecutor] cases to EOIR in abeyance until the Supreme Court issues its decision in Negusie v. Mukasey, No. 07-499?**

By way of background, Negusie was an Eritrean prison guard for four years at a prison where inmates were persecuted. He argues that he was forced to be a guard. It was involuntary. There is a split in the circuits regarding involuntariness: The 8<sup>th</sup> Circuit held that “involuntariness is one of the many relevant factors,” whereas the 5<sup>th</sup> Circuit held that it is irrelevant to the application of the persecutor bar. Negusie argues that Congress never intended for the persecutor bar to apply to asylum-seekers forced to engage in persecutory acts. The government argues that there is no exception to the persecutor bar for individuals who acted involuntarily. It cites 8 USC 1101(a)(42) and 8 USC 1231(b)(3)(B)(i) and Fedorenko v United States and the Displaced Persons Act. The government also argues that the 8<sup>th</sup> Circuit was quoted out of context, and there is *no* case in which a court of appeals held that a person was exempt from the persecutor bar because his participation was involuntary.

Thus, Negusie deals with “involuntary” acts of persecution that could apply to applicants who were forcibly recruited during the civil war. AILA proposes that suspected military persecutor cases be placed on hold pending the Supreme Court decision. The suspected military persecutor cases processed at the Asylum Office do not, by and large, involve the “involuntariness” of the Negusie case. The central issue of such cases is “individual” accountability and culpability, not “involuntariness.” Since “individual accountability” and not “involuntariness” is the central issue in these cases, cases involving suspected military persecutors will not be placed on hold pending the Supreme Court decision in Negusie unless HQASM instructs to the contrary. For those cases that do involve an “involuntariness” issue, the Asylum Office does not, absent direct HQASM guidance, generally hold cases due to pending, unresolved appellate litigation.

**Could ZLA please hold referral of these [suspected military persecutor] cases pursuant to the March 27, 2008 memo from USCIS Deputy Director Jonathan Scharfen entitled "Withholding Adjudication and Review of Prior Denials of Certain Category of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups"?**

This memorandum instructs adjudicators regarding the withholding of adjudication of certain cases that could benefit from the Secretary’s expanded discretionary authority and to initiate a review of prior denials of certain categories of cases decided after the December 26, 2007, effective date of the Consolidated Appropriations Act of 2008, Pub. L. 110-161, 121 Stat. 1844 (“CAA”). The cited memo places certain types of terrorist cases on hold pending implementation of the CAA. This memorandum applies to terrorist cases, not persecutor cases. Unless HQASM instructs to the contrary, suspected military persecutor cases will not be placed on hold.

31. The USCIS Asylum Branch has been routinely issuing NTAs and initiating removal proceedings against many Salvadoran and Guatemalan asylum seekers with final, unexecuted orders of deportation who, notwithstanding these final orders, were permitted to apply or reapply for asylum with the USCIS Asylum Branch under the terms of the settlement agreement in American Baptist Churches v. Thornburgh, 760 F.Supp. 796 (N.D. Cal. 1991). In many of these cases, the NTA lists the asylum applicant’s same name, A-number, and the same exact date of entry as listed on the applicant’s prior OSC

(and, in fact, in many cases the reason the Asylum Office dismissed the applicant's NACARA § 203 application was precisely because of the existence of the applicant's outstanding final order of deportation in the prior EOIR proceedings). The Asylum Office's institution of removal proceedings against such applicants with final, unexecuted deportation orders may violate section 309(c)(1) of IIRIRA, which provides that "in the case of an alien who is in exclusion or deportation proceedings as of the title III-A effective date - (A) the amendments made by this subtitle shall not apply". What accounts for the institution of these duplicative Immigration Court proceedings against unsuccessful ABC asylum applicants? Is this merely a pervasive mistake wrought by the sheer volume and automation of the Asylum Office's workload? Or is the Asylum Office trying to effectuate the intent of the ABC Settlement Agreement to permit unsuccessful ABC asylum applicants to reopen their EOIR proceedings for review of the Asylum Office's adjudication in order to get around the September 30, 1996 time and number limitations on motions to reopen deportation proceedings (since these limits post-date the enactment of the ABC Settlement Agreement)?

We are not aware that our office "has been routinely issuing NTAs" for ABC cases with final orders. Instead, we issue "Appendix P," and forward the files either to Office of Chief Counsel for ICE motion to calendar proceedings (usually to pursue NACARA before the IJ), or to the Office of Detention & Removal to execute the outstanding orders.

As a point of clarification, if an ABC case has a final order, we issue "Appendix P" and forward the file to the Office of Detention & Removal to execute the outstanding orders. If an ABC case does NOT have a final order (i.e. the case was administratively closed before the IJ), we issue "Appendix P" and forward the file to the Office of Chief Counsel for ICE motion to calendar proceedings. When the proceedings are re-calendared, the alien may pursue NACARA before the IJ. We do not send ABC cases with final orders to OCC. We do not issue NTAs for ABC cases with final orders.

Please bring any case for which an NTA was improvidently issued to the immediate attention of an ABC/NACARA Coordinator.

32. Why does the Asylum Office issue Notices of ABC Ineligibility to NACARA applicants who qualify for NACARA § 203 relief because they first applied for asylum by April 1, 1990 and who have never claimed that they registered for ABC benefits? It is not the applicant's fault that the Asylum Branch elected to be over-inclusive in classifying asylum cases as Special Group ABC, nor is it the applicant's fault that this may have caused the California Service Center to enter the applicant's I-881 into RAPS as an ABC case, despite the fact that the applicant never checked the first box (Box (a)) on Part 2 of the I-881 (but rather checked Box (b)). Therefore the applicant should not be penalized by the delay in adjudicating his I-881 entailed by the Asylum Office's first resolving the non-existent ABC registration controversy.

The Asylum Office does not consider ABC eligibility determinations as a means of penalization, but rather as an integral way to ensure that ABC class members receive any and all ABC benefits to which they may be entitled. The Asylum Office makes an ABC determination for all NACARA and asylum pre-reform cases submitted by Salvadorans and Guatemalans, and subsequently issues a Notice of ABC Ineligibility to any applicant who is not a registered ABC class member who is eligible for ABC benefits. A Notice of

ABC Ineligibility can be issued to someone who may qualify for NACARA § 203 relief under what is referred to as “eligibility B” (denoted as box (b) on Part 2 of the I-881 application form, indicating that the individual had filed for asylum by April 1, 1990), but this will not impact their eligibility to apply as a “B.” The ABC Ineligibility Notice is required because although the individual is a class member, they may not have registered for, or otherwise be entitled to, ABC benefits and, therefore, do not fall under the protections of the ABC Settlement Agreement. This issue must be addressed in the event that the NACARA application is not granted and an affirmative asylum interview is scheduled for a later date. If the Notice of ABC Ineligibility is issued at a pre-reform asylum interview for an individual who has not applied for NACARA, the ABC eligibility determination will not require a re-adjudication by an Asylum Officer at any subsequent NACARA interview.

33. While, according to the USCIS and FBI Joint Plan to Eliminate Backlog of FBI Name Checks, all FBI name check pending over 3 years have now been completed, what can be done to get a case adjudicated where the FBI name check has been completed but the continuing delay is the fault of the LESC in failing to forward the FBI's response to the Asylum Office?

A USCIS News Release dated April 2, 2008 detailed the USCIS and FBI Joint Plan to Eliminate the Backlog of FBI Name Checks. (See response to Question 21). Several target dates are set forth in this News Release, starting with a May 2008 date for completing the processing of all name checks pending more than 3 years. Successive target dates over the rest of 2008 are set for all name checks pending more than 2 years, 1 year, and 180 days.

The News Release also points out that by increasing staff, expanding resources, and applying new business processes, the ultimate goal of the USCIS and FBI Joint Plan is to achieve and sustain the following processing times by June 2009: 98% of all name checks will be completed within 30 days. The remaining 2% represent the most difficult name checks and require additional time to complete; the intent is to have these resolved within 90 days or less.

Regarding the rare instance when an FBI name check yields a ‘positive’ result, procedures set by Asylum HQ are followed by ZLA. This involves communication sent from ZLA to the LESC (Law Enforcement Support Center). We request that any materials relating to a ‘positive’ name check be forwarded to us to enable final processing of the relevant application. When delays are encountered, ZLA follows up with additional requests to the LESC to expedite the forwarding of any materials pertaining to a ‘positive’ name check.

Please bring any cases that fall into this category to the attention of BISC Coordinator SAO Steve Ulloa.

34. Is there a specific procedure to have an NTA issued for a derivative NACARA applicant for which the principal was granted NACARA relief by an IJ and for which an NTA was never issued for the derivative? Many members are hesitant to file I-589 applications for this purpose fearing that a frivolous determination may be made.

Upon request, the Asylum Office will issue an NTA for the derivative or dependent who does not have current legal status in the United States, who does not have a pending unadjudicated asylum application or NACARA application, and who has an A number. For example, a NACARA derivative whose case was closed as “in legal status” (i.e. TPS), and then the derivative withdraws his or her TPS, or it expires. Requests for “courtesy” NTAs should be made by the applicant or his/her representative, in writing, to the attention of SAO Tonya Burdine. The request may either be faxed or mailed. (See response to Question 13).

35. What if an alien does not have an A number?

If a person does not have an A number, ZLA cannot issue an NTA. The alien would have to apply for an immigration benefit to obtain an A number from USCIS. If the alien files an I-589, that would be a way for them to obtain an A number, but ZLA cannot guarantee that the IJ would not make a frivolous determination, since that is up to the IJ to decide.

36. With regard to material support to terrorist cases, what procedures must applicants follow to be considered for the relevant waivers that have recently become available? Are there any forms to submit?

There are no forms to submit. During the interview, the AO gathers the information necessary for the waiver (i.e. what terrorist group, what support provided, whether the support was provided under duress, etc.). After the interview, the AO prepares a worksheet and package that is forwarded to HQASM for their evaluation.

37. With regard to nunc pro tunc cases, where the dependent spouse loses her status because of a dissolution of the marriage, what can be done to enable her to adjust status since the ex-husband will not cooperate?

See the response to Question 16. The former dependent spouse should file an I-589 and send it to the attention of the nunc pro tunc coordinator at ZLA, requesting a nunc pro tunc interview. We can obtain the husband's A-file and we do not require the ex-husband's cooperation to do so.

38. Does the Los Angeles Asylum Office have any relationship with the Nebraska Service Center to order biometrics for EOIR?

No. For any issue pertaining to asylum or NACARA and security and background checks, please contact SAO Steve Ulloa.

39. For ABC cases where a NOID is issued and the basis of denial is clear (i.e. no past persecution, or no well-founded fear), there is an additional basis of denial that is cited that is difficult for applicants to rebut, namely that he or she "may be barred as a persecutor." Without reference to evidence in the NOID as to why the AO found that the applicant is a suspected persecutor, how are applicants able to prove otherwise? The "finding" does not even appear to definitively be a finding, and it causes problems for the applicant's other applications for relief.

Per HQASM guidance, an Asylum Officer must reference in an assessment or NOID any potential mandatory bar issues, even if a decision is based on grounds other than a mandatory bar. To the extent possible, an Asylum Officer should specify the evidence upon which any reference to a possible bar is based. The Asylum Office will provide follow-up training to AOs and remind them to be more explicit in their discussion of possible bar issues.