UPDATED GUIDANCE FOR REFUGEE ADJUDICATIONS RESULTING FROM THE 90-DAY REVIEW

RAD Policy

April 12, 2018
THE 90-DAY REVIEW

• Required by EO 13815, “Resuming the U.S. Refugee Admissions Program with Enhanced Vetting Capabilities”. Included:
  • An in-depth threat assessment of each SAO country from the intelligence community AND
  • A review of all relevant information related to ongoing or completed investigations involving refugees admitted to the United States.
    i. USCIS conducted this adjudicative review
    ii. This training focuses on lessons learned from the review regarding enhancements to the interview and adjudications process.
CARRP OPERATIONAL GUIDANCE

• Additional NS indicators/NS concerns
  • Actual involvement in or association with terrorist activity or a terrorist organization
  • Close proximity to violent events or terrorist activity

• Updated guidance does not substantively change CARRP policy
CARRP OPERATIONAL GUIDANCE

- Read RSC Case History and flag any NS indicators or NS concerns
- Answer poll
INTERVIEWING DERIVATIVES SEPARATELY
INTERVIEWING DERIVATIVES

- Interviewing derivatives separately allows them to meet their burden of proof with respect to inadmissibility grounds and the persecutor bar
- It also allows a full exploration of national security concerns and indicators
- Additional interview time will be allotted
- New Response to Query provides guidance on determining if a separate interview is required and on how to conduct it
INTERVIEWING DERIVATIVES

Separate interviews with derivatives allow you to more fully develop the record with respect to:

- Identity
- Persecutor bar
- Inadmissibility grounds
- National security indicators and concerns
- Fraud
SEPARATE INTERVIEW REQUIRED

During I-590 review, derivative testifies to:

- Redacted

### Part 1. Information About You

<table>
<thead>
<tr>
<th>1. Family Name <em>(Last Name)</em></th>
<th>Given Name <em>(First Name)</em></th>
<th>Middle Name <em>(if applicable)</em></th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

2. Other Names Used *(if any)*. Include maiden name, names by previous marriages, and all aliases.

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FOR OFFICIAL USE ONLY
SEPARATE INTERVIEW REQUIRED

During I-590 review, derivative testifies to:

• Having participated in any military service or military-type training

<table>
<thead>
<tr>
<th>Part 4. Military Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide in chronological order information about all your military service and/or military-type training. <em>(Include additional information on continuation page if necessary.)</em></td>
</tr>
</tbody>
</table>

1. Military Service 1

<table>
<thead>
<tr>
<th>Military Branch or Organization that Trained You</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit</td>
<td>Duty Location</td>
</tr>
<tr>
<td>Highest Rank</td>
<td>Dates of Service <em>(mm/dd/yyyy)</em></td>
</tr>
<tr>
<td>From</td>
<td>To</td>
</tr>
</tbody>
</table>

2. Military Service 2

<table>
<thead>
<tr>
<th>Military Branch or Organization that Trained You</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit</td>
<td>Duty Location</td>
</tr>
<tr>
<td>Highest Rank</td>
<td>Dates of Service <em>(mm/dd/yyyy)</em></td>
</tr>
<tr>
<td>From</td>
<td>To</td>
</tr>
</tbody>
</table>
SEPARATE INTERVIEW REQUIRED

During I-590 review, derivative testifies to:

- Redacted

Part 8. Information About Your Request For Refugee Status (Include additional information on continuation page if necessary.)

1. What was your travel route when you first left your country of citizenship/nationality or country of last habitual residence?

   [Blank lines for text input]
SEPARATE INTERVIEW REQUIRED, CONT.

During I-590 review, derivative testifies to return(s) to country of feared persecution if:

- Redacted
- 
- 
- 
-
3. Have you ever returned to your country?  □ Yes  □ No

If "Yes", when and why did you return? (if necessary use continuation page)
SEPARATE INTERVIEW REQUIRED, CONT.

The derivative replies “Yes” to any question on Part 11 (Admissibility), except:

A separate interview may not be needed for Question 3, which is about previous applications for US immigration benefits, depending on the relevant details.

3. Have you ever applied for a U.S. immigration benefit, such as a visa, refugee status, or asylum? □ Yes □ No

If "Yes", were you on your parents’ or spouse’s application? (Provide details below)

<table>
<thead>
<tr>
<th>Date (mm/dd/yyyy)</th>
<th>Location</th>
</tr>
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<tbody>
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<td></td>
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</table>

<table>
<thead>
<tr>
<th>Type of Immigration Benefit</th>
<th>Status (status granted or denied)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>
SEPARATE INTERVIEW MAY BE REQUIRED IF:

- Redacted
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- Redacted

- Other I-590 responses raise questions about identity, admissibility, persecutor bar, national security, fraud, etc.
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- Redacted

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- Other COI-based demographic identifiers apply
NOTE-TAKING

Interview notes must enable a reviewer to reconstruct what transpired during an interview so notes should reflect:

- Which individual is speaking
- Which individuals are present when questions are asked
- If and when certain individuals are dismissed
- If the officer asks to interview a derivative separately, the request and the response should be recorded in the notes
CREDIBILITY CONFRONTATIONS

- Testimony from one case member may be used to confront another
- Exercise caution and sensitivity to minimize the risk that sharing this information will place the individual at risk of harm from another family member
- Take care to generalize the source of conflicting information when possible
- Confront only when required for legally sufficient credibility determination
DERIVATIVE CHILDREN

Juvenile Children 14 - 17

• Notes should record request to interview alone and response
• If permission not given, continue without separating and place on HQ Hold
• Notes should record relevant demeanor and questions/responses about comfort testifying

Juvenile Children under 14

• Should generally not be interviewed alone, except after careful consideration and supervisory concurrence
• Proceed as above
INTERVIEWING DERIVATIVES SEPARATELY - SUMMARY

- Some responses to I-590 and addendum questions will REQUIRE a separate interview
- Some demographic indicators will REQUIRE a separate interview
- Officers have the option to conduct a separate interview even if it is not required
INTERVIEWING DERIVATIVES SEPARATELY - SUMMARY

Separate interviews with derivatives allow you to more fully develop the record with respect to:

- Identity
- Persecutor bar
- Inadmissibility grounds
- National security indicators and concerns
- Fraud
DISCRETION
DISCRETION UPDATE

- RAD supplement to RAIO LP on Discretion finalized and submitted to RAIO Training for inclusion in LP on 3/2/18.
- Discretion has always been component of refugee adjudications, but previously only applied in context of national security concerns and limited DNA pilot.
- Supplement provides guidance on identifying and analyzing circumstances that could warrant a denial (of I-590, TRIG worksheet, and I-602) as a matter of discretion, based on the totality of the circumstances.
DISCRETION SUPPLEMENT CONTENT OVERVIEW

• **Cases with Derogatory Info from Security Checks**
  • Review by FDNS of classified information

• **Cases with National Security Concerns**
  • Multiple arrests/accusations of affiliations with specific terrorist organizations and multiple specific terrorist activities in the context of the insurgency against American and MNF in Iraq.

• **Cases eligible for TRIG exemption**
  • Past involvement with the Tier I (LTTE) and continuing association with members

• **Cases eligible for waivers of inadmissibility grounds**
  • Applicant has been convicted of a violent aggravated felony

• **Other cases with Adverse Discretionary Factors**
  • Engaging in domestic violence - conduct regular and recent
  • Crime of raping a child so serious doesn’t warrant positive exercise of discretion
  • Association with transnational gang or gang member, business that engages in organized criminal activity

REDacted
WHAT IS DISCRETION?

...a balancing of “the adverse factor's evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented in his behalf to determine whether...relief appears in the best interest of this country.”

Matter of Marin, 16 I&N Dec. 581, 584 (BIA 1978)
WHOSE DISCRETION DO WE EXERCISE?

The Immigration and Nationality Act provides that “the Attorney General may, in the Attorney General's discretion...admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible.”

INA § 207(c)(1).
Mandatory and Discretionary Benefits

- Mandatory benefits **must** be granted if the facts establish the elements of statutory eligibility.

- Discretionary benefits **may** be denied even when the facts establish the elements of statutory eligibility.
DISCRETIONARY BENEFIT-THREE STEP PROCESS

1. Find the facts

2. Apply the law

3. Balance positive and negative factors
## REFUGEE APPLICANTS – DISCRETIONARY FACTORS

### Positive
- Eligibility for benefit sought
- Danger of persecution (Risk of refoulement)
- Past harm
- Family unity
- Public interest
- Medical needs
- Lack of support in host country
- Threats/harm in host country
- Remorse
- Rehabilitation
- Significant time since occurrence of negative discretionary factor

### Negative
- Derogatory security checks
- Violations of laws
- Inadmissible (e.g. TRIG, misrep)
- Severity and consequences of the negative act(s)
- Frequency of negative conduct
- Likelihood of future repetition of negative act(s)
- Circumvention of established procedures
- Duration of time since occurrence of negative factor
ADDITIONAL CONSIDERATIONS

- Distance in time since negative act(s)
- Number of incidences of negative conduct
- Whether negative conduct is a pattern and practice or a limited occurrence
- Applicant’s explanation of circumstances surrounding negative act(s)
- Whether negative conduct was compelled or under duress
- Age of the applicant currently and at the time of the negative act(s)
- Medical records and physicians’ statements
- Affidavits or letters
- Interviewing officer’s notes/recommendations
DISCRETION- REFUGEE APPLICANTS

Because bars, inadmissibility grounds, and security vetting requirements are relatively broad, negative factors that would outweigh positive generally render applicant statutorily ineligible for refugee status or subject to a security-related hold category (HQ Review).

Majority of refugee cases that are approvable in the field do not have adverse discretionary factors sufficient to outweigh the positive factors established by substantiation of the refugee claim.
IDENTIFY THE POSITIVE AND NEGATIVE DISCRETIONARY FACTORS

A Bhutanese refugee applicant in Nepal testifies that fifteen years before his USCIS refugee interview, when he was 16 years old, he was convicted of raping a four-year-old child under Chapter 14, No. 1, of the Nepali Chapter on Rape. He was sentenced to 5 years in prison and released after serving 2.5 years. The applicant testifies that he is has not committed or been convicted of any other crimes, and he expresses remorse for his crime. The applicant establishes that he has a well-founded fear of persecution in Bhutan, and furthermore, medical documents in the record establish that the applicant has a serious medical condition for which treatment is not available in Nepal.
TOTALLY OF THE CIRCUMSTANCES

Balance

Positive  Make a Final Decision  Negative
WEIGH THE POSITIVE AND NEGATIVE DISCRETIONARY FACTORS

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DOCUMENTING YOUR EXERCISE OF DISCRETION

If there are significant negative factors but you still recommend approval, or you exercise your discretion to deny a benefit:

1. The written decision must contain a complete analysis of the factors considered in exercising discretion, with a specific and cogent explanation of why you exercised discretion positively or negatively.

2. If recommending denial based on discretion, place case on HQ Review hold.

Recommended non-NS discretionary denials cannot be adjudicated without RAD HQ concurrence.
DOCUMENTING YOUR EXERCISE OF DISCRETION

HQ Review (for Desk Officer review): Review of recommended non-NS DD

☐ YES Initials/Date:

JUSTIFICATION:

PA has established statutory eligibility for refugee status based on a well-founded fear of future persecution in Bhutan. PA's statutory eligibility is a significant positive discretionary factor. PA has been convicted of raping a four-year-old under Chapter 14, No. 1, of the Nepali Chapter on Rape. As explained in Section VI, this conviction does not render PA inadmissibility because he falls within the juvenile offense exception to the CMI ground of inadmissibility, but this crime meets the definition of a crime of violence under 18 U.S.C. § 16(a) and therefore qualifies as a "violent or dangerous" crime. Thus, it constitutes a very significant adverse discretionary factor in his case. The crime occurred more than ten years ago and PA has since received psychological treatment and expressed remorse for his actions. However, PA has not demonstrated that there are extraordinary circumstances in his case or that he would suffer exceptional and extremely unusual hardship if his application is not approved. Although he is currently living in difficult circumstances in Nepal and there do not appear to be other durable solutions available in his case, his circumstances are not clearly more difficult than those of similarly situated refugees, he is currently not at risk of harm in Nepal, and he is not in immediate danger of refoulement to his home country. Therefore, his application cannot be approved in the exercise of discretion.

Applicant has established eligibility for refugee status, but does no merit a favorable exercise of discretion under the totality of the circumstances.
DISCRETION UPDATE
NOTICE OF INELIGIBILITY

- Updated Notice of Ineligibility.
- Box 7 will be checked for all DDs (non-NS and NS-based)

7. □ OTHER REASON(S): After review of all the information concerning your case, including your testimony, supporting documentation, background checks, country conditions, and other available information, your application for refugee resettlement to the United States under INA §207 has been denied as a matter of discretion.
ANALYZE DISCRETION-FACT PATTERN #2

Redacted
Redacted

The positive humanitarian discretionary factors in this case - the strongest being a possibility that the applicant could potentially be harmed in the future in El Salvador - are not found to outweigh these negative factors. Recommend discretionary denial pending HQ concurrence.”
POST-DHS INTERVIEW CASE REVIEW

AD’s implementing memo required RAD to institute a process to evaluate whether I-590 pipeline cases involving SAO nationals were adjudicated in accordance with recently implemented integrity measures

- Process called Pipeline DHS Review or “PDR”
- PDR currently only taking place at RAD HQ.
- Right now, don’t stamp approved any SAO cases without prior HQ authorization to ensure this review has occurred
- Denied cases that have an RFR overturned and/or I-602 approved must go through this process as well.
QUESTIONS?

RAD Policy: 

Redacted

Policy Documents/ Guidance: