



International Refugee  
Assistance Project

August 13, 2021

Ur Mendoza Jaddou  
Director  
U.S. Citizenship and Immigration Services  
5900 Capital Gateway Drive  
Camp Springs, Maryland 20588

Dear Ms. Jaddou:

We write in regards to Attorney General Merrick Garland’s precedential decisions in *Matter of A-B*<sup>1</sup> and *Matter of L-E-A*,<sup>2</sup> vacating previous attorney general decisions in the respective cases. We respectfully request that USCIS affirmatively and expeditiously review the cases of all refugees whose applications for refugee status were denied under the now-vacated precedent.

The International Refugee Assistance Project (IRAP) is a non-profit organization dedicated to advancing and defending the rights of refugees through direct legal aid, litigation, and policy and media advocacy. With a network of pro bono volunteers and law students, we have represented hundreds of refugees in the refugee adjudications and Requests for Review (RFRs) before USCIS, including in cases that are impacted by the Attorney General’s recent decisions.

In a memorandum on the recent decisions, the Department of Justice acknowledged that the now-vacated decisions “restricted the availability of asylum” and recommended reviewing pending cases.<sup>3</sup> Because the vacated decisions similarly restricted access to refugee status, we expect that USCIS will ensure that the refugee corps appropriately decides pending cases. USCIS should also take steps to affirmatively review and reconsider the cases of all refugees whose applications for refugee status were denied under the now-vacated precedent.

In domestic immigration proceedings, asylum seekers and others may file motions to reconsider and motions to reopen closed proceedings, under precedent that permits the *sua sponte* reopening

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<sup>1</sup> *Matter of A-B*, 28 I&N Dec. 307 (A.G. 2021), available at <https://www.justice.gov/eoir/page/file/1404796/download>

<sup>2</sup> *Matter of L-E-A*, 28 I&N Dec. 304 (A.G. 2021) available at <https://www.justice.gov/eoir/page/file/1404791/download>

<sup>3</sup> Vanita Gupta, Associate Attorney General, *Memorandum for the Civil Division re: Impact of Attorney General decisions in Matter of L-E-A and Matter of A-B*, June 16, 2021, available at <https://www.justice.gov/asg/page/file/1404826/download>



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or reconsideration of cases based on a fundamental change in law<sup>4</sup> and allows for the equitable tolling of deadlines, including due to a change in case law.<sup>5</sup> In refugee adjudications, USCIS allows for Requests for Review (RFRs), and regularly exercises discretion to accept RFRs and review applications beyond the 90-day filing period.<sup>6</sup>

However, most refugee applicants face a myriad of challenges that make it practically impossible to use an RFR process to request review of a change in law. Refugee applicants often face ongoing persecution and dire humanitarian circumstances in their current location; many lack the English language skills or access to translation needed to file an RFR in English as required; none will know definitively if their case was impacted because USCIS does not release specific reasons for denying refugee applications; and few would be able to understand if new legal precedent impacts their case as the vast majority of refugee applicants lack access to legal assistance. President Biden recognized some of these challenges in his executive order requiring consideration of reforms to improve the “quality, integrity, efficiency, and fairness of the adjudication process for USRAP applicants, while also taking due account of the challenges facing refugee applicants.”<sup>7</sup>

Given the significant change in law and taking into account those challenges, USCIS should affirmatively reopen all relevant refugee applications and RFRs denied under vacated *Matter of A-B-* or *Matter of L-E-A-* and review to determine whether an application should be approved under current law.<sup>8</sup> Affirmative review will be the most efficient and fair way to address the vacated precedent, because requiring individual RFRs will be burdensome, lead to inconsistent decisions, and privilege refugees with access to legal assistance over others.

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<sup>4</sup> *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3418.pdf>

<sup>5</sup> *Lugo-Resendez v. Lynch*, 831 F.3d 337 (5th Cir. 2016)

<sup>6</sup> Citizenship and Immigration Services Ombudsman, *Recommendation Regarding the Adjudication of Applications for Refugee Status*, p. 8, April 14, 2010, available at

[https://www.dhs.gov/sites/default/files/publications/recommendation\\_adjudication\\_of\\_applications\\_for\\_refugee\\_status.pdf](https://www.dhs.gov/sites/default/files/publications/recommendation_adjudication_of_applications_for_refugee_status.pdf)

<sup>7</sup> Exec. Order No. 14013, 86 FR 8839 § 4(g) (Feb 4, 2021) available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/executive-order-on-rebuilding-and-enhancing-programs-to-resettle-refugees-and-planning-for-the-impact-of-climate-change-on-migration/>

<sup>8</sup> If USCIS does not track decisions internally with greater specificity than is available on Notices of Ineligibility, then relevant refugee applications should include all refugee applications that received Notices of Ineligibility issued between June 11, 2018 and June 16, 2021, denied on the basis of a “Refugee Claim” issue. Given that *Matter of A-B-* impacted both the assessment of what harm qualifies as “persecution” and the analysis of a “protected characteristic,” a “Refugee Claim” denial on either criteria may have been based on vacated precedent. Likewise, any RFR decisions that were issued during the same period in which the original decision was based on a “Refugee Claim” issue may have relied on vacated precedent.



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If affirmative review is not possible, USCIS should accept RFRs requesting review on the basis that a refugee's application was denied due to vacated *A-B-* or *L-E-A-* precedent; to ensure that all relevant applicants are aware of this possibility, USCIS should inform impacted refugee applicants of this option.

We would welcome the opportunity to speak with your team about a process to review refugee applications impacted by vacated precedent, and if this work is already underway, we look forward to receiving any information or guidance that we can share with clients and partners.

Sincerely yours,

International Refugee Assistance Project

CC: Ashley Tabaddor, Chief Counsel, Office of Chief Counsel  
Amanda Baran, Chief, Office of Policy and Strategy  
Jennifer B. Higgins, Associate Director, Refugee, Asylum and International Operations  
Joanna Ruppel, Division Chief, International & Refugee Affairs Division  
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