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## Policy Alert

SUBJECT: Evidence, Requests for Evidence, and Notices of Intent to Deny

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the [USCIS Policy Manual](#) regarding evidentiary standards, Requests for Evidence (RFEs), and Notices of Intent to Deny (NOIDs).

### Background

When adjudicating immigration benefit requests, USCIS considers any relevant evidence submitted in connection with the benefit request as part of the request.<sup>1</sup> The burden is on the requestor to establish that he or she is eligible for the requested benefit at the time of filing the benefit request and that he or she continues to be eligible through adjudication.<sup>2</sup> If the requestor meets the burden of proof to establish eligibility and, where required by statute or regulation, that the requestor warrants a favorable exercise of discretion,<sup>3</sup> USCIS officers approve the benefit request. In cases where the requestor does not meet the burden of proof, USCIS officers deny the benefit request.

DHS established regulations for the adjudication of petitions and applications for immigration benefits in 1994.<sup>4</sup> Under the regulations, USCIS has discretion to issue RFEs and NOIDs for immigration benefit requests in appropriate circumstances.<sup>5</sup> Generally, USCIS has full discretion to deny the request without first issuing an RFE or NOID in various situations including, but not limited to, when the benefit request has no legal basis for approval or when the requestor fails to provide required initial evidence.<sup>6</sup>

Under USCIS' previous policy, officers were instructed to issue an RFE or NOID when a benefit requestor failed to submit initial evidence, or when the record failed to establish eligibility for the benefit sought. The prior policy created opportunities for frivolous or substantially incomplete filings, and in many cases was exploited to secure ancillary benefits associated with the benefit

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<sup>1</sup> See [8 CFR 103.2\(b\)](#).

<sup>2</sup> See [INA 291](#). See [8 CFR 103.2\(b\)](#).

<sup>3</sup> See [INA 291](#).

<sup>4</sup> See Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits, [59 FR 1455](#) (Jan. 11, 1994).

<sup>5</sup> See [8 CFR 103.2\(b\)\(8\)](#). Certain immigration benefits, such as refugee and asylum applications, are governed by different regulations and procedures regarding RFEs, NOIDs, denials, and failure to appear.

<sup>6</sup> See [8 CFR 103.2\(b\)\(8\)\(ii\)](#).

request or for other reasons not directly related to the request itself. It discouraged officers from exercising discretion to deny the benefit request, without first issuing an RFE or NOID, when the record failed to establish eligibility or when the benefit requestor failed to submit initial required evidence in accordance with statute, regulation, or form instructions.

Similarly, USCIS' previous policy encouraged officers to issue a NOID when a benefit requestor submitted little or no evidence, despite DHS regulations requiring the benefit requestor establish eligibility at the time of filing the benefit request and that each benefit request be properly filed with all initial evidence required by applicable regulations and USCIS instructions.<sup>7</sup> This prior policy increased processing times, raised costs which are transferred to all benefit requestors through filing fees, and encouraged nefarious filing practices such as frivolous and placeholder filings to secure ancillary benefits. Therefore, in order to faithfully implement the regulations, when a benefit requestor fails to submit all required initial evidence, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or issue an RFE for the missing initial evidence.

USCIS' new policy will improve its ability to efficiently adjudicate benefit requests by discouraging frivolous, placeholder, or incomplete filings and requiring the requestor to meet his or her burden of proof by submitting complete benefit requests. The filing of a benefit request without the required initial evidence effectively hampers USCIS' ability to efficiently determine eligibility. This updated policy ensures that benefit requestors are not allowed to either inadvertently or intentionally hamper USCIS' ability to render a decision and as a result gain a potential or actual benefit.

Accordingly, USCIS is updating its policy guidance to restore USCIS officers' full discretion to deny such benefit requests without first issuing an RFE or NOID, as allowed by the regulations.

When USCIS issues an RFE, the regulations state that the notice "will indicate the deadline for response, but in no case shall the maximum response period provided in a[n RFE] exceed twelve weeks, nor shall the maximum response time provided in a [NOID] exceed thirty days. Additional time to respond to a[n RFE] or [NOID] may not be granted."<sup>8</sup> Further, when notices are served by mail, 3 days are added to the response deadline.<sup>9</sup>

Previous policy required officers to follow standard timeframes by generally providing the maximum 12-week response period. It also added an additional 14 days to the response deadline when RFEs or NOIDs were mailed outside the United States, in contravention of regulation.

USCIS is now updating its guidance to follow regulatory and procedural requirements. Under the regulations, officers are not required to issue an RFE with a standard 12-week response period, but rather the maximum response period cannot exceed 12 weeks. Additionally, USCIS no longer provides benefit requestors an additional 14 days to respond to notices mailed outside the United States, as the regulations only allow for an additional 3 days for notices served by mail.

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<sup>7</sup> See [8 CFR 103.2\(b\)\(1\)](#) and [8 CFR 103.2\(b\)\(8\)\(ii\)](#). In contrast, [8 CFR 103.2\(b\)\(8\)\(iii\)](#) states that a NOID may be appropriate when the benefit requestor submits all required initial evidence, but the evidence submitted does not establish eligibility.

<sup>8</sup> See [8 CFR 103.2\(b\)\(8\)\(iv\)](#).

<sup>9</sup> See [8 CFR 103.8\(b\)](#).

This updated guidance on evidence, RFEs, and NOIDs realigns USCIS policy with regulations, which in turn provides clarity for USCIS officers, promotes consistency across adjudications, sets clear expectations and guidelines for benefit requestors, encourages benefit requestors to be diligent in submitting required initial evidence, discourages unfair advantages accruing to some benefit requestors who submit incomplete benefit requests while others wait to obtain all necessary evidence ensuring that priority dates and other benefits are accorded fairly, and builds trust with stakeholders.

USCIS has not identified any significant reliance interests that may have been caused by the previous policies. To the contrary, the expectation that USCIS will allow benefit requestors to submit legally insufficient requests to be corrected later in the adjudication process, notwithstanding the statutory and regulatory requirements and form instructions, encourages frivolous filings and increases processing times, which is a problem that this policy guidance aims to address.

This guidance, contained in Volume 1 of the Policy Manual, is effective immediately and applies to benefit requests pending or filed on or after the publication date. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

### **Policy Highlights**

- Clarifies the distinction between initial and additional evidence, primary and secondary evidence, and the evidentiary weight given to affidavits submitted in lieu of primary or secondary evidence.
- Clarifies that USCIS, in its discretion, may deny the benefit request for failure to establish eligibility based on lack of required initial evidence without first issuing an RFE or NOID in cases where all required initial evidence is not submitted with the benefit request.
- Realigns the response time and additional mailing time provided for RFEs and NOIDs to conform to the regulatory guidelines, regardless of location; previously, USCIS provided 14 days of additional mailing time for international correspondence.
- Clarifies that when USCIS receives any requested evidence in response to an RFE or NOID, even if the evidence only partially responds to the RFE or NOID, that USCIS considers such response as a request for a decision.

### **Summary of Changes**

Affected Section: Volume 1 > Part E > Chapter 6, Evidence

- Revises Chapter throughout.

Affected Section: Volume > 1 > Part E > Chapter 9 > Section B, Denials

- Revises first paragraph under Subsection 1 (Denials Based on Lack of Legal Basis).

Affected Section: Volume > 1 > Part E > Chapter 10 > Section D, Revocation, Rescission, or Termination

- Makes minor edits to 4th and 5th paragraphs.
- Deletes final paragraph.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

### **Citation**

Volume 1: General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence [[1 USCIS-PM E.6](#)]; Chapter 9, Rendering a Decision [[1 USCIS-PM E.9](#)]; and Chapter 10, Post-Decision Actions [[1 USCIS-PM E.10](#)].