

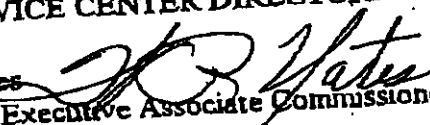


U.S. Department of Justice
Immigration and Naturalization Service

425 I Street NW
Washington, DC 20536

OCT 2 - 1998

MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS

FROM: William R. Yates 
Acting Deputy Executive Associate Commissioner
Office of Field Operations
Immigration & Naturalization Service

SUBJECT: Direct Mail Processing of Refugee and Asylee Applications to
Adjust Status Under Section 209

An interim rule to extend the Direct Mail Program to the processing and adjudication of refugee and asylee adjustment applications under section 209 of the Immigration and Nationality Act (the Act) was published on June 3, 1998. The text of the rule and its preamble is attached for reference. The effective date of the rule was July 6, 1998.

By enabling the Immigration and Naturalization Service (INS) to centralize the recording and management of refugee and asylee adjustment cases at a service center, the new rule should promote consistency in our adjudication and improve the efficiency of service to the applicants. Section 8 CFR 209 has been amended to allow the receiving service center to adjudicate adjustment applications without an interview, when appropriate. The new rule also implements recent policy changes regarding medical and fingerprinting requirements.

This interim rule will remain in effect from July 6, 1998, until such time as it is superseded by a final rule.

Processing of Refugee and Asylee Adjustment Applications under the Direct Mail Program:

Under the previous rule, use of the Form I-485 was required only for applications filed by asylees under section 209(b) of the Act. No standard form was prescribed for the adjustment of refugees under section 209(a). Effective July 6, 1998, refugees were required to apply for adjustment on Form I-485, the same form already prescribed for applications filed by asylees. The I-485 applications filed by refugees under section 209(a) of the Act are fee-exempt. Both

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refugees and asylees mail their I-485 adjustment applications to a designated INS Service Center, which at this time is the Nebraska Service Center (NSC). Applicants for asylum-based adjustment continue to check block "D" of the I-485. Until the current I-485 can be revised, refugee applicants will identify their status by marking block "H" of the I-485, and entering the word "Refugee" in the space provided.

A refugee or asylee I-485 application mailed to the NSC must include the required I-485 photographs. Form I-643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status, should also be submitted, although no penalty is prescribed for failure to do so. After acceptance of the I-485, the NSC will schedule those applicants required to be fingerprinted to appear at an application support center (ASC) for such. Refugee and asylee adjustment applicants who are 14 years of age or older are subject to the \$25 fingerprint processing fee requirement, unless they have applied for and been granted a fee waiver under the provisions of Section 8 CFR 103.7(c). The adjudicating office will notify applicants whose I-485 applications have been approved regarding an appointment for the execution of a Form I-89, Data Collection Card.

Refugee or asylee adjustment applicants who seek an Employment Authorization Document (EAD), advance parole or refugee travel document, or waiver of inadmissibility should submit the Form I-765, I-131, or I-602 to the NSC concurrently with the adjustment application, as long as the application is pending at the NSC. If the applicant's I-485 is transferred to a local district office for adjudication, the NSC will instruct the applicant to submit any subsequent Form I-765, I-131 or I-602 to the local office where the I-485 application is pending.

Case Referrals to Local Offices:

Most section 209 adjustment applications submitted under the Direct Mail Program will be retained for adjudication at the NSC without an in-person interview. However, the NSC will refer to the local offices all applications which can best be resolved through an interview, such as those involving higher risk or complex issues, criminal charges, indications of fraud, and asylee applicants whose records indicate entry without inspection or changes in the country conditions on which the original grant of asylum was based. In addition, the NSC will refer for interview a random sample of at least 2 percent of all other refugee and asylee adjustment applications. The results will provide an ongoing indicator of the integrity of the adjudication process as well as emerging trends affecting the exercise of the Service's interview determination authority.

Other case referral criteria may be added or changed as they are developed by the NSC and by INS district offices. In a previous memorandum HQ 70/20-C dated September 3, 1997, the Office of Adjudications solicited recommendations from field offices regarding other interview referral criteria that in their judgment would be appropriate. A copy of the original memorandum is attached for reference. Although the original deadline for suggestions to the Office of

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Adjudications is past, field offices are invited to refer any additional interview referral suggestions to the Office of Field Operations.

Whenever the NSC refers an adjustment application to a local office for adjudication, the application will be accompanied by a "Relocation of Pending I-485 Filed by Refugee or Asylee and Report of Final Action Taken" form, a copy of which is attached for reference. The NSC will fill out Part I of the form with the reason(s) for the relocation of the case to the receiving office. Upon completing the adjudication the local office will execute Part 11 of the form with a report regarding the final action taken on the case and will return the form to the NSC. The completed processing worksheets will be retained and reviewed for the purpose of improving adjudication quality and developing new interview referral criteria.

Local offices receiving section 209 case referrals from the NSC are to adjudicate the I-485 to completion. Under existing rules, if the adjudicating office develops evidence that the original grant of asylum was obtained through fraud or misrepresentation or that the applicant no longer qualifies as a refugee under section 101(a)(42) of the Act, it must refer the case to the Asylum Office having jurisdiction over the applicant's place of residence for a determination whether asylee status is to be revoked. The determination by the Asylum Office will be the basis for the final adjudication of the Form I-485 application by the INS field office.

Annual Limit of 10,000 for Asylee Adjustments of Status:

The number of asylees who may be adjusted during any fiscal year is limited by section 209(b) of the Act to 10,000. Therefore, every adjudicating office, whether it is a service center or a local office, must verify that a visa number is available prior to finalizing the approval of any asylee adjustment application.

No asylee adjustment application may be completed until the adjudicating office receives notice from the NSC that an asylee adjustment number has been allocated to it. To obtain the asylee adjustment allocation, each adjudication office must provide the NSC with the information set forth on the attached form regarding every application that it has been determined to be approvable in every other respect. These forms are to be faxed to the NSC at (402) 437-5899. The NSC point of contact is SCAO Tom Barber at (402) 437-4197.

It is anticipated that the demand for asylee adjustment numbers for Fiscal year 1999 will soon exceed the 10,000 annual cap [Section 209(b) of the Act of 10,000]. Therefore, adjudication offices are urged to report their approvable cases pending completion to the NSC as soon as possible in order to secure adjustments numbers for those applicants.

Until the annual cap has been reached, the NSC will notify the field offices within one month as to which cases may be complete. Once the cap has been reached, the NSC will maintain a consolidated list of the pending asylee adjustment applications in priority date order. At the

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beginning of the next fiscal year, that list will be the basis for notifying the local offices as to which cases they may process to completion.

Please distribute this memorandum to all field offices and training centers within your jurisdiction. Field offices are requested to provide a copy to their local ASC managers so they are aware of the upcoming fingerprint workload. Scheduling capacities will be addressed with the ASCs before applicants are actually scheduled.

Attachments