Chapter 6 - Evidence

Guidance Resources (12) Appendices (0) Updates (8)

Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.[1] The purpose of gathering evidence is to determine some fact or matter at issue. When adjudicating a benefit request under the preponderance of evidence standard, the officer examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is "more likely than not" or "probably" true.[2]

The administrative record created by an officer is often crucial in later proceedings relating to the same requestor, such as appeals, rescission proceedings, removal proceedings, applications for relief and protection from removal, other benefit requests, and investigations of fraud. Additionally, under the Jencks Act,[3] anyone who provides a statement at an administrative proceeding, such as an immigration interview, is a potential government witness whose statement the government may be required to produce. Therefore, officers and other USCIS staff must retain and enter into the administrative record the following:

- Written and signed affidavits from statements, such as sworn statements;
- Recordings and transcripts of interviews;

- Original interview notes;
- Original notes made during site visits and surveillance operations; and
- Original drafts of reports concerning interviews or surveillance operations if they are the first written record of the interview or surveillance.

A requestor must establish eligibility for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. If the evidence the requestor provides meets their burden of proof to establish eligibility,[4] USCIS approves the benefit request. If the law requires an exercise of discretion, USCIS can approve the request only if the requestor merits a favorable exercise of discretion and otherwise establishes eligibility.[5] If the evidence is not sufficient to establish eligibility, USCIS may request evidence or proceed to denial, as appropriate.

A. Initial and Additional Evidence [Reserved]

[Reserved]

B. Primary and Secondary Evidence

Each benefit request has specific eligibility requirements that a requestor must meet, which must be demonstrated by evidence. Any evidence the requestor submits in connection with a benefit request is incorporated into and considered part of the request.[6]

Some evidence is considered primary evidence, and other evidence is considered secondary evidence. Primary evidence is evidence that on its own proves an eligibility requirement. For example, a divorce certificate is primary evidence of a divorce. Secondary evidence is evidence that may demonstrate a fact is more likely than not true, but the evidence does not derive from a primary, authoritative source. Records maintained by religious or faith-based organizations showing that a person was divorced at a certain time are an example of secondary evidence of the divorce.

Likewise, a government-issued birth certificate is an example of primary evidence of the birth of a child, whereas a baptismal certificate is an example of secondary evidence of the birth of a child.[7]

USCIS requires primary evidence where such evidence is generally available according to the U.S. Department of State (DOS).[8] If the requestor cannot obtain such primary evidence, the requestor must demonstrate that the required primary evidence does not exist or cannot be obtained and provide

secondary evidence.[9] Any secondary evidence submitted must overcome the unavailability of primary evidence.[10]

However, for some applications and petitions, such as asylum applications and applications for classification as a refugee, testimony alone may meet the evidentiary requirements.[11]

Primary Evidence that Does not Exist or Cannot be Obtained

Officers might encounter situations in which primary evidence is available according to DOS's U.S. Visa: Reciprocity and Civil Documents by Country webpage, but the applicant asserts it does not exist or cannot be obtained.[12] This generally gives rise to a presumption of ineligibility, which is the requestor's burden to overcome.[13] A requestor cannot simply assert that primary evidence does not exist.

In the absence of primary evidence as required by regulation,[14] the requestor must:

- Demonstrate that the required document does not exist or cannot be obtained by providing a written statement from the appropriate issuing authority attesting to the fact that no primary record exists and the reason the record does not exist;[15] and
- Submit secondary evidence that overcomes the unavailability of the primary evidence.

In the absence of primary and secondary evidence as required by regulation,[16] the requestor must:

- Demonstrate that the required document does not exist or cannot be obtained by providing a written statement from the appropriate issuing authority attesting to the fact that the primary record does not exist and the reason the record does not exist;
- Demonstrate the unavailability of any secondary evidence; and
- Submit two or more affidavits by persons who are not parties to the benefit request and who have direct personal knowledge of the event and circumstances.[17]

A requestor who is not able to provide a written statement of unavailability from the relevant foreign authority may instead submit evidence of repeated good faith attempts to obtain the required document or statement.[18]

Primary Evidence that is Generally Available but is Unreliable

Officers may also encounter cases where primary evidence is generally available, but DOS reports that such documents are unreliable. Civil records may be considered unreliable or require additional scrutiny for

various reasons, including inaccurate recording, date of issuance, inconsistent standards for issuance, or widespread fraud.

If foreign documents submitted as primary evidence are unreliable according to DOS,[19] USCIS may request secondary evidence[20] in support of the benefit request. In cases where the secondary evidence is insufficient, or where interview criteria indicate, USCIS may refer the benefit requestor for an in-person interview. In addition, petitioners or applicants should be encouraged to submit all evidence at their disposal in response to any Request for Evidence (RFE). Whether evidence establishes the eligibility requirements is evaluated by the totality and quality of the evidence presented.

C. Copies vs. Originals

When adjudicating an immigration benefit, officers need to verify facts such as dates of marriage, birth, death, and divorce, as well as criminal and employment history. The "best evidence rule" states that where the facts are at issue in a case, the officer should request the original document. For example, if evidence of a divorce decree is required and a submitted photocopy looks altered, the officer should request the original divorce decree.

1. When Originals Required and Photocopies Permitted

When a requestor files a paper form[21] with USCIS, original documents may be required. Examples of supporting documents that requestors must generally present in the original are:

- Medical examinations;
- Affidavits; and
- Labor certifications.

Unless otherwise required, the requestor may submit a legible photocopy of any other supporting document at the time of filing.[22]

2. Requesting Original Documents

USCIS may, at any time, request submission of an original document for review. The request sets a deadline for submission of the original document.

If a requestor does not submit the requested original of the document by the deadline, USCIS may deny the benefit request as abandoned, based on the record, or both.[23]

3. Returning Original Documents

Upon completion of the adjudication, USCIS may return original documents if the submission was in response to a USCIS request. All retained originals become part of the record. Although USCIS does not automatically return originals that it did not request, offices are encouraged to voluntarily return submitted original documents.[24]

To request return of originals that were not returned during the adjudication process, the requestor may submit a Request for the Return of Original Documents (Form G-884).

D. Types of Evidence

Strict rules of evidence used in judicial proceedings do not apply in administrative proceedings, including benefits requests before USCIS. Usually, requestors may submit any oral or documentary evidence for USCIS' consideration when determining eligibility for the benefit sought.

Because the strict rules of evidence do not apply in administrative proceedings, officers may consider a wide range of oral or documentary evidence.

1. Documentary Evidence

Documentary evidence includes all types of documents, records, and writings and is subject to the same considerations regarding competency and credibility as is testimonial evidence discussed below. Documentary evidence may be divided into two categories: public documents and private documents.

Public Documents

Public documents are the official records of legislative, judicial, and administrative bodies. A requestor may submit public documents as evidence to demonstrate eligibility for the benefit sought. For example, a government-issued birth certificate is a public document.

Birth or baptismal records maintained by officials in religious or faith-based organizations are not considered public documents but may be accepted as secondary evidence of birth if the actual place of birth

is indicated on the certificate.

Private Documents

Private documents include all documents other than the official records of legislative, judicial, or administrative bodies of government. Requestors often submit private documents as supporting evidence for benefit requests. Private documents can include, but are not limited to, business or tax records, bank statements, affidavits, education credentials, or photographs.

2. Testimonial Evidence

Officers frequently take testimony to determine eligibility for immigration benefits.[25] An officer should only take testimony from a person who is mentally competent at the time set to testify. An officer should not attempt to take testimony from any person who might lack the mental capacity, such as:

- A person who has been found mentally incompetent by an appropriate authority;
- A person who is under the influence of drugs or alcohol; or
- A person the officer suspects is mentally incompetent. In those cases, the officer must clearly document their reason(s) for reaching that conclusion.

In any situation where the witness' competency is in doubt, officers should supplement the record with the testimony of another witness, with other evidence relating to the same matter or reschedule the interview, per local procedures.

When interviewing minors, officers should consider the child's age, stage of language development, and emotional maturity when eliciting testimony. Such interviews must be conducted with sensitivity and may warrant special considerations, including determining whether a trusted adult may be present.

Credibility of Testimony

Discrepancies in statements do not necessarily discredit the witness.[26] A truthful witness, in speaking of a past event, might not repeatedly reproduce the facts in their entirety without some change in detail.

Witnesses who have signed statements might later indicate that they wish to retract the statement, or they might give contrary testimony when later called upon to testify. USCIS may not prevent such witnesses from retracting or changing prior statements. However, contradictory statements may adversely impact the credibility of the witness.[27]

If an officer determines that the testimony of a witness is not credible, the written decision or interview notes or both should indicate this conclusion. However, it generally is not enough to simply say that the witness is not credible. Instead, the officer's decision should give the specific reason(s) for the conclusion and refer to evidence in the record that supports the conclusion.

Privileged Testimony

Officers may occasionally encounter the issue of privilege. A testimonial privilege allows the person who invokes it to bar testimony that would violate the privilege. Examples include the privilege against self-incrimination and spousal privileges.

Each privilege differs slightly in how it applies, such as whose testimony may be barred and who may invoke the privilege. The scope of the material covered by the privilege also differs.[28]

Sworn Statements

An officer may also take a sworn statement. A sworn statement is a written declaration given under an oath (or affirmation). It must be witnessed and signed and contain an accurate record of the questions asked, and answers received. The sworn statement becomes part of the permanent, official record and may be used in a subsequent proceeding or prosecution. The determination of benefit eligibility may depend on the evidence in the sworn statement and the interview record it creates may be particularly important in complex cases, such as those involving national security or fraud concerns.

An officer taking a sworn statement must focus on gathering all necessary information to make a decision. The officer must structure the statement in a manner that is logical, using a clear progression of facts and questions. Officers should explore each relevant fact uncovered in a statement by further questioning to the extent necessary before changing topics.

When a sworn statement is taken and the affiant signs it, the affiant (the person making the statement) or authorized representative may request a copy of the statement. Upon request, USCIS provides a copy of the signed sworn statement to an affiant, without fee, at the conclusion of the interview where the statement was taken.[29]

3. Expert and Opinion Evidence

On occasion, officers may require evidence from an expert to assist in completing an adjudication. For example, in cases involving handwritten, counterfeit, or altered documents, U.S. Immigration and Customs

Enforcement (ICE)'s Homeland Security Investigations Forensic Laboratory may serve as experts.[30] A requestor may also submit evidence from a non-DHS expert.

An expert is permitted to give an opinion on a particular set of facts or circumstances involving scientific, technical, or other specialized knowledge. Knowledge, skill, experience, training, or education must qualify the expert. Officers may reject or afford lesser evidentiary weight to expert opinions that conflict with the evidence of record or are questionable.[31]

E. Translations

1. Document Translations

Any document containing a foreign language submitted in support of a benefit request must be accompanied by a full English language translation.[32] The translator must certify that the translation is complete and accurate, and that the translator is competent to translate from the foreign language into English.[33] Sometimes the keeper of a record issues an "extract" version of a document. Such official extracts are acceptable, but only if they contain all the information necessary to make a decision on a case. Only extracts prepared by an authorized official (the "keeper of record") are acceptable. A summary of a document prepared by a translator is unacceptable.

2. Document Translators

If an officer takes a written statement in a foreign language and a translator translates it into English, it may be necessary to produce the translator at a subsequent interview or hearing. When there is evidence that a written statement might not be accurately translated, the translator may be called upon to testify not only as to knowledge of the English and the foreign language, but also to confirm the accuracy of the translation.[34]

F. Requests for Evidence and Notices of Intent to Deny

Under the regulations, USCIS has the discretion to issue Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) for immigration benefit requests in appropriate circumstances.[35] USCIS also has the discretion in some instances to issue a denial without first issuing an RFE or a NOID.

An officer should issue an RFE or NOID when the facts and the law warrant; an officer should not avoid issuing an RFE or NOID when one is needed. However, an officer should not issue an RFE or NOID if the officer determines the evidence already submitted establishes eligibility or ineligibility for the request. An unnecessary RFE or NOID can delay case completion and result in additional unnecessary costs to both the government and the benefit requestor.[36]

Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial[37] or additional evidence from benefit requestors. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID. If the officer determines a benefit request does not have any legal basis for approval, the officer should issue a denial without prior issuance of an RFE or a NOID.[38]

1. Evaluating Evidence and Eligibility

Unless otherwise specified, officers should generally follow these principles in each case:

- Understand the specific elements required to demonstrate eligibility for the benefit request.[39]
- Understand the standard of proof that applies to the benefit request. In most instances, the benefit requestor must establish eligibility under the preponderance of the evidence standard. Under that standard, the benefit requestor must prove it is more likely than not that the requestor meets each of the required elements.[40]
- Review all the evidence to determine if each of the essential elements has been satisfied by the applicable standard of proof.

If the officer determines that the benefit requestor is eligible for the benefit requested (all the essential elements have been satisfied by the applicable standard of proof, including but not limited to, when applicable, that a favorable exercise of discretion is warranted), the officer approves the benefit request without issuance of an RFE or NOID.[41]

If the benefit requestor has not established eligibility under the applicable standard of proof, the officer generally issues an RFE or NOID to request evidence of eligibility. However, if the benefit request does not have a legal basis for approval, and the officer determines that there is no possibility that additional information or explanation will establish a legal basis for approval, then the officer generally should deny the benefit request without first issuing an RFE or NOID.[42]

2. Considerations Before Issuing Requests for Evidence or Notices of Intent to Deny

Instead of or in addition to issuing an RFE or NOID, the officer may also:

- Perform additional research;
- If not already required for the benefit type, interview the benefit requestor or other witnesses; or
- Initiate an investigation.

Each option requires varying degrees of resources. Therefore, officers should carefully evaluate each option when deciding next steps.

Performing Additional Research

Although the burden of proof to establish eligibility for an immigration benefit is on the benefit requestor,[43] an officer may assess, before issuing an RFE or a NOID, whether the information or evidence needed is available in USCIS records or systems. Officers have the discretion[44] to validate assertions or corroborate evidence and information by reviewing USCIS (or other governmental) files, systems, and databases, or by obtaining publicly available information that is readily accessible.[45]

For example, an officer may, in the exercise of discretion, verify information relating to a petitioner's corporate structure by consulting a publicly available government website or corroborate evidence relating to a person's history of nonimmigrant stays in the United States by searching a U.S. government database.

3. Requests for Evidence

If the benefit requestor either has not submitted all of the required initial evidence[46] for the benefit request, or the evidence in the record does not establish eligibility for the benefit sought, the officer should issue an RFE or NOID requesting such evidence unless the officer determines that there is no legal basis for the benefit request and no possibility that additional information or explanation will establish a legal basis for approval.[47]

Content of RFEs

RFEs should:

- Identify the eligibility requirement(s) that has not been established and why the evidence submitted is insufficient;
- Identify any missing evidence specifically required by the applicable statute, regulation, or form instructions;
- Identify examples of other evidence that may be submitted to establish eligibility; and
- Request that evidence.

An officer should not request evidence that is outside the scope of the adjudication or otherwise irrelevant to an identified deficiency.

The RFE should ask for all the evidence the officer anticipates needing to determine eligibility and should clearly state the deadline for response.

Avoiding Multiple RFEs

In certain instances, the evidence provided in response to an RFE may raise eligibility questions that the officer did not identify during initial case review or open new lines of inquiry. In such a case, the officer may issue a follow-up RFE or NOID. However, officers should include in a single RFE all the evidence they anticipate needing to determine eligibility. The officer's careful consideration of all the apparent deficiencies in the evidence minimizes the need for multiple RFEs.

Timeframe for Response

The maximum response time for an RFE is 12 weeks (84 days); regulations prohibit officers from granting additional time to respond to an RFE.[48]

However, the regulations permit USCIS to assign flexible timeframes for benefit requestors to respond to an RFE.[49] To ensure consistency, officers should follow standard timeframes but may reduce the response time on a case-by-case basis after obtaining supervisory concurrence. This discretion should only be used when warranted by circumstances as determined by the officer and the supervisor.

The RFE must clearly state the deadline by which the requested initial or additional evidence must be submitted to USCIS.

Regulations govern the effect of service, which may be in person, by ordinary mail, or electronically.[50] When USCIS serves an RFE by ordinary mail, the service of the RFE is complete upon the benefit requestor on the day that USCIS physically mails the RFE.[51] When USCIS serves an RFE by ordinary mail, an

RFE response is timely if USCIS receives it no more than 3 days after the prescribed period. This provides a total of 87 days after USCIS mails the RFE, for USCIS to receive an RFE response.

Further, USCIS applies the regulatory definition of day[52] when reviewing a mailed RFE response for timeliness. Where USCIS receives the response on a Monday or on the next business day after a federal holiday, USCIS considers the response to be timely if the deadline fell on the preceding Saturday, Sunday, or federal holiday. As such, when the last day of the filing period falls on a Saturday, Sunday, or federal holiday, the RFE response period is extended until the end of the next business day that is not a Saturday, Sunday, or federal holiday.

USCIS considers a response to an RFE that is issued through the USCIS online system to be received on the date it is electronically filed through the individual's (or attorney or representative's) online account, regardless of whether the day is on a weekend or federal holiday.

Additional mailing time (14 days) should be given to benefit requestors residing outside the United States or when USCIS mails an RFE from an international USCIS field office.

Standard Timeframes

In compliance with the regulations, the guidelines in the table below provide standard timeframes for benefit requestors to respond to RFEs.[53] These standard timeframes do not apply to circumstances in which a fixed maximum response time is specified by regulation.[54]

Standard Timeframes for Response to an RFE

When Submitting Evidence Required For	Standard Response Time (Calendar Days)	Additional Mailing Time When Residing Inside the United States	Additional Mailing Time When Residing Outside the United States or When an International Field Office Issues RFEs
Application to Extend/Change Nonimmigrant Status (Form I-539)[55]	30	3	N/A

When Submitting Evidence Required For	Standard Response Time (Calendar Days)	Additional Mailing Time When Residing Inside the United States	Additional Mailing Time When Residing Outside the United States or When an International Field Office Issues RFEs
Application for Provisional Unlawful Presence Waiver (Form I-601A)[56]	30	3	N/A
All other form types, regardless of whether the request is for initial or additional evidence, or whether the evidence is available in the United States or from overseas sources[57]	84	3	14

4. Notices of Intent to Deny

Circumstances Under Which NOIDs are Required[58]

USCIS issues a NOID before denying any immigration benefit requests submitted on the following forms:

- Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I-800A) based on a mandatory denial ground;[59]
- Petition to Classify Convention Adoptee as an Immediate Relative (Form I-800) based on a mandatory denial ground;[60] or
- Application to Register Permanent Residence or Adjust Status (Form I-485) filed by a physician because the physician failed to comply with the conditions attached to his or her national interest waiver.[61]

Derogatory Information Unknown to the Benefit Requestor

In general, USCIS is also required to issue a NOID when derogatory information is uncovered during the course of the adjudication that is not known to the benefit requestor and USCIS intends to deny the benefit request on the basis of that derogatory information.[62] The benefit requestor may be either unaware of the derogatory information or unaware of its impact on eligibility.

When USCIS bases an adverse decision on derogatory information that may be unknown to the benefit requestor, USCIS must provide the requestor an opportunity to rebut that information.[63] A NOID provides a benefit requestor with adequate notice and sufficient opportunity to respond and the opportunity to review and rebut derogatory information not known to the benefit requestor.

Any explanation, rebuttal, or information presented by or on behalf of the benefit requestor must be included in the record of proceeding.

Additional Circumstances Under Which USCIS May Issue NOIDs

While not required in other situations, a NOID also provides a benefit requestor with adequate notice and sufficient opportunity to respond to an intended denial because of a determination of ineligibility.[64]

It is also appropriate for officers to issue NOIDs in the following circumstances:

- The benefit requestor submitted little or no evidence;[65] or
- The benefit requestor has met the eligibility requirements for the requested benefit or action but has not established that he or she warrants a favorable exercise of discretion (where there is also a discretionary component to the adjudication).[66]

Content of NOIDs

NOIDs should:

- Identify the reasons for the intended denial, including the eligibility requirement(s) that has not been established, and why the evidence submitted is insufficient;
- Explain the nature of the adverse information, if any.
- Identify any missing evidence specifically required by the applicable statute, regulation, or form instructions;
- Identify examples of other evidence that may be submitted to establish eligibility; and
- Request that evidence.

The NOID should also instruct the benefit requestor that a failure to respond may result in a denial and must clearly state the deadline for response.[67]

Timeframe for Response

The NOID must clearly state the deadline by which the response must be submitted to USCIS. The maximum response time for a NOID is 30 days.[68]

Regulations govern the effect of service, which may be in person, by ordinary mail, or electronically.[69] When USCIS serves a NOID by ordinary mail, the service of the NOID is complete upon the benefit requestor on the day that USCIS physically mails the NOID.[70] When USCIS serves a NOID by ordinary mail, a NOID response is timely if USCIS receives it no more than 3 days after the prescribed period. If the response time is 30 days, this provides a total of 33 days after USCIS mails the NOID, for USCIS to receive a NOID response.

Further, USCIS applies the regulatory definition of day[71] when reviewing a mailed NOID response for timeliness. Where USCIS receives the response on a Monday or on the next business day after a federal holiday, USCIS considers the response to be timely if the deadline fell on the preceding Saturday, Sunday, or federal holiday. As such, when the last day of the filing period falls on a Saturday, Sunday, or federal holiday, the NOID response period is extended until the end of the next business day that is not a Saturday, Sunday, or federal holiday.

USCIS considers a response to a NOID that is issued through the USCIS online system to be received on the date it is electronically filed through the individual's (or attorney or representative's) online account, regardless of whether the day is a weekend or federal holiday.

Additional mailing time (14 days) should be given to benefit requestors residing outside the United States or when USCIS mails a NOID from an international USCIS field office.

Standard Timeframes

In compliance with the regulations, the guidelines in the table below provide standard timeframes for benefit requestors to respond to NOIDs.[72]

Standard Timeframes for Response to a NOID

When Submitting Evidence Required For	Standard Response Time (Calendar Days)	Additional Mailing Time When Residing Inside the United States	Additional Mailing Time When Residing Outside the United States or When an International Field Office Issues NOIDs
All form types[73]	30	3	14

5. Responses to Requests for Evidence and Notices of Intent to Deny

Within the timeframe specified, benefit requestors may respond to an RFE or NOID in one of three ways:

- Submit a complete response containing all requested information;
- Submit a partial response, which is considered a request for a decision on the record; or
- Withdraw the application or petition.[74]

Requested Materials Must Be Submitted Together

Whether in response to an RFE or a NOID, benefit requestors must submit all requested materials together at one time, along with the original RFE or NOID. USCIS treats any submission partially responding to an RFE or NOID as a request for a final decision on the record.[75] USCIS does not wait for a second response or issue a second RFE simply because a response from the benefit requestor is a partial response.

Failure to Respond to an RFE or NOID

Failure to submit requested evidence that is relevant to the adjudication is grounds for denying the request.[76] If a benefit requestor does not respond to an RFE or NOID by the required date,[77] USCIS may:

- Deny the benefit request as abandoned;[78]
- Deny the benefit request on the record; or
- Deny the benefit request for both reasons.[79]

Footnotes

[^ 1] See 8 CFR 103.2(b).

[^ 2] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369, 376 (AAO 2010). Certain documentation requirements do not apply to asylees adjusting status. See INA 212(a)(7)(A).

[^ 3] See 18 U.S.C. 3500. The Jencks Act requires that a statement that was made by a government witness be produced after the government witness has testified upon demand by the defense. Failure by the government to produce the statement requires the suppression of the testimony of that witness.

[^ 4] See INA 291.

[^ 5] See Chapter 8, Discretionary Analysis [1-USCIS PM E.8].

[^ 6] See 8 CFR 103.2(b)(1).

[^ 7] Although birth certificates are primary evidence, when the birth certificate was not registered contemporaneously with the birth, the officer must consider the birth certificate, as well as all the other evidence of record and the circumstances of the case, to determine whether the petitioner has submitted sufficient reliable evidence to demonstrate the claimed relationship by a preponderance of the evidence. See *Matter of Rehman*, 27 I&N Dec. 124 (BIA 2017). In addition, as of September 30, 2010, all birth certificates that were issued in Puerto Rico before July 1, 2010 are invalid. For any benefit request received after September 30, 2010, officers should verify that the Puerto Rico birth certificate was issued by the General Vital Statistics Office of Puerto Rico (Puerto Rico Department of Health) on or after July 1, 2010. For additional information related to the legislation that amended Puerto Rico law with respect to the issuance and validity of birth certificates, see S.B. 1653, Law No. 68 of 2009.

[^ 8] Officers reference DOS's U.S. Visa: Reciprocity and Civil Documents by Country webpage for country-specific document standards.

[^ 9] See 8 CFR 103.2(b).

[^ 10] See 8 CFR 103.2(b)(2). For self-petitions under the Violence Against Women Act (VAWA) and petitions and applications for T and U nonimmigrant status (for victims of human trafficking and other specified crimes), USCIS considers any credible evidence relevant to the petition or application. Requestors may submit any credible, relevant, and probative evidence to establish eligibility. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of USCIS and determined on a case-by-case basis. See INA 204(a)(1)(J). See INA 214(p)(4). See 8 CFR 103.2(b)(2)(iii). See 8 CFR 204.1(f)(1). See 8 CFR 204.2(c)(2)(i). See 8 CFR 204.2(e)(2)(i). See 8 CFR 214.14(c)(4). See 8 CFR 214.11(d)

(2) and 8 CFR 214.11(d)(5). VAWA self-petitioners may not be required to demonstrate that preferred primary or secondary evidence is unavailable. See 8 CFR 103.2(b)(2)(iii). See Volume 3, Humanitarian Protection and Parole [3 USCIS-PM].

[^ 11] See INA 208(b)(1)(B)(ii).

[^ 12] The DOS's website provides country-specific information on the availability of various foreign documents. If DOS shows that a record is generally not available in a particular country, USCIS may accept secondary evidence without requiring the written statement from the issuing authority. See 8 CFR 103.2(b)(2)(ii).

[^ 13] See 8 CFR 103.2(b)(2)(i).

[^ 14] See 8 CFR 103.2(b).

[^ 15] See 8 CFR 103.2(b)(2)(ii).

[^ 16] See 8 CFR 103.2(b).

[^ 17] Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence. See 8 CFR 103.2(b)(2).

[^ 18] See 8 CFR 103.2(b)(2)(ii).

[^ 19] See 8 CFR 204.1(f)(1). DOS's U.S. Visa: Reciprocity and Civil Documents by Country webpage provides country-specific information on the availability and reliability of various foreign documents. If DOS shows that a record is generally not reliable in a particular country, USCIS should request secondary evidence.

[^ 20] Secondary evidence may include optional submission of DNA results. In certain cases where primary and secondary evidence are not sufficient to demonstrate a claimed family relationship, USCIS may send the requestor a Request for Evidence (RFE) suggesting DNA testing to support a claim of a biological family relationship. DNA collection is voluntary and a decision to omit DNA evidence is not factored into an adjudicative decision. For additional information on voluntary DNA submission, see USCIS Response to COVID-19 webpage.

[^ 21] For benefit requests filed electronically as permitted by form instructions, requestors must follow the instructions provided to properly submit all required evidence. For additional information relating to electronic filings, see Part B, Submission of Benefit Requests, Chapter 6, Submitting Requests [1 USCIS-PM B.6].

[^ 22] For additional information on when USCIS requires original documents, see form-specific filing instructions.

[^ 23] See 8 CFR 103.2(b)(4)-(5). See 8 CFR 103.2(b)(13).

[^ 24] See 8 CFR 103.2(b)(5).

[^ 25] For example, an officer reviews all relevant records and considers the applicant's testimony to determine whether a naturalization applicant has met the required period of continuous residence.

[^ 26] Witnesses may include, but are not limited to, applicants, petitioners, and other benefit requestors.

[^ 27] Retraction of prior statements made under oath may, under certain conditions, render the witnesses liable for perjury. However, witnesses have a legal right to claim that written statements are not true, or that they were obtained by fraud or duress.

[^ 28] Officers should not confuse privileged testimony with confidentiality provisions. For more information on confidentiality, see Part A, Public Services, Chapter 7, Privacy and Confidentiality. [1 USCIS-PM A.7].

[^ 29] See 8 CFR 103.2(b)(7).

[^ 30] If an officer intends to issue an adverse decision based on derogatory information of which the benefit requestor is unaware, the officer must disclose the information and provide the benefit requestor the opportunity to rebut the information and present information in the requestor's own behalf. See 8 CFR 103.2(b)(16)(i).

[^ 31] See *Matter of Caron Int'l, Inc. (PDF)*, 19 I&N Dec. 791, 795 (Comm. 1988).

[^ 32] See 8 CFR 103.2(b)(3).

[^ 33] See 8 CFR 103.2(b)(3).

[^ 34] See 8 CFR 103.2(b)(3).

[^ 35] See 8 CFR 103.2(b)(8). However, certain immigration benefits, such as refugee and asylum applications, are governed by different regulations and procedures regarding RFEs, NOIDs, denials, and failures to appear; therefore, the guidance in this chapter does not apply to these immigration benefits governed by different regulations. The terms "benefit request" and "immigration benefit request," as used in this Policy Manual part, include, but are not limited to, all requests funded by the Immigration Examinations

Fee Account (IEFA). These terms may also refer to forms or requests not directly resulting in an immigration benefit.

[^ 36] For purposes of this Policy Manual part, the terms “benefit requestor” and “requestor” mean the person, organization, or business requesting an immigration benefit from USCIS. In most instances, this will either be an applicant or a petitioner, depending on the request.

[^ 37] See 8 CFR 103.2(b)(1). Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions.

[^ 38] For more information, see Chapter 9, Rendering a Decision, Section B, Denials, Subsection 1, Denials Based on Lack of Legal Basis [1 USCIS-PM E.9(B)(1)].

[^ 39] See the program-specific part of the Policy Manual for more information on eligibility requirements that apply to a particular benefit request.

[^ 40] For more information, see Chapter 4, Burden and Standards of Proof [1 USCIS-PM E.4].

[^ 41] See 8 CFR 103.2(b)(8)(i).

[^ 42] See Chapter 9, Rendering a Decision, Section B, Denials, Subsection 1, Denials Based on Lack of Legal Basis [1 USCIS-PM E.9(B)(1)].

[^ 43] See INA 291. See *Matter of Arthur (PDF)*, 16 I&N Dec. 558 (BIA 1978).

[^ 44] However, under 8 CFR 103.2(b)(17), officers must verify the status of an applicant or petitioner who claims that he or she is a lawful permanent resident by reviewing USCIS records.

[^ 45] See INA 287(b). See 8 CFR 103.2(b)(16)(i).

[^ 46] For applications and petitions for T and U nonimmigrant status (for victims of trafficking and other specified crimes) and Violence Against Women Act (VAWA) benefit requests, USCIS considers any credible evidence relevant to the request. Requestors may submit any credible, relevant, and probative evidence to establish eligibility. See INA 204(a)(1)(J). See INA 214(p)(4). See 8 CFR 103.2(b)(2)(iii). See 8 CFR 204.1(f)(1). See 8 CFR 204.2(c)(2)(i). See 8 CFR 204.2(e)(2)(i). See 8 CFR 214.14(c)(4). See 8 CFR 214.11(d)(2) and 8 CFR 214.11(d)(5).

[^ 47] If there is no legal basis for the benefit request and no possibility that additional information or explanation will establish a legal basis, the officer may deny the request without first issuing an RFE or NOID.

See Chapter 9, Rendering a Decision, Section B, Denials, Subsection 1, Denials Based on Lack of Legal Basis [1 USCIS-PM E.9(B)(1)].

[^ 48] See 8 CFR 103.2(b)(8)(iv). Officers adjudicating a benefit request may exercise their discretion to consider late responses to RFEs to have been submitted timely if in their view circumstances warrant it.

[^ 49] See 8 CFR 103.2(b)(8) and 8 CFR 103.2(b)(11).

[^ 50] See 8 CFR 103.8(b) ("[w]henever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing."). See 8 CFR 103.8(a) (describing routine service by ordinary or electronic mail and personal service, performed by a government employee).

[^ 51] See 8 CFR 103.8(b) ("[w]henever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing.").

[^ 52] See 8 CFR 1.2.

[^ 53] See 8 CFR 103.2(b)(8)(iv).

[^ 54] For example, USCIS generally provides an applicant for naturalization 30 days (33 if mailed) to respond to an RFE. See 8 CFR 335.7. See Volume 12, Citizenship and Naturalization, Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination, Section B, Continuation of Examination, Subsection 1, Continuation to Request Evidence [12 USCIS-PM B.4(B)(1)].

[^ 55] Due to the relatively short processing times required by the Form I-539, a response time of only 30 days applies to RFEs for Form I-539 filings.

[^ 56] Due to the streamlined nature of the provisional unlawful presence waiver process and to avoid long delays in immigrant visa processing, a response time of 30 days applies to RFEs for the Form I-601A. Officers, in their discretion, may increase the response time for the Form I-601A after obtaining supervisory concurrence. This discretion should be used on a case-by-case basis when warranted by circumstances as determined by the officer and the supervisor.

[^ 57] Certain immigration benefits, such as refugee and asylum applications, are governed by different regulations and procedures regarding RFEs, NOIDs, denials, and failures to appear. Therefore, the guidance in this table does not apply to these immigration benefits governed by different regulations.

[^ 58] Certain immigration benefits, such as refugee and asylum applications, are governed by different regulations and procedures regarding RFEs, NOIDs, denials, and failures to appear. Therefore, the guidance in this section does not apply to these immigration benefits governed by different regulations.

[^ 59] See 8 CFR 204.309(a). See 8 CFR 204.309(c).

[^ 60] See 8 CFR 204.309(a). See 8 CFR 204.309(c).

[^ 61] See 8 CFR 245.18(i).

[^ 62] See 8 CFR 103.2(b)(16).

[^ 63] See 8 CFR 103.2(b)(16)(i).

[^ 64] However, if the officer determines that there is no legal basis for the benefit request, the officer generally denies the request. See Chapter 9, Rendering a Decision, Section B, Denials, Subsection 1, Denials Based on Lack of Legal Basis [1 USCIS-PM E.9(B)(1)].

[^ 65] USCIS generally issues RFEs when some required evidence is missing but may issue a NOID if all or most of the required evidence is missing. However, USCIS generally rejects incomplete benefit requests, including those with filing deficiencies, such as missing or invalid signatures. USCIS does not issue NOIDs for such filing deficiencies since the requests were never accepted for adjudicative review and therefore are not subject to approval or denial criteria. See 8 CFR 103.2(a)(7)(ii). See Part B, Submission of Benefit Requests, Chapter 6, Submitting Requests, Section B, Intake Processing [1 USCIS-PM B.6(B)].

[^ 66] For more information, see Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

[^ 67] See 8 CFR 103.2(b)(13).

[^ 68] See 8 CFR 103.2(b)(8)(iv). Officers adjudicating a benefit request may exercise their discretion to consider late responses to NOIDs to have been submitted timely if in their view circumstances warrant it.

[^ 69] See 8 CFR 103.8(b) ("[w]henever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing."). See 8 CFR 103.8(a) (describing routine service by ordinary or electronic mail and personal service, performed by a government employee).

[^ 70] See 8 CFR 103.8(b) ("[w]henever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be

added to the prescribed period. Service by mail is complete upon mailing.").

[^ 71] See 8 CFR 1.2.

[^ 72] See 8 CFR 103.2(b)(8)(iv).

[^ 73] Certain immigration benefits, such as refugee and asylum applications, are governed by different regulations and procedures regarding RFEs, NOIDs, denials, and failures to appear. Therefore, the guidance in this table does not apply to these immigration benefits governed by different regulations.

[^ 74] See 8 CFR 103.2(b)(6). USCIS' acknowledgement of a withdrawal may not be appealed. See 8 CFR 103.2(b)(15).

[^ 75] See 8 CFR 103.2(b)(11).

[^ 76] See 8 CFR 103.2(b)(14).

[^ 77] Applications for asylum are not subject to denial under 8 CFR 103.2(b), like other benefit requests, generally. See 8 CFR 208.14(d).

[^ 78] The benefit requestor may not appeal a denial due to abandonment, but the benefit requestor may file a motion to reopen. See 8 CFR 103.2(b)(15). See Notice of Appeal or Motion (Form I-290B). A new proceeding will not be affected by the withdrawal or denial due to abandonment, but the facts and circumstances surrounding the prior benefit request will otherwise be material to the new benefit request. See 8 CFR 103.2(b)(15). See 8 CFR 1.2 (definition of benefit request).

[^ 79] See 8 CFR 103.2(b)(13).

Current as of May 13, 2025