Chapter 6 - Evidence

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]

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.[62]

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

- The benefit requestor submitted little or no evidence; [63] 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). [64]

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.[65]

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.[66]

Regulations govern the effect of service, which may be in person, by ordinary mail, or electronically.[67] 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.[68] 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[69] 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.[70]

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[71]	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. [72]

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.[73] 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.[74] If a benefit requestor does not respond to an RFE or NOID by the required date,[75] USCIS may:

- Deny the benefit request as abandoned; [76]
- Deny the benefit request on the record; or
- Deny the benefit request for both reasons. [77]

G. Derogatory Information Unknown to the Benefit Requestor

Derogatory information is information that is relevant to the adjudication and adverse to the benefit requestor's ability to demonstrate eligibility or warrant a favorable exercise of discretion for the benefit sought.[78]

If USCIS intends to deny a benefit request based on derogatory information of which the requestor is unaware,[79] USCIS must first give the requestor sufficient notice of and an opportunity to rebut the derogatory information and to present evidence in support of the benefit request.[80] The use of certain information, including classified information, is subject to specific requirements and policies.

Officers intending to utilize classified derogatory information, or derogatory information that otherwise require specific procedures by regulation or policy, must comply with these requirements as directed in this Policy Manual section. Additionally, USCIS generally does not disclose information that may be limited by procedural agreements or contracts.

USCIS encounters a wide array of adverse information through a variety of sources.

USCIS must also follow applicable laws and policies pertaining to privacy, confidentiality, and sharing personally identifiable information with third parties.[81]

1. Documents and Information That USCIS Cannot Disclose

Certain documentation is privileged, sensitive, or otherwise protected by statute or regulation and cannot be disclosed, even if such adverse information would otherwise be relied upon in an adverse decision.

Information that USCIS generally cannot disclose includes:

- Information that is classified under Executive Order 13526; [82]
- Information owned by another agency for which use or sharing authority has not been provided;
- Information related to an alien who is protected by 8 U.S.C. 1367 [83] unless it can be sufficiently anonymized to protect the confidentiality of the protected individual or an exception applies; [84] and
- Information related to certain applications for asylum status, extended to refugees as a matter of policy, and withholding of removal under INA 241(b)(3). [85]

Classified Information

USCIS cannot provide the benefit requestor any information contained in the record or outside the record that is classified[86] as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure or the information has been declassified.[87] This information cannot be provided in any form, including summarized in a detailed description or verbally during an interview.

Other Agency Records

USCIS generally does not disclose records owned by another agency[88] unless USCIS is authorized to use or share such information.[89] However, USCIS may disclose the information in a detailed description if the benefit requestor or alien beneficiary provided that information to the U.S. Government agency (USGA) himself or herself or if permission is granted by the USGA owner and subject to the terms and conditions of applicable data sharing agreements, such as the agreement between USCIS and the U.S. Department of State (DOS) on disclosure authorization requirements.[90]

USCIS officers are responsible for following information security controls, as established by DHS policies and federal laws, that protect federal operations and assets when sharing or using information across agencies.[91] Other agency information includes records from DOS and other agencies outside of USCIS or DHS.

If other agency records yield information upon which USCIS intends to make an adverse decision and that information was provided by the benefit requestor or alien beneficiary, is clearly attributable to the benefit

requestor or alien beneficiary, is not based exclusively on the other agency's records and is otherwise disclosable, or the benefit requestor is already aware of the information, USCIS may confront the benefit requestor with it in an interview or disclose the information in a NOID, whichever applies.

2. Derogatory Information Containing Details That May or May Not Be Disclosed

Derogatory information may be found in any evidence, document, or statement relevant to the benefit request. The sections below discuss different types of information an officer may encounter that may include derogatory information for potential use in an adverse decision, and which parts of such derogatory information may or may not be disclosed.

Private Information

Derogatory information is sometimes found in documents or statements that contain information that may cause harm or embarrassment to an individual or that may be protected by privacy laws.[92] USCIS may generally disclose this type of information but may be restricted from providing certain details, such as personally identifiable information (PII) and sensitive personally identifiable information (SPII). In some cases, certain information may be disclosed if permission is obtained from the individual about whom the information pertains.

Information Designated as Law Enforcement Sensitive (LES) or Sensitive But Unclassified (SBU), including For Official Use Only (FOUO)

Information that is owned by USCIS and designated as LES, SBU, or FOUO may sometimes contain derogatory information that USCIS intends to rely on in an adverse determination. USCIS generally does not disclose information that is labeled as LES, SBU, or FOUO without following specific protocols, which may include obtaining permission from the individuals involved in the investigation, redesignating the relevant information by the appropriate designation authorities, withholding sensitive details that could reveal investigative methods or sensitive information or sources (including government names in investigative reports), or following Freedom of Information Act procedures.[93]

Information Related to an Ongoing or Past Investigation

Derogatory information is sometimes found in records that pertain to an investigation including information that could jeopardize investigative sources or methods, or ongoing criminal, civil, or administrative investigations.

Certain derogatory information that is part of a past investigation may generally be disclosed in a detailed description. If unclear whether the investigation is closed, officers should contact the lead investigator to confirm the status of the investigation. Officers may be required to obtain permission from the investigating source or from a third party involved in the past investigation to disclose certain details. However, USCIS must follow applicable laws, rules and data sharing agreements and officers are expected to interpret information from various sources and know what information must be disclosed or confronted with the benefit requestor and what details are necessary to provide a legally sufficient decision, including whether details require permission from another agency.

Officers must omit any non-disclosable information from the detailed description (NOID) or verbally during an interview. For example, USCIS may disclose the derogatory information in a detailed description without

providing the name of the person who provided the information if the source has not given USCIS permission to reveal his or her identity. For example, USCIS does not need to provide the names or identities of neighbors that provided adverse information to USCIS during a site visit so long as USCIS provides sufficient detail of derogatory information unknown to the benefit requestor.[94]

Officers should discuss an ongoing investigation with the investigator before disclosing parts of the investigation or derogatory information as premature disclosures could impact the investigation. Generally, investigative reports specify the origin of derogatory information and special limitations on disclosure. However, in the absence of such designations, officers are expected to utilize all resources available to them and apply the information they have obtained from both investigations and government resources to adjudicate a benefit request appropriately. Each USCIS employee is responsible for safeguarding sensitive information.

Third-Party Information

Certain records containing derogatory information may include PII or SPII relating to a person or entity other than the benefit requestor or alien beneficiary. This third-party information includes, but is not limited to:

- Financial information; [95]
- Patient or health records;
- Consumer reporting agency reports;
- Trade secrets;
- Student education records from an educational institution;
- Cable subscriber records;
- Tax return information;
- Utility company correspondence (such as gas or internet bills); or
- Electronic communication records from a communication service provider or remote computing service.

USCIS generally may disclose third-party information that was provided to or obtained by USCIS, which is sometimes mixed with the benefit requestor's or alien beneficiary's information; however, certain details or information that are protected by specific privacy or confidentiality laws may not be disclosed without permission from the individual to whom the information pertains.[96]

3. How USCIS Discloses Derogatory Information

If USCIS has the authority and permission to disclose the information, officers provide notice of derogatory information with a detailed description[97] in the form of a Request for Evidence (RFE), Notice of Intent to Deny (NOID), or in certain cases, a Notice of Intent to Revoke (NOIR), Notice of Intent to Rescind (NOIR), or a Notice of Intent to Terminate (NOIT).[98] Officers may also provide derogatory information or a detailed description during an interview, if permissible.[99]

Generally, when disclosing derogatory information through a detailed description, USCIS must describe the derogatory information in sufficient detail to give the benefit requestor a meaningful opportunity to rebut the adverse information used in arriving at the decision.[100] USCIS does not need to inform the benefit requestor of every detail in the record. Rather, USCIS only informs the benefit requestor in "sufficient detail" so the

benefit requestor is provided an opportunity to resolve any inconsistencies in the record by objective evidence.[101]

When a benefit requestor is aware of the information that USCIS may use to make an adverse determination because the benefit requestor provided the information[102] or the information was provided in support of another benefit request filed by the same requestor[103] USCIS may, but is not required to,[104] disclose information in a detailed description before issuing a final decision.

When USCIS intends to deny the benefit request based on derogatory information of which the benefit requestor is unaware and the information is not prohibited from being disclosed as described above, USCIS may, in some discretionary instances,[105] provide a legible copy of the primary source document containing the derogatory information to the benefit requestor. USCIS may attach the primary source document to a NOID, RFE, NOIR, or NOIT, with necessary redactions.[106]

Before providing source copies of any derogatory information, USCIS, in consultation with other agencies as appropriate, redacts the primary source document as required by the Privacy Act and other confidentiality laws or policies. If the relevant derogatory information appears in a section of a larger document that makes releasing the entire document unfeasible or burdensome, USCIS releases only that section as necessary to adequately advise the benefit requestor of the derogatory information and give them a meaningful opportunity to rebut or explain it.

There may be instances where a primary source document must be redacted to the point that it no longer contains sufficient information to provide the benefit requestor a meaningful opportunity to rebut the information on which USCIS will base an adverse decision. In such cases, USCIS may instead provide a detailed description of the relevant derogatory information.

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] 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)].

[^ 63] 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)].

[^ 64] For more information, see Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

[^ 65] See 8 CFR 103.2(b)(13).

[^ 66] 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.

[^ 67] 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).

[^ 68] 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.").

[^ 69] See 8 CFR 1.2.

[^ 70] See 8 CFR 103.2(b)(8)(iv).

[^ 71] 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.

[^ 72] See 8 CFR 103.2(b)(6). USCIS' acknowledgement of a withdrawal may not be appealed. See 8 CFR 103.2(b)(15).

[^ 73] See 8 CFR 103.2(b)(11).

[^ 74] See 8 CFR 103.2(b)(14).

[^ 75] 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).

[^ 76] 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).

[^ 77] See 8 CFR 103.2(b)(13).

[^ 78] See 8 CFR 103.2(b)(16)(i).

[^ 79] Information that the requestor has forgotten is not considered information that the requestor is unaware of and USCIS is generally not required to disclose such information. See *Sardo v. DHS*, 284 Fed. Appx. 262, 266 (6th Cir. 2008). Information included on a form that the requestor, person authorized to sign on behalf of the requestor, or their G-28 counsel has signed is considered to be imputed knowledge of the requestor, as are documents or statements submitted with or in furtherance of the benefit requested on that form, regardless of whether the requestor or alien beneficiary alleges a lack of awareness.

[^ 80] See 8 CFR 103.2(b)(16)(i). See *Matter of Cuello* (PDF), 20 I&N Dec. 94, 96-98 (BIA 1989).

[^ 81] See Part A, Public Services, Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7]. See Privacy Act of 1974, Pub. L. 93-579 (PDF) (December 31, 1974) (codified at 5 U.S.C. 552a). See 8 U.S.C. 1367. See INA 244(c)(6), INA 210(b)(6), and INA 245A(c)(5). See 8 CFR 244.16, 8 CFR 210.2(e), 8 CFR 245a.2(t), 8 CFR 245a.3(n), 8 CFR 245a.21, and 8 CFR 208.6.

[^ 82] See Classified National Security Information, 75 FR 707 (PDF) (Dec. 29, 2009). See 8 CFR 103.2(b)(16)(iv). See DHS Policy and Guidelines for the Use of Classified Information in Immigration Proceedings (PDF), issued May 9, 2024.

[^ 83] This generally includes Violence Against Women Act (VAWA) self-petitioners; applicants and petitioners for, and recipients of, T and U nonimmigrant status; and abused spouses of certain persons applying for employment authorization under INA 106.

[^ 84] See Part A, Public Services, Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7].

[^ 85] See 8 CFR 208.6. This also applies to withholding of removal under Article 3 of the Convention Against Torture.

[^ 86] See National Security Information, 47 FR 14667, 14874 (PDF) (Apr. 6, 1982).

[^ 87] See 8 CFR 103.2(b)(16)(iv).

[^ 88] This refers to information that is subject to what is sometimes known informally as the third-agency rule.

[^ 89] See Part A, Public Services, Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7].

[^ 90] For example, DOS visa records covered under INA 222(f) and consular return memoranda are considered other agency documents, and unclassified derogatory information contained in such records and memoranda may generally be disclosed with a few exceptions. For instance, USCIS cannot disclose information about DOS's investigatory methods, the identity of an information source, DOS officials' names and identifiers, or perceptions, opinions, or internal deliberations by DOS. All external agencies that share information with DHS should define the responsibilities and requirements in a Memorandum of Understanding or Memorandum of Agreement.

[^ 91] See the Federal Information Security Modernization Act of 2014, Pub. L. 113-284 (PDF) (December 18, 2014).

[^ 92] USCIS must follow standard procedures for handling sensitive personally identifiable information. See Part A, Public Services, Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7].

[^ 93] See Safeguarding Sensitive But Unclassified (For Official Use Only) Information (PDF), DHS Management Directive 11042.1, signed January 6, 2005.

[^ 94] Notably, 8 CFR 103.2(b)(16) does not require USCIS to provide the benefit requestor with an opportunity to inspect actual evidence or cross-examine witnesses. See *Owusu-Boakye v. Barr*, 376 F.Supp.3d 663, 678-79 (E.D. Va. 2019), aff'd, 836 F. App'x 131 (4th Cir. 2020). See *Koffi v. Holder*, 487 F. App'x 658, 660–61 (2d Cir. 2012) and *Mangwiro v. Johnson*, 554 F. App'x 255, 261 (5th Cir. 2014). 8 CFR 103.2(b)(16) only requires USCIS to inform the benefit requestor of derogatory information and offer the benefit requestor an opportunity to rebut it. See *Zizi v. Field Office Director*, 753 F. App'x 116, 117 (3d Cir. 2019). Judicial decisions in several jurisdictions impose different requirements in the visa petition context.

[^ 95] For example, bank records, pay stubs, or other records about an individual's income or finances.

[^ 96] Various laws and regulations may limit or prevent USCIS from disclosing information about or from a third party. See Privacy Act of 1974, Pub. L. 93-579 (PDF) (December 31, 1974) (codified at 5 U.S.C. 552a) and FOIA Improvement Act of 2016, Pub. L. 114-185 (PDF) (June 30, 2016) (codified at 5 U.S.C. 552). Other protective measures include the Right to Financial Privacy Act of 1978, Pub. L. 95-360 (PDF), 92 Stat. 3641, 3697 (November 10, 1978) (codified at 12 U.S.C. 3401 and following); the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Pub. L. 104-191 (PDF) (August 21, 1996); 45 CFR Part 2; the Electronic Communications Privacy Act of 1986, Pub. L. 99-508 (PDF) (October 21, 1986) (codified at 18 U.S.C. 2701 and following); the Fair Credit Reporting Act, Pub. L. 91-508 (PDF), 84 Stat. 1114, 1127 (October 26, 1970) (codified at 15 U.S.C. 1681 and following); and the Family Educational Rights and Privacy Act of 1974, Pub. L. 93-380 (PDF), 88 Stat. 484, 571 (August 21, 1974) (codified at 20 U.S.C. 1232g). This is not an exhaustive list.

[^ 97] Some courts have addressed how USCIS provides notice of derogatory information relevant to the adjudication of a Petition for Alien Relative (Form I-130), generally finding that summarizing derogatory information is sufficient under 8 CFR 103.2(b)(16). See *Mestanek v. Jaddou*, 93 F.4th 164 (4th Cir. 2024); *Ghaly v. INS*, 48 F.3d 1426, 1434 (7th Cir. 1995); *Diaz v. U.S. Citizenship & Immigration Servs.*, 499 F. App'x 853, 855 (11th Cir. 2012); *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010); *Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009); *Owusu-Boakye v. Barr*, 376 F.Supp.3d 663, 675 (E.D. Va. 2019); *Brinklys v. Johnson*, 175 F.Supp.3d 1338, 1353-56 (M.D. Fla. 2016); *Mangwiro v. Johnson*, 554 F. App'x 255, 261-62 (5th Cir. 2014). In some jurisdictions, USCIS must provide the petitioner with "specific, rebuttable details" or the "underlying documents" when USCIS intends to deny a family-based petition based on derogatory information of which the petitioner is unaware. See *Zerezghi v. USCIS* (PDF), 955 F.3d 802, 810 (9th Cir. 2020). The Board of Immigration Appeals (BIA) has not directly spoken to the method of providing derogatory information for a Form I-130 in a precedent decision, however the BIA has generally found that a visa petition revocation based on an "unsupported statement or unstated presumption, or where the petitioner is unaware and has not been advised of derogatory evidence…cannot be sustained." See *Matter of Estime* (PDF), 19 I&N Dec. 450 (BIA 1987).

[^ 98] See Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[^ 99] If the derogatory information is disclosed during an interview, the officer records the information and the benefit requestor's rebuttal. See Section D, Types of Evidence, Subsection 2, Testimonial Evidence [1 USCIS-PM E.6(D)(2)].

[^ 100] See 8 CFR 103.2(b)(16). A determination of statutory eligibility must be based only on information contained in the record of proceeding that is disclosed to the benefit requestor, except as provided in 8 CFR 103.2(b)(16)(iv). See 8 CFR 103.2(b)(16)(ii).

[^ 101] Any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. See *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

[^ 102] For example, a benefit requestor's tax return statement submitted with the Form I-130 that USCIS uses as evidence of a lack of a qualifying spousal relationship.

[^ 103] For example, records such as marriage certificates or personal financial statements submitted with a previous spousal petition.

[^ 104] USCIS is not required to disclose derogatory information of which the benefit requestor is aware. See 8 CFR 103.2(b)(16). See Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)]. However, USCIS may disclose derogatory information that the benefit requestor may be aware of to ensure the benefit requestor has sufficient opportunity to rebut information used in an adverse decision.

[^ 105] For example, officers may provide a copy of the source document containing derogatory information, such as a lease agreement, in instances where the document contains no privileged or confidential information, or information that is otherwise prohibited from disclosure.

[^ 106] USCIS must not provide screenshots of information obtained from DHS or other third agency systems absent permission from the data owner. If an adverse decision is based primarily on derogatory information that originates from such systems, any disclosure must be in a detailed summary statement and is subject to the terms and conditions of applicable data sharing agreements, such as the agreement between USCIS and DOS on disclosure authorization requirements.