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PRACTICE RESOURCES

Practice Alert: Disturbing Trends in Affirmative Asylum Adjudications

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By AILA Asylum & Refugee Committee

AILA members have reported a growing number of concerns in affirmative asylum adjudications. These reports suggest emerging patterns that may be affecting case processing, interview procedures, adjudication timelines, and decision-making in affirmative asylum cases.

1. Making Referral Decisions Before the Asylum Interview

Practitioners have reported circumstances suggesting USCIS may be preparing referral decisions before they hold required asylum eligibility interviews. For example, one member reported an undated Decision and Notice of Non-Eligibility referring the application to EOIR on the applicant’s USCIS portal before the asylum interview. The referral notice appeared to be removed and reuploaded minutes after the conclusion of the asylum interview — this time with the date handwritten onto the notice.

Practice tip: Members should check the USCIS portal before and after the interview, taking screenshots of any notifications.

2. Increased Use of Discretionary Denials or Referrals Based on Country of Origin

Practitioners report USCIS discretionarily referring cases to EOIR despite finding that the asylum-seekers meet the refugee definition. In some cases, USCIS issued Asylum Referral Notices stating applicants meet the definition of a refugee but nonetheless are ineligible for asylum and referred to EOIR as a matter of discretion. One example stated, “The U.S. government has identified Venezuela as a country that lacks a competent or cooperative central authority for appropriate security screening and vetting measures. This lack of appropriate oversight directly limits USCIS’ ability to meaningfully assess the risk that you may pose to the United States and is hereby a significant negative factor.”

Practice tip: Members representing asylum seekers from a country on the travel ban list should include background checks from local jurisdictions in the U.S. and from the home country as well as additional evidence of positive discretionary factors.

3. Expanded Questioning of Derivative Family Members

Practitioners have reported instances in which asylum officers have separated derivative beneficiaries — including young children — from principal asylum applicants during interviews and conducted independent questioning outside the presence of the principal applicant. Officers asked questions about the underling facts material to asylum eligibility, criminal conduct if any, by both the principal and derivative applicants, and corroborating evidence.

Practice tip: Members should document whether this practice becomes more widespread and whether such questioning exceeds the traditional scope of derivative-beneficiary interviews.

4. Heightened Screening

Practitioners report a broadening of substantive screening questions including questions probing:

- Whether the asylum-seeker or the asylum-seeker’s family members have ever espoused or intend to espouse antisemitic sentiments;
- Whether the asylum-seeker or the asylum-seeker's family members have ever espoused or intend to espouse any anti-American sentiments;
- Any chronic illnesses of the asylum-seeker or members of the household;
- Employment history;
- Degrees and/or awards;
- Paying both federal and state taxes;
- Religious affiliations;
- Community involvement;
- Positive contributions to the U.S.;
- Criminal history, even where conduct does not trigger statutory bars;
- Public statements, social media activity, or other credibility-related concerns;

- Immigration history and status of family members.

Practice tip: Members should prepare asylum seekers for extensive questioning in these areas.

5. Reduced Access to Asylum Office Engagement

Practitioners report a reduction in direct engagement opportunities across asylum offices, including:

- Reduction or elimination of public inquiry window hours at asylum offices;
- Reduction or elimination of responses to email correspondence directly with asylum offices;
- Significantly increased reliance on the national USCIS Contact Center.

For example, the Los Angeles Asylum Office announced that, effective April 20, 2026, it would no longer respond to email inquiries regarding case status and directed applicants to use USCIS online tools or the USCIS Contact Center instead. Similarly, the Newark Asylum Office set up an email auto response stating they were not accepting documents via in person delivery, mail, fax, or email. However, some practitioners reported occasionally receiving an individualized response to an email minutes later.

Practice tip: USCIS office-specific procedures may change and should be reviewed regularly through the USCIS Asylum Office Locator at <https://egov.uscis.gov/office-locator/asy>.

Conclusion

AILA will continue to monitor developments in affirmative asylum adjudications and provide updates as additional information becomes available. Members are encouraged to seek Congressional inquiries about particular matters, file [USCIS Ombudsman](#) complaints, and share examples of affirmative asylum cases reflecting these and other trends through the Asylum and Refugee Committee page at <https://www.aila.org/committees-groups/aila-national-committees/asylum-refugee-committee>.

Special thanks to Asylum and Refugee Committee member Diana Tafur for preparing this practice alert.

Accessible to: Member, Student, Paralegal.