



Memorandum

TO: Asylum Division Staff

FROM: Ashley Caudill-Mirillo
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SUBJECT: Language Access in Credible Fear Screenings

I. Purpose

The purpose of this memorandum is to provide updated guidance on providing language access in credible fear interviews. These procedures are effective July 8, 2022 and supersede the procedures outlined in the March 26, 2020 memo, “Updated Guidance on Processing Credible Fear Cases when a Rare Language Interpreter is Unavailable.” If you have any questions regarding the guidance in the attached procedures, please contact the Asylum Division Headquarters Operations and Management Branches.

II. Background

Executive Order 13985, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021), called on federal agencies to conduct an equity assessment to assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to those policies and programs. DHS selected several DHS programs for assessment, including accessing humanitarian protection during immigration processing. Within the humanitarian protection program, DHS identified language access in credible fear as a potential barrier. The Asylum Division is issuing language access guidance in response to this equity assessment.

In the credible fear process, persons who do not speak English may face barriers accessing the credible fear process. Noncitizens who speak indigenous languages and other less commonly spoken languages have additional challenges with the credible fear process as USCIS may not have interpreters readily available for such languages.

To comply with 8 CFR section 208.30(d)(5) and DHS language access requirements, the Asylum Division has contracted interpreter services for the purposes of providing noncitizens with direct interpretation for credible fear interviews. While many languages are required under this contract, certain languages are difficult to fill due to a lack of cleared interpreters. There may be no interpreters available or a limited number of interpreters available for these languages.

Asylum Division Headquarters Management Branch has created a list of languages that are currently available under the asylum contracts. This list is posted on the ECN and updated regularly. Asylum Offices are required to consult this list monthly. Asylum offices also must document all attempts to schedule an interpreter in the interpreter log. The purpose of the interpreter log is to track calls made by Asylum Division staff in order to reconcile invoices as well as to provide feedback to the contractors regarding interpreter/monitor performance.

III. Implementation

A. Asylum Office Determines Which Language to Use in Credible Fear Interview

When an Asylum Office receives a credible fear referral, the office must schedule the noncitizen for a credible fear interview. During the interview, the Asylum Pre-Screening Officer (APSO) must determine which language(s) the noncitizen speaks and understands and confirm with the noncitizen the preferred language to use in the credible fear interview.

The APSO must ask the following questions when determining which language to use during the credible fear interview:

- Do you speak any other languages besides [language of interview]?
- [If the applicant speaks more than one language] In which language do you prefer to proceed for this interview?
- Do you understand the interpreter in [preferred language]?
- Interpreter – do you understand the applicant in [preferred language]?

If appropriate, the APSO may want to ask one or more of the following questions when determining all the languages the applicant speaks:

- What is your native language/mother tongue?
- What language did you speak at home (as a child with your family)?
- What language were you instructed in at the school(s) you attended?

If the noncitizen's preferred language is not serviced by an interpreter contract, but there is evidence that the noncitizen communicated in a different language during the initial processing by CBP or ICE that is serviced by an interpreter contract, then the Asylum Pre-Screening Officer (APSO) must ask whether the noncitizen is able and willing to proceed with the credible fear interview in the language used when being processed by CBP and ICE. This confirmation must be reflected in the interview notes. When confirming whether the noncitizen is able and willing to proceed with the credible fear interview, APSOs must keep in mind that noncitizens who successfully provided basic biographic and travel information to CBP or ICE in a language may

not be able to discuss or feel comfortable discussing their credible fear claim in depth in that same language. APSOs are reminded that the purpose of a credible fear interview is different than an interview during an encounter with CBP or ICE.

If the APSO determines that the noncitizen can fully participate in a credible fear interview in another language, for which there is an interpreter available, and the noncitizen agrees to proceed with the interview in that language, the APSO should confirm throughout the interview (as needed) and at the conclusion of the interview that the noncitizen understood the contents of the interview and was able to testify accurately and completely.¹ This confirmation that the noncitizen understood the contents of the interview and was able to testify accurately and completely must be reflected in the interview notes.

B. Language Not Serviced because No Available Interpreter on Asylum Contract

If the APSO is unable to communicate with the noncitizen because their preferred language is not serviced by an asylum contract and, if applicable, the noncitizen does not agree to proceed with the credible fear interview in another language for which the APSO confirms understanding, the Asylum Office must issue Form I-862, Notice to Appear (NTA), without making a credible fear determination. This charging document is known as a language access NTA and is reviewed by a SAPSO or Section Chief depending on local office policy. Concurrence by local field office leadership or Asylum Headquarters is not required.

When issuing the language access NTA, please note that on page 1 of the NTA the following box should **not** be checked as no credible fear determination has been made:

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

The Asylum Office must create a memorandum to file documenting the steps taken to secure an interpreter and explaining why the language access NTA was issued. This memorandum to file must be placed in the A-file with a copy placed in the physical or electronic work file, and a copy of this memorandum should be provided to EOIR with the NTA. Offices are no longer required to email the memo to Asylum Division Headquarters.

The office will update Global, including the Global interpreter log, following the procedures in Section IV.

C. Language Serviced Under Contract

When the noncitizen's preferred language is serviced under the primary interpreter services contract, the Asylum Office must contact all three interpreter services vendors (currently Language Line, Lionbridge, TransPerfect) to attempt to schedule an interpreter as soon as practicable, generally within the next three (3) business days, and document the calls on the interpreter log in Global. If the language appears on the rare language contract, the Asylum

¹ See the RAIO Lesson Plan "Interviewing – Working with an Interpreter."

Office staff must contact the rare language contract vendor (currently Language Line) to attempt to schedule an interpreter as soon as practicable, generally within the next three (3) business days, and document the calls on the interpreter log in Global.

If an interpreter cannot be secured/scheduled within three (3) business days, the Asylum Office may issue a language access NTA. The office must complete a memo to file that documents the steps taken to attempt to secure/schedule an interpreter and explains why the language access NTA was issued. This memorandum to file must be placed in the A-file with a copy placed in the physical or electronic work file, and a copy of this memorandum should be provided to EOIR with the NTA. Offices are no longer required to email the memo to Asylum Division Headquarters.

The office will update Global, including the Global interpreter log, following the procedures in Section IV.

IV. Interpreter Log and Global Procedures

Offices must update the interpreter log in Global promptly for all cases, regardless of whether an interpreter is available.

The interpreter log can be found on the interview card in the Adjudication tab, by clicking the “LOG INTERPRETER/MONITOR” button. This opens the interpreter log. Select ADD CALL under the relevant vendor.

If there are no interpreters available, either because the language is not serviced or the operator indicated that there are no interpreters available at the time of the interview, select “Unaccommodated Language” and indicate the language that was unavailable. Any failed attempts to pre-schedule an interpreter must be documented with a new interpreter log entry indicating that the language was unaccommodated.

V. ECN Updates

The Asylum Division Management Branch maintains a list of all languages that are currently available under the contract in the resource materials section of the interpreter log page in the ECN. The Management Branch updates it as needed. Asylum Offices are responsible for checking the ECN site for updates on a regular basis and confirming current availability with the interpreter service providers.

If you have any questions regarding the guidance in this memorandum, please contact HQ Asylum Operation Branch points of contact through your chain of command as appropriate.

Attachments (1)

1. Updated CFPM Section III.E.3, Interpreters