



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

October 28, 2024

Bitta Mostofi
Senior Advisor to the Director
U.S. Citizenship and Immigration Services

via email

Dear Ms. Mostofi:

The American Immigration Lawyers Association (AILA) and ASISTA write to bring to your attention a trend of missing correspondence, both from USCIS and to USCIS. Between April and October 2024, ASISTA and the AILA National VAWA/U/T Committee collected 12 practitioner examples of missing correspondence *from* USCIS and 6 practitioner examples of missing submissions *to* USCIS. Below is a summary of the issues highlighted by the examples gathered, as well as recommendations for how to address this trend.

Missing Correspondence from USCIS

1. Legal representatives do not receive correspondence from USCIS, regardless of whether a change of address or new G-28 is filed.

Practitioners report not receiving correspondence—often, a request for evidence (RFE)—from the Vermont Service Center, Nebraska Service Center, and certain field offices. This is true in cases where the representative and address have remained unchanged throughout the pendency of the case (*see* Exhibit A, examples 1, 2, 4, 8, 11, and 12), where the representative filed a change of address (*Id.*, examples 5 & 7), where the representative entered a new G-28 (*Id.*, examples 3 & 10), or where the representative filed both a change of address and a new G-28 (*Id.*, examples 6 & 9). Legal representatives have reported these issues across a variety of case types, including petitions for U nonimmigrant status, U-based adjustment of status, T-based adjustment of status, VAWA self-petitions, and VAWA adjustment of status.

In all cases where the legal representative subsequently received the case decision, USCIS denied the case based on abandonment for failure to respond to the RFE that the legal representative had not received. *See* Exhibit A, examples 1-8, 10 & 12. In two additional cases where the representative had not received the decision at the time of submitting the case example, the facts would indicate that the likely reason for the denial was abandonment for failure to respond to the RFE. *Id.*, examples 9 & 11.

2. Missing correspondence results in inefficiencies and hardship.

Non-receipt of the RFE and subsequent denials often resulted in additional work for the survivor, their legal representative, and USCIS in the form of hotline inquiries (*See* Exhibit A, examples 2, 4, 6, 8 & 11), Infopass appointments (*Id.*, example 6), I-290B filings (*Id.*, examples 3-5, 8-10), escalation to the USCIS Ombudsman (*Id.*, example 8), Congressional inquiries (*Id.*, example 6); refiling of the application (*Id.*, example 2 & 6), and, in one case, litigation (*Id.*, example 5).

Of particular concern are cases where the representative was aware that an RFE had been issued, generally because of a change in online case status or a notification email, but still could not get USCIS to respond to inquiries attempting to obtain a copy of the RFE that had not been received. *Id.*, examples 6, 8, and 11. In one of those cases, the VSC VAWA hotline instructed the representative to schedule an InfoPass appointment, but USCIS officials at the appointment were unable to pull up a copy of the RFE. *Id.*, example 6.

3. Recommendations

ASISTA and AILA respectfully recommend the following:

- USCIS should conduct a review of its procedures relating to maintaining and updating applicant and representative addresses with a goal of ascertaining the root of these issues. These examples and other practitioner reports of USCIS correspondence sent to an incorrect address (for example, to another attorney who is not the attorney of record) seem to indicate that such mailing issues are not isolated.
- USCIS should verify procedures for ensuring legal representatives' change of address and/or new appearances on G-28s are timely and properly updated prior to the issuance of any documents or notices, such as RFEs, NOIDs, and denials.
- Given the barriers to obtaining copies of an RFE that the legal representative did not receive, when USCIS believes that no RFE response was received, USCIS should make its decision on the record rather than denying the application for abandonment, as 8 § C.F.R. 103.2(b)(13)(i) allows USCIS discretion to make a decision on the record.
- USCIS should improve staffing or implement other changes to speed up response times to hotline inquiries. Additionally or alternatively, USCIS should consider allowing attorneys to call the Contact Center or reinstate the old VAWA phone hotline.
- USCIS should institute a policy of providing a copy of the RFE/NOID in question via the email hotline when legal representatives request reissuance of the notice without the need for FOIAs, in-person field office appointments, or other filings, which delay the process and increase the likelihood of case denial.

Missing Submissions to USCIS

ASISTA and AILA also collected examples of missing submissions to USCIS and received a handful of examples, in addition to those that were shared with USCIS in June 2024 as part of AILA's receipt notice and hotline delay example collection. The examples gathered reflect the following issues:

- VAWA, U, and T-related initial filings that have not been receipted for several months after filing, resulting in an expired I-918B; no proof of automatic extension of status for T nonimmigrants who had timely filed for adjustment, resulting in job loss.
- No I-765 receipt when the I-765 was included with the U visa filing and the I-918 receipt was issued.
- One out of three U adjustment applications mailed in the same FedEx box was receipted; the other two were lost and later rejected because the checks had expired.
- An I-539 was denied for abandonment for failure to respond to the RFE, though the attorney had timely responded to the RFE.
- USCIS issued an RFE for a medical exam for a detained T adjustment applicant who had already submitted a completed I-693 prior to RFE issuance and after I-485 submission.

ASISTA and AILA respectfully recommend the following:

- USCIS should evaluate mailroom practices for all humanitarian case types to ascertain where the errors are most commonly occurring. Create protocols to eliminate these errors.
- USCIS should improve its hotline response time to be able to identify missing submissions before consequences snowball over time. In addition, when an application is identified as having been lost, USCIS should uniformly apply a policy to permit the filing of a copy of the original filing and backdate it to the date of original delivery.
 - A favorable USCIS policy would be to treat all eligibility and filing deadlines as having been met if they were met on the date of original delivery. It would be helpful for USCIS to communicate this policy to applicants at the time they are informed the application is lost so their minds can be at ease and they can demonstrate to employers, benefits officers, insurers, bankers, or others immediately, even before receipt, that their application will be reviewed as timely.
- When USCIS believes that no RFE response was received, USCIS should make its decision on the record rather than denying the application for abandonment, as 8 § C.F.R. 103.2(b)(13)(i) allows USCIS to make a decision on the record.

We look forward to your response about this troubling trend. If you have any questions, please reach out to Amy Grenier, AILA staff contact for the AILA National VAWA/U/T Committee at agrenier@aila.org.

Sincerely,

American Immigration Lawyers Association

ASISTA

Attached: Exhibit A – Examples of Missing Correspondence

Cc:

Nathan Stiefel, Citizenship and Immigration Services Ombudsman

Connie Nolan, Deputy Associate Director, Service Center Operation Directorate

Beth Bokan, Adjudication Officer, HART, Service Center Operations Directorate

Michael Valverde, Associate Director Field Operations Directorate

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