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Memorandum

TO: Asylum Division Directors
Asylum Office Deputy Directors
Supervisory Asylum Officers
Quality Assurance/Training Asylum Officers
Asylum Officers

FROM: John Lafferty
Chief, Asylum Division

A handwritten signature in blue ink, appearing to read "John Lafferty", written over the printed name and title.

SUBJECT: Updated Guidance on Reasonable Fear Note-Taking

Purpose

The purpose of this memorandum is to announce revisions to the Reasonable Fear Procedures Manual at Section III.E.4 on Note-Taking and Sworn Statement.

Effective immediately, Asylum Pre-Screening Officers (APSOs) are no longer required to take notes in sworn statement format or to conduct a "read-back." Additionally, APSOs are no longer required to ensure alien signature at the end of the interview notes or alien initials for corrections and on each page¹. Instead of conducting a sworn statement and read-back, APSOs will now take interview notes in a Q&A format and will provide to the alien a summary of the claim and an opportunity to correct errors.

Background

Previously, the Reasonable Fear Procedures Manual required notes for reasonable fear processing to be taken in Question and Answer (Q&A) format, transcribed on a sworn statement form and read back to the alien, during which time the alien could make corrections. The alien was then required to initial all corrections and each page of the sworn statement notes. The alien, the APSO, and a third party then signed the completed sworn statement.

¹ Form I-899, Record of Determination/Reasonable Fear Worksheet is going through the Paperwork Reduction Act Process and will be amended to eliminate the requirement for a sworn statement.

The regulations do not require that interview notes be taken in “sworn statement” format. Federal regulations on the reasonable fear determination at 8 C.F.R. § 208.31(c) state:

“The asylum officer shall conduct the interview in a non-adversarial manner, separate and apart from the general public. At the time of the interview, the asylum officer shall determine that the alien has an understanding of the reasonable fear determination process. ... The asylum officer shall create a summary of the material facts as stated by the applicant. At the conclusion of the interview, the officer shall review the summary with the alien and provide the alien with an opportunity to correct errors therein....”

Rather than requiring a sworn statement, APSOs will now take interview notes in a Q&A format, consistent with the manner in which notes are taken in the context of the credible fear protection claim. Although Q&A notes are not required to be a verbatim record of everything said at the interview, they must provide an accurate record of the specific questions asked and the alien’s specific answers to demonstrate that the APSO gave the alien every opportunity to establish a reasonable fear. Q&A notes must reflect that the APSO asked the alien to explain any inconsistencies, as well as to provide more detail concerning material issues. This type of record will provide the supervisor with a clear record of the issues that may require follow-up questions or analysis, as well as assist the asylum officer in the identification of issues related to credibility and analysis of the claim after the interview. While there is no longer a requirement that the Q&A notes be reviewed with the applicant as a sworn statement, the APSO must provide a summary of the claim to the alien and provide an opportunity to correct errors. This summary may be documented in the Q&A notes with a statement such as the following:

“APSO summarized the case to the alien and provided an opportunity to correct any errors as required by regulation. The alien had no corrections to the summary. [OR APSO corrected the errors indicated by the alien.]”

Implementation

Sections III. E.4 Note-Taking and Sworn Statement (now “Note-Taking”) of the Reasonable Fear Procedures Manual is revised to reflect the aforementioned changes.

Contact Information

Questions regarding reasonable fear procedures should be submitted to the Reasonable Fear Program Manager in the Operations Branch, Giacomo A. Picciotto.

Attachment