

# Immigration Information

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## 10.3 General Adjudication Procedures [AD 01-34].

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The following steps generally apply to all cases processed by the adjudications unit within a service center or local office (including all naturalization and nationality applications). Depending upon local procedures, cases may be handled by a single adjudicator, or they may be broken down according to task with various tasks handled by different employees.

(a) Case Review. Each case must be thoroughly reviewed to determine jurisdiction, presence of required supporting documentation, existence of relating files and basic statutory eligibility. If there is a relating file that has not been reviewed, endorse the file number on Forms I-94 and the petition or application if they have not already been so noted.

(b) IBIS Checks. [(b)(2) or (b)(7)(E)]

(c) Other Records. A check of the Headquarters records may also be made with respect to the applicant, petitioner or beneficiary, but only when it is believed such a check would produce pertinent information. See Chapter 3(B)(1) of the Records Operations Handbook for information on checking other records.

Any further action that may be required, short of approval of the petition, shall not be delayed while the Headquarters record check is pending.

(d) Adjudication. The adjudicator must carefully examine the application form and all supporting documentation. Examination should address (but not be limited to) the following questions:

- Is the form complete and signed?
- Is the applicant or petitioner represented by counsel with Form G-28 on file?
- Are there any responses which require further explanation or indicate there may be a need for additional documentation?
- Are all necessary supporting documents present and translated into English, if necessary?
- Is the beneficiary statutorily eligible for the benefit sought?
- Are all supporting documents authentic and unaltered?
- Is there any reason to suspect fraud?
- Are there any legal precedent decisions or court orders relevant to the case?
- Are there any ancillary applications which should be filed by the applicant (e.g. a waiver application, adjustment application, advance parole request, or employment authorization request)?

(e) The Burden of Proof. Bear in mind that the burden of proof in establishing eligibility for an immigration benefit always falls solely on the petitioner or applicant. USCIS need not prove ineligibility. Each application form includes specific evidence requirements necessary for approval. When an applicant or petitioner cannot establish that certain primary evidence is unavailable, secondary evidence, also in specific forms, may

provided. Experienced officers become familiar with a wide range of documents submitted as evidence judgement is required to determine which forms of primary and secondary evidence should be accepted in individual cases. In addition to reliance on past experience, there are sources of information for verifying information discussed in **chapter 14**. [See Matter of Brantigan, 11 I&N Dec. 453 (BIA 1966).]

Strict rules of evidence used in criminal proceedings do not apply in administrative proceedings. Usual or documentary evidence may be used in visa petition proceedings. Copies of public documents, certified person having custody of the originals, are generally admissible. [See also **Chapter 11** of this manual discussion of evidence.]

(f) **Inspection of Evidence**. The adjudicator must afford a petitioner or applicant an opportunity to inspect and rebut adverse evidence used in making a decision. Prior to denial of any application or petition based on adverse evidence, USCIS routinely issues a "notice of intent" to deny, by letter, explaining the nature of the adverse information. The applicant or petitioner may choose to respond in writing or may ask to inspect the record of proceedings prior to submission of a rebuttal. A notice of intent must specify the date by which a response must be received and instruct the applicant or petitioner that a failure to respond will result in a denial. [See **8 CFR 103.2(b)(16)**.]

(g) **Decision: Approval**. If a case is ready for approval, the adjudicator must stamp the action block with an approval stamp and approved "security" ink. In some cases, the officer's signature is also required. Depending upon local procedures, a work sheet for clerical action may be completed, or the adjudicator may update the CLAIMS system to initiate generation of an approval notice to the applicant or petitioner and the attorney of record, if any. In some instances, the adjudicator may manually complete processing. The adjudicator must forward the case file for disposition: to the file room, the National Visa Center or consular post, or another office. In emergent cases, the petitioner may request that a cable be sent to the consular post. The cables for such notifications are included as **Appendix 10-4**. Each service center has a quality review procedure that may review some segment of completed cases for proper adjudication.

(h) **Decision: Denial**. If a case is to be denied, the adjudicator must so note the action block and prepare a written denial notice. Denials may consist mainly of "boilerplate" paragraphs explaining the legal basis for an adverse decision or they may be entirely original. In all cases, the specific facts of the individual case must be explained in the decision. If a denial is based on precedent decisions, those decisions should be properly cited in the body of the denial notice. The applicant or petitioner (or representative) must be advised of the action provided with information concerning his or her right of appeal. Depending upon local procedures, denial of a case may be held in suspense until an appeal is filed or the appeal period lapses, or the case file may be sent to another office for follow-up action. Denial decisions are normally sent to a supervisory officer for review and signature prior to mailing. Service of a decision is ordinarily accomplished by routine service as prescribed in **CFR 103.5a**. Personal service is required only when an adverse action is being initiated by USCIS, such as a suspension, rescission or revocation.

#### **10.4 Transferring Jurisdiction within USCIS.**

A case pending with one office or officer may be transferred to another officer or jurisdiction without a hearing for several reasons, such as:

- the case was misfiled and jurisdiction belongs to another office
- the applicant moved to another jurisdiction
- a case pending with a service center adjudicator appears to warrant a personal interview in a local office
- an officer is transferred to other duties and a supervisory officer transfers pending casework to another officer in the same jurisdiction
- regulations require movement of a case to another office for specific action.

The transfer of a case should be carefully considered before action. Jurisdictional issues should, if possible, be settled before the initial officer spends significant time on the case.

Before leaving his or her current position, an officer being transferred to another position, assignment or promotion should be given time to complete cases he or she had started, rather than reassigning unfinished work to another officer. Cases being transferred from a service center to a local office for interview or investigation should be reviewed by a supervisory officer before the transfer is initiated to ensure that the matter can be readily resolved through in-house research: a phone call to an employer, review of existing files, or use of available research tools. Such a transfer results in a significant additional workload for USCIS. While it is a very valuable and effective tool in certain circumstances, it should not be abused—used as a way of handling difficult cases.

### **10.5 Requesting Additional Information.**

(a) General. Whenever a case is received and the adjudicator cannot decide the case based on the information submitted, there are five options. Each of the options must be considered carefully, since each requires expenditure of USCIS resources to some degree. The available options are:

- internal research using available sources such as those described in **chapter 14** of this manual;
- requesting the applicant or petitioner to submit additional documentary evidence;
- conducting an interview with the petitioner, beneficiary, applicant or other witnesses;
- if local office policy allows, conducting a field examination (see **chapter 17**); and
- conducting an investigation.

(b) Requests for Additional Evidence. Just as the transfer of open cases to another office should be avoided where possible, so should requests for evidence (RFEs) from the applicant or petitioner. Requesting additional information or returning a case for additional information is a drain on USCIS support resources, results in duplication of effort by the adjudicating officer and delays completion of the case. Up-front case review must be thorough. Information not submitted with the application, but contained in other USCIS records or readily available external sources should be obtained from those sources rather than by returning the case to the applicant for information or evidence.

In particular, requests for "discretionary" evidence should be carefully considered. For example, a request for returns or other financial information as evidence of a petitioner's ability to pay the wage offered on an application might be reasonable if the petitioner is a small start-up company, but it would not be reasonable to request such information from a "Fortune 500" company. It is important that the adjudicator exercise common sense judgment to strike a balance between obtaining necessary information for thorough, correct decision-making and avoiding pointless "fishing trips."

If a case must be returned for evidence, it is essential that all required evidence be identified and requested. (Occasionally, the additional evidence itself will raise new questions which could not have been foreseen at initial review, but this is extremely rare and can be kept to an absolute minimum by a careful initial review of the application/petition and detailed explanation of the reasons for the RFE.) Multiple, sequential returns of a case, particularly wasteful and demonstrate a lack of professional competence on the part of the adjudicator.

Upon resubmission of the application or petition, or compliance with the RFE, the case should be returned to processing order in accordance with its original filing date. This will normally make the case one of the first (if not the very next one) to be adjudicated as it had already reached the "head of the line" at the time the RFE was made.

(c) Interview Requests. In most instances, a request for an interview means sending the case from a center to a local office. If such action is necessary, the officer requesting the interview must identify the information which he or she believes can best be obtained by a personal interview. The most common requests involve spouse cases, although an interview may be appropriate in other types of cases as well. It is inappropriate to go on "fishing expeditions", transferring cases as a result of vague suspicions. The requesting officer should list specific items which the interviewer should probe. In addition, the requesting officer should conduct any preliminary research which may be possible, such as verifying telephone numbers, employment records, business records, etc., and provide the results for use by the interviewer.

(d) Investigative Requests. [(b)(2) or (b)(7)(E)]

## 10.6 Post-Decision Case Actions.

(a) Form I-824. In most instances once a case is adjudicated and notices are sent to the applicant or petitioner, no further action on the part of the adjudicator is required. However, there are certain situations which may require additional actions. Such actions may be initiated by the applicant or petitioner, ordinarily by filing Form I-824. They may independently be initiated by USCIS, such as when a beneficiary is unlawfully in the United States and is subject to removal proceedings.

Form I-824 may be filed, with fee, to request a duplicate approval notice or to transfer a case requiring issuance from one consulate to another. Jurisdiction to act on an I-824 lies with the office which originally approved the case, or, if a case file has been transferred, with the office currently holding the file. Follow the procedures for completing action on forms I-824, including updating CLAIMS and notifying the applicant.

(b) Removal Proceedings. [(b)(2) or (b)(7)(E)]

(c) Adverse Information. There may be instances where a petition or application is approved, but information is discovered which impacts the admissibility of the applicant or petitioner. In such cases, the "remarks" section of the petition may be noted with the information. In other cases, it may be appropriate to post a lookout to inform the alien if he or she attempts entry.

## 10.7 Preparing Denial Orders.

(a) General. This paragraph provides basic guidelines to use when preparing a decision to deny an application or petition for a benefit under the Immigration and Nationality Act, or to certify a decision to either the AAC or the BIA.

For many applications and petitions, standardized forms exist, or "canned" paragraphs have been prepared to provide assistance in preparing a formal decision. For many other applications and petitions, a individual form or paragraph must be prepared. When using standard forms and "canned" paragraphs, make sure that the language of the form or paragraph is appropriate for the situation involved. It is all too easy to get into the habit of trying to make the situation fit the language of the canned decision. The following standard forms pertain to the applications listed:

Application/Petition Type	Form Number
Any application adjudicated by a service center or by a district or local office using the CLAIMS system	I-797
Any application or petition where the decision is being certified to the Office of Administrative Appeals or to the Board of Immigration Appeals	I-290C

Application to Extend Nonimmigrant Status (Form I-129 or Form I-539)	I-541
Application to Register Permanent Residence or Adjust Status (Form I-485)	I-291
Application to Change Nonimmigrant Status (Form I-539)	I-543
Petition for Alien Fiance(e) (Form I-129F), Petition for Alien Relative (Form I-130), Immigrant Petition for Alien Worker (Form I-140), Petition for Nonimmigrant Worker (Form I-129).	I-292

Office letterhead may be used for denial notices for application types not specified above.

(b) Elements of a Formal Decision. Use simple language which can be understood by the applicant. Although immigration law can involve complicated legal principals, the decision should be written in clear, simple language which the applicant or petitioner can understand it. Avoid Latin terms and other "legalese" language.

A formal decision should contain five elements, each of which may be one or more paragraphs in length:

- (1) An introduction which describes the benefit being sought
- (2) A description of the criteria which the applicant or petitioner must meet in order to obtain the benefit sought. This criteria should explain both the statutory requirements and (where appropriate) the discretionary standards and precedents.
- (3) A description of the evidence in the case in question. This includes both the documentation submitted by the applicant or petitioner, and the other evidence which is contained in the case file. If the applicant cannot reasonably be presumed to be already aware of the evidence, he or she must be given an opportunity to rebut the evidence before a decision is made. [8 CFR 103.2(b)(16)(i)]
- (4) A discussion of how the evidence in the case fails to meet the criteria for obtaining the benefit. In most cases, there may be more than one reason for the denial, in which case normally all should be discussed. In some cases, however, when the statutory basis for the denial is clear and incontrovertible, a discussion of discretionary issues may be unnecessary.
- (5) A conclusion which informs the applicant or petitioner that the case is being denied. It should advise him or her as to his or her appeal rights (if any) and whether the decision is without prejudice to other cases the individual is seeking or is likely to seek.  
(Added AD01-26)

NOTE 1: The final denial and final revocation notice must reflect the correct number of days in which the applicant or petitioner or self-petitioner has to appeal the decision. For standard denials which are appealable to the BIA, the applicant or petitioner has 30 days to appeal the decision. For standard denials which are appealable to the AAO, the applicant or petitioner has only 15 days to appeal the decision. For revocations of petitions pursuant to 8 C.F.R. 205.2 (i.e., revocations on notice), a petitioner or self-petitioner has only 15 days to appeal the decision, regardless of whether the AAO or the BIA has appellate authority.

NOTE 2: 8 CFR 103.2(b)(15) provides that when USCIS denies a petition or application for lack of procedural requirements, the denial cannot be appealed (although the alien can file a motion).

Each decision should include a copy of Form M-188, Appeals and Motions, which discusses procedural requirements for appeals and motions. (Since fees for appeals and motions tend to change faster than the M-188 is revised, ensure that the version of the form being sent lists the correct amounts.)

Where the applicant or petitioner has appeal rights, include copies of the appropriate forms:

- Appeals to the Board of Immigration Appeals (Form EOIR-29)
- Appeals to the Office of Administrative Appeals (Form I-292B)

(c) Signatory Authority. Formal orders of denial or certification (approval or denial) are prepared for the of the district director, service center director or officer-in-charge delegated pursuant to 8 CFR 103.1( authority has been re-delegated, the decision must be made in the name of the director or officer-in-charge. An original signed copy is delivered to the petitioner, applicant or attorney of record. An initialed and facsimile-stamped copy is retained in the file and becomes part of the record of proceeding. In the lower corner of the file copy add the phrase “recommended by” and the name of the officer who prepared the Public copies of orders should not include this information.

## 10.8 Preparing the Appellate Case Record.

### (a) Administrative Appeals Office (AAO) Cases.

(1) General. 8 CFR 103.1(f)(3)(iii) lists the types of cases which may be appealed or certified to the AAO. In addition, a director may choose to certify an application over which neither the AAO nor the BIA has jurisdiction, if the director believes that the case presents novel or unique issues warranting higher review and/or possible designation as a precedent decision.

Upon receipt of an appeal in a case over which the AAO, the district or center must review the case to determine whether the arguments presented on appeal clearly overcome the basis for denial. If the district or center may treat the appeal as a motion to reopen or motion to reconsider (MTR) and a separate case on the MTR. If the arguments fail to clearly overcome the basis of the denial, the appeal must be forwarded to the AAO.

A district or center may forward either the complete A-file or a complete Record of Proceeding to the AAO. Each district or service center director shall determine whether to send to the AAO either the original or a separate record of proceeding (ROP) for the adjudication of the appeal. If an ROP is to be sent, it must be prepared according to the instructions in Chapter 3, Section E, of the Records Operation Handbook.

Arrange all documents in either the A-file or the ROP chronologically, with the earliest submitted documentation on the bottom and the most recently submitted documentation on the top. The only exception to this chronological order concerns a brief filed in support of a Notice of Appeal (Form I-290B) or a Notice of Certification (Form I-290C). In all cases, the brief should be placed below the Form I-290B or Form I-290C even if it is filed subsequent to the Notice. [Note: Unlike an appeal to the BIA, an appeal to the AAO requires a brief by a USCIS counsel or other official. If the district or center chooses to prepare a brief in rebuttal to the appellant’s brief, it should be clearly identified as such and placed below the appellant’s brief.]

(2) Sample Record of Proceeding in a Non-bond Case. The following is a sample of a ROP (or of a portion of an A-file) in chronological order (listed from top to bottom) for all cases being sent to the AAO (other than bond breaches):

- Notice of Appeal (Form I-290B) or Notice of Certification (I-290C)
- Brief in support of appeal or certification (regardless of its filing date)
- District or service center director’s final decision (e.g., denial notice, revocation notice or notice of certification)

- Evidence submitted in response to a request for additional evidence (RFE), notice of intent to deny, or notice of intent to revoke
- District or service center director's RFE, notice of intent to deny, or notice of intent to revoke
- Notice of Appearance (Form G-28)
- Visa Petition or Application
- Documents in support of the visa petition

(3) Record of Proceeding for Bond Breach Cases. Bond breaches require special attention. The A-file or ROP of a bond breach should contain copies (listed from top of A-file or ROP to bottom) of:

- The G-28 notice of appearance if applicable
- The I-290B appeal form with attachments
- The Form I-323 breach notice
- The Form I-166
- The Form I-340 demand notice
- The postal service Form 3811 showing delivery of the Form I-340
- The questionnaire and worksheet for a surety bond
- The power of attorney for the surety, or the Form I-305 as applicable
- The Form I-352, Immigration Bond
- The appellate decision of the BIA if applicable
- The final order of the immigration judge
- The Form I-862, Notice to Appear

If the applicant or petitioner has filed a motion to reopen or a motion to reconsider (MTR) an earlier decision (AO) (the "appellate decision"), the A-file or ROP should be returned to the AAO with the addition of the decision, and finally, the MTR and attachments on top.

(b) Board of Immigration Appeals (BIA) Cases.

(1) General. 8 CFR 3.1(b) lists the types of cases which may be appealed or certified to the BIA. When an appeal is filed from a decision in one of these cases, an SDAO (or higher official) must review the decision, and USCIS counsel must prepare a written brief on the matter, and a Record of Proceeding must be prepared for transmittal of the case to the BIA (the complete A-File is never sent to the BIA). Unlike appeals to the district or service center, the district or service center cannot treat the appeal as a motion, even when it finds the arguments in the appeal to be convincing.

(2) Preparation of a Record of Proceeding for Transmittal to the BIA. Follow these steps in setting up the A-file for transmittal to the BIA:

- If the alien has not already been assigned an A number, create an A-file. A record going to the BIA must have an "A" file number, even if the denial was originally housed in a CLAIMS receipt file.
- Write the three letter FCO code on the folder's tab followed by the A-file number (odd numbers on the left, even on the right)
- Place a "Record of Proceeding" stamp on the outside of a standard manila file folder

- In every case involving an alien detained by or for USCIS, ICE or DHS, or when an alien's detention is imminent, firmly staple a conspicuously marked flag showing his or her detention status to the folder
- Place all record documents on the right side of the file using an Acco-type fastener. Set up the folder in an orderly fashion using a logical chronological sequence with the appeal (Form EOIR-29) and brief followed by the decision itself, the petition, supporting documentation and all other relevant records. However, if any of the material is classified, it must be handled separately (see paragraph 3)
- Staple one copy of the decision of the district or center director (with the stamped or typed notation "copy" on the bottom of the face page of the order) to the left inside of the record of proceedings. In addition, staple two additional copies stamped "Public Copy", but with no identifying data deleted in the inside corner. [See also "Public Copies" discussion in AFM chapter 10.13.]
- Do NOT place any non-record material or duplicate material in the ROP. Such material should be placed in the actual A-file jacket.
- In the original A-file, attach a copy of the EOIR-29 on top of the record side indicating the action taken.
- Insure that the case is referred to a supervisor for his/her review and to the appropriate Service for preparation of a brief, following normal local procedures.
- Date the form and note that it has been forwarded to the BIA, but do not date the form or note that it has been forwarded until it has been reviewed and briefed by counsel.
- Follow local procedures for housing the A-file pending receipt of the decision by the BIA.

(3) Special Procedures for Classified Information. When a record is sent to the BIA and the decision is based on classified information, that information must be removed from the file and mailed to the DIO representative at the BIA, with an appropriate cover memorandum, following standard procedures for the transmittal of classified information. This material should be forwarded simultaneously with the record of proceedings.

## 10.9 Waiver of Fees.

### (a) Implementation. [\[Revised 08-23-2004\]](#)

(1) Guideline Applicability. All pending and newly submitted fee waiver requests should be reviewed under these guidelines. All CIS Officers are asked to facilitate the adjudication of the fee waiver requests and the implementation of these guidelines. These guidelines apply to those applications, petitions, motions and requests for filing fees contained in **8 CFR 103.7(b)**. There are certain applications and petitions listed in 103.7(b), which are exempt from fee waivers or have specific fee exemptions and therefore would not be reviewed under these fee waiver guidelines.

(2) Documentation. Along with the affidavit or unsworn declaration pursuant to 28 USC 1746, as required by **8 CFR 103.7(c)**, the applicant may submit additional documentation to provide proof of the "inability to pay" fee waiver requests should be decided based upon the affidavit and any additional documentation in support of the fee waiver request. A fee waiver request may be approved in the absence of such documentation provided that the applicant's affidavit or unsworn declaration is sufficiently detailed to substantiate his or her inability to pay the fee. If the CIS Officer determines that the individual did not substantiate his or her inability to pay, then the fee waiver request should be denied.

(3) Submission of Both Fee and Fee Waiver Request. When a form is submitted with both the application fee for the form and a fee waiver request, the form should be processed, if otherwise acceptable, and filed with fee. No subsequent consideration should be given to, nor action taken on the fee waiver request.

(b) Guidelines. [Revised 08-23-2004]

(1) Inability to Pay. An individual does not automatically qualify for a fee waiver based on any on situation or if he or she meets just one or more of the criteria listed below (e.g. the individual is not automatically qualified for a fee waiver if they are over 65 or if they have qualified for or received a means-tested public benefit"). Each case is unique and should be considered upon its own merits.

A fee waiver request may be granted when it has been established to the satisfaction of the CIS O jurisdiction over the request that the individual is unable to pay the fee. The CIS Officer should look individual's overall financial picture and take note of any evidence or documentation regarding the i living arrangements in the United States; the individual's extraordinary expenditures or those of his dependents residing in the United States; monetary contributions for the payment of monthly expe received from adult children, dependents, and other people who are living in the individual's housef and other expenses for which the individual is responsible.

In determining whether the individual should be granted a fee waiver, the CIS Officer may consider following situations and criteria, in addition to the individual's overall financial picture and household when adjudicating the fee waiver request:

- Whether the individual has demonstrated that within the last 180 days, he or she qualified for o "federal means-tested public benefit." A Federal "means-tested public benefits" is any public be funded in whole or in part by funds provided by the Federal Government that the Federal agen administering the Federal funds has determined to be a Federal "means-tested public benefit" t Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193. include, but is not limited to, Food Stamps, Medicaid, Supplemental Security Income, and Temp Assistance of Needy Families or other public benefit. Keep in mind that state and local public a may be based on an amount higher than the "Federal means-tested public benefits," but both s considered as income and treated equally.

Note: Each agency's public benefits are determined based on a unique set of criteria. Therefor though an individual has qualified for another agency's benefits, it should only be one of the fac determining the CIS fee waiver request and should not be used as a definitive factor.

- Whether the individual has demonstrated that his or her household income, on which taxes wei the most recent tax year, is at or below the poverty level contained in the most recent poverty l revised annually by the Secretary of Health and Human Services' "Poverty Guidelines." See <http://uscis.gov/graphics/howdoi/affsupp.htm#poverty> A household as defined by the Ce Bureau, for statistical purposes, consists of all the persons who occupy a housing unit (house apartment), whether they are related to each other or not.
- Whether the individual is elderly (age 65 and over) at the time the fee request is submitted).
- Whether the individual is disabled. The disability should have been previously determined by th Security Administration (SSA), Health and Human Services (HHS), Veteran's Administration (V Department of Defense (DOD) or other appropriate federal agency. An applicant or petitioner r verification of his or her disability by submitting documentation showing that the disability has b previously determined by SSA, HHS, the VA, DOD, or other appropriate federal agency.

Note: Each agency's public benefits are determined based on a unique set of criteria. Therefor though an individual has qualified for another agency's benefits, it should only be one of the fac determining the CIS fee waiver request and should not be used as a definitive factor.

- The age and number of dependents in the individual's family household who are seeking deriva

or benefits concurrently with the principal applicant or beneficiary.

- Humanitarian or compassionate reasons, either temporary or permanent, which justify a grant waiver request. For example: the applicant is temporarily destitute; the applicant does not own or control assets sufficient to pay the fee without causing substantial financial hardship; or an applicant on a fixed income and confined to a nursing home.
- Any other evidence or factors that the CIS Officer believes establishes an applicant or petitioner to pay the required filing fees.

(2) Delegation of Fee Waiver Authority. The authority to grant fee waivers should not be delegated to a CIS supervisory level (i.e. SDAO, SCAO). Initial review may be performed at the Adjudication Office with recommendations, however the final decision must be made at the supervisory level.

(3) Documentation. The following is a descriptive list of financial information that, if submitted, should be reviewed in order to obtain a picture of the individual's overall financial situation:

- Proof of living arrangements (i.e. living with relatives, living in the individual's own house, apartment, etc.) and evidence of whether the individual's dependents are residing in his or her household.
- Evidence of current employment or self-employment such as recent pay statements, W-2 form statement(s) from the individual's employer(s) on business stationary showing salary or wages and income tax returns (proof of filing of a tax return).
- Mortgage payment receipts, rent receipts, food and clothing receipts, utility bills (such as gas, electricity, telephone, and water), child or elder care receipts, tuition bills, transportation expense receipts, and proof of other essential expenditures.
- Any other proof of essential expenditures.
- Proof that verifies the individual's disability. The individual may provide proof of his or her disability by submitting documentation showing that the disability has been previously determined by SSA, VA, DOD, or other appropriate federal agency.
- Proof of the individual's extraordinary expenditures or his or her dependents residing in the United States. Essential extraordinary expenses are those which do not occur on a monthly basis but which are necessary for the well being of the individual or his or her dependents.
- Proof that the individual has, within the last six months, qualified for and/or received a Federal "means-tested public benefit."
- Documentation to show all assets owned, possessed, or controlled by the individual or by his or her dependents.
- Documentation establishing other financial support or subsidies – such as parental support, alimony, support, educational scholarships, and fellowships, pensions, Social Security, or veterans benefits. This includes monetary contributions for the payment of monthly expenses received from adult dependents, and other people who are living in the individual's household, etc.
- Documentation of debts and liabilities – what is owed on any outstanding loans, credit cards, etc. by the individual and his or her dependents, and any other expenses the individual is responsible for (e.g. insurance, medical/dental bills, etc.).

(4) Issues To Be Considered. In considering fee waiver requests, CIS Officers should take into consideration the following issues:

- Incarcerated Individuals Requesting a Fee Waiver. In the case of an incarcerated individual who is requesting a fee waiver, the individual will not automatically qualify for the fee waiver based solely on his/her incarceration. CIS Officers should consider the overall financial picture of the requestor, including any outside income or assets possessed by the individual and which the individual may have access to by way of spouse or outside family member. A fee waiver request submitted by an incarcerated individual should contain a description of any and all outside income or assets possessed and include any supporting documentation as is expected of a non-incarcerated person.
- Extraordinary Expenses. The individual requesting the fee waiver has experienced unusual or extraordinary expenses to the degree that his or her financial situation has been significantly impacted and payment of the filing fee would subject the requestor to undue hardship. Examples include: unexpected and uninsured or underinsured medical bills or situations which could not normally be expected in the regular course of life events; a medical emergency or catastrophic illness affecting the individual or the individual's dependents.
- Frequent or Prolonged Travel Expenses. If the fee waiver request states that the individual is unable to pay the filing fee because of travel expenses and the individual provides a reasonable explanation and supporting documentation regarding the purpose of the travel, the CIS Officer should not refer the associated application or petition to substantiate this statement.

However, if the fee waiver request states that the individual is unable to pay the filing fee because of travel expenses and does not provide any explanation and/or supporting evidence, the associated application or petition may be examined to determine the manner, amount and reason for the travel.

For example: If John Smith is requesting a fee waiver because he used all his funds to travel to several times for pleasure, this situation does not merit a fee waiver unless additional supporting information is provided to convince the CIS Officer to the contrary. However, if John states that he traveled to Australia several times in order to care for a dying relative, then travel would not be an appropriate reason to deny the fee waiver request.

- Self-Petitioning Abused/Battered Spouses and Children of Citizens or Lawful Permanent Resident Applicants and Adjustment of Status and Employment Authorization Applicants, under The Provisions of the Violence Against Women Act (VAWA). See Forms [I-360](#), [I-485](#), and [I-765](#). Due to the sensitive nature of applications and petitions associated with this category, CIS Officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated May 16, 1996; May 6, 1997; and May 25, 2001.
- Nonimmigrant Applications. Generally, nonimmigrants are required to demonstrate sufficient financial support for the duration of their stay in the United States (i.e. sufficient to overcome the public charge grounds of inadmissibility under section [212\(a\)\(4\)](#) of the Immigration and Nationality Act (the Act)). An example of a type of application for which a demonstration of financial support is required would be an application to extend or change nonimmigrant status (Form [I-539](#)). Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications.
- Family-Based Visa Petitions and Applications and Petitions Related to Classifying an Orphan as an Immediate Relative. Petitioners for family-based visas must file an enforceable affidavit of support under section [213A](#) of the Act, on behalf of the beneficiaries at the time the beneficiaries are applying for adjustment of status. Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications or petitions. Keep in mind that multiple affidavits

support may be submitted to meet the requirement and may be from persons other than the petitioner's other relatives.

In addition, the nature of applications and petitions associated with classifying an orphan as an immediate relative and applying for certificate of citizenship for adopted child (Form N-643) has the same considerations as the family-based petitions. Adoptive parents must demonstrate sufficient financial means to support the child in order to meet home study requirements. They must also file an affidavit of support on behalf of the adopted child. These applications and petitions should be treated the same as family-based visa petitions.

- Employment-Based Visa Petitions and Employment Authorization. Generally, beneficiaries and petitioners are entering the United States specifically for employment, with sponsorship from their employer or are obtaining employment after entering. Fee waiver requests should be adjudicated in light of the petitioner's income and support required for approval of these types of applications or petitions.
- Travel Documents and Advance Parole. A fee waiver request made in connection with this type of application should be adjudicated in light of the applicant or petitioner's representations as to the need for and purpose of travel as well as the individual's source of income for the travel requested or proposed.
- Special Situations Concerning Adjustment of Status Applications (Form I-485):
  - Public Charge Concerns. The granting of a fee waiver does not necessarily subject the applicant or petitioner to public charge liability under other provisions of the Act, such as deportability under section **237(a)(5)** or inadmissibility under section **212(a)(4)**.
  - Exceptions to Public Charge Requirements. Refugees, Asylees, Nicaraguan and Cuban Adjustment Act (NACARA), Haitian Refugee Immigration Fairness Act (HRIFA), Indochinese Parole Adjustment Act, Syrian Asylee Adjustment Act, Special Immigrant Juveniles and Registry applicants are exempt from the Form I-485 requirements to show evidence that they are not likely to become a public charge. Therefore, these categories may be given wider latitude in determining required income levels when determining fee waivers.
  - Self-Petitioning Abused/Battered Spouses and Children of Citizens or Lawful Permanent Residents and Adjustment of Status Applicants under the Provisions of the Violence Against Women Act (VAWA). This category should be given special consideration when determining whether a fee waiver should be granted. Due to the sensitive nature of applications and petitions associated with this category, CIS Officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated April 16, 1996; May 6, 1996; and May 25, 2001.

(c) Processing fee waiver requests. The current fee waiver guidelines went into effect on October 13, 2005. From that date, all pending and newly submitted fee waiver requests should be reviewed under these guidelines. Officers are asked to facilitate the adjudication of the fee waiver requests and the implementation of the guidelines. These guidelines only apply to application and petition filing fees contained in **8 CFR 103.7(c)**.

(1) Documentation. (Revised 09/19/2005; AFM 06-05) Fee waiver requests should generally be based upon the initial evidence submitted in support of the fee waiver request, unless the USCIS officer determines that a request for additional evidence would be appropriate. Along with the affidavit or unsworn declaration pursuant to 28 U.S.C. 1746, as required by 8 CFR 103.7(c), the applicant *may* submit additional documentation to provide proof of the "inability to pay." However, when there are natural disasters, such as Hurricane Katrina in August 2005, victims may in fact have no documentation to submit in addition to an affidavit or unsworn declaration to prove their "inability to pay." Therefore, when a situation has been established to the satisfaction of the USCIS [Supervisory] Officer, it would be reasonable to

grant a fee waiver request for replacement of documents based only on the applicant's affidavit or declaration. All documents submitted by the applicant in support of a fee waiver request are subject verification.

**NOTE:** USCIS will advise field offices how to identify applicants eligible for waivers of documentation. For example, in the case of Hurricane Katrina, USCIS informed field offices that people living in certain zip codes were eligible for waivers of documentation. See **Appendix 10-7**.

Suggested examples of documentation include:

- Evidence that an applicant has, within the last 180 days, qualified for or received a "federal medical benefit";
- Evidence which verifies an applicant's disability. An applicant or petitioner may provide verification of her disability by submitting documentation showing that the disability has been previously determined by the SSA, HHS, VA, DOD, or other appropriate federal agency;
- Employment records, pay stubs, W-2 forms, letter(s) from employer(s), and income tax return (including filing of a tax return). The same documents may also be submitted for the dependents in the United States;
- Rent receipts, utility bills (such as gas, electricity, telephone, water), food, medical expense, child care receipts and receipts for other essential expenditures;
- Documentation to show all assets owned, possessed, or controlled by the applicant or petitioner or her dependents;
- Evidence of the applicant's living arrangements in the United States (living with relative, living in own house, apartment, etc.), and evidence of whether his or her spouse, children, or other dependents are residing in his or her household in the United States; and
- Evidence of the applicant's essential extraordinary expenditures or those of his or her dependents residing in the United States.

#### **10.10 Refund of Fees.**

When an applicant or petitioner pays a filing fee on an application, he or she is seeking a decision from USCIS regarding the applicant or beneficiary's eligibility for the benefit(s) being sought. In general, USCIS does not refund a fee or application regardless of the decision on the application. There are only a few exceptions to this rule, such as when USCIS made an error which resulted in the application being filed inappropriately or an incorrect fee was collected. For example, if USCIS advises an applicant to file a waiver application for inadmissibility which is inapplicable to that applicant, the fee should be refunded.

If an applicant or petitioner believes that he or she is entitled to a refund of fee, he or she should file Form I-912, Refund of Immigration and Naturalization Fees. The form is available on the USCIS Intranet. Send the form to the Debt Management Center (DMC), 70 Kimball Ave., South Burlington, VT 05403-6813 or fax 660-5107. Retain a copy for office records, following local procedures. Send only the completed form to the DMC, retaining any back-up documents, applications, etc. The DMC will notify you of the disposition of the request. Only a single refund may be requested per form. Complete the form in accordance with the following instructions:

Block Number	Explanation of Entry

1	List the office in which the form was prepared
2	Assign a request number for the refund using the FCO-Fiscal Year-Sequential Number format. (For example: LOS-2000-0011 would be the 11 <sup>th</sup> request submitted by the Los Angeles office during FY 2000.)
3	Enter the requesting office mailing address
4	Enter the area code and telephone number of the person to whom questions regarding the refund may be directed
5	Enter the name and address of the person to whom the refund should be sent. Fee refunds for minors should be sent to a parent or guardian "in behalf of" the child's name. This information must be displayed in the sequence listed below. Use an additional address line, if necessary - Line 1: First name, middle initial, last name of payee - Line 2: In behalf of _____ (if applicable) - Line 3: Street address or P.O. Box - Line 4: City, state and Zip code
6	Record information necessary to file and retrieve the disposition copy after action by the DMC. (receipt file number, etc, according to local procedures). The requesting office remains responsible for maintaining sufficient information and files for a proper audit trail
7	Use this space to identify (name and phone number) a point of contact in the event The DMC has questions concerning processing of the request
8	Enter the application form number (or "fingerprint fee" if appropriate)
9	Enter applicable section of law, if any
10	Enter the exact amount of the fee to be refunded
11	Circle the reason for the refund: "overpayment", "Service error" or "other". If "other" is circled, there must be a brief explanation. Forms submitted without explanation will be returned by DMC without action
12	Original signature of signatory authority.*
13 - 15	Leave blank – for DMC use only

\* If delegated below the office head, the office head must send a memorandum defining the specific del The memorandum must contain the specific authority being delegated (e.g. approval of Fee Refund R Forms G-266), the name, title and signature of each subordinate receiving the delegation and the effect of the delegation.

### 10.11 Order of Processing.

(a) Routine and Expedited Cases. Generally, applications and petitions should be processed in the order they are received. Exceptions can, and should, be made for a number of different reasons, and sometimes reasons may appear to conflict with one another. Reasons for prioritizing certain applications and petitions may relate to:

- A statutory requirement, such as the requirement that joint petitions for removal of conditions under marriage fraud amendments be interviewed within 90 days of filing and adjudicated within 90 days (section 216 of the Act), or that L-1 petitions be adjudicated within 30 days of filing (section 214(a)(2)(C) of the Act);
- USCIS-wide policy pertaining to the type of application or petition being filed, such as The USCIS I fiscal year priority that backlogs in a given type of application or petition be reduced to a specified I
- Current events in the homeland of the applicant or beneficiary, such as a natural disaster or civil w
- Imminent events which may effect the eligibility of the applicant or petitioner, such as the terminati program whose duration is limited by statute or the "ageing out" of a dependent,
- A need to coordinate actions with other branches of DHS, or with other agencies in order to meet i goals
- To correct an injustice which may have occurred, or to prevent one which may be about to occur.

(b) Cases Held for Submission of Additional Information. When an application or petition does not provide sufficient information to make a decision, additional evidence may be requested in accordance with **8 (103.2(b)(8))**, and the processing of the case held in abeyance until a response is received (or the 12 v allowed for a response has expired). Upon receipt of the response (or passage of the allotted time), th shall be returned to its processing place based on the original filing date. This will normally make the c immediate adjudication, since it had already reached the that point once.

(c) Cases Pending Investigation or Decision Deferred for Other Reasons. When a case is returned fr Investigations, it should be returned to its place chronologically, according to receipt date, for process sent to Investigations should remain on a local call- up system within Adjudications and reviewed perio determine if investigation is still warranted or if circumstances have changed. Similarly, if a decision or deferred for any other reason, a call-up system should be maintained locally and the case reviewed to if circumstances have changed sufficiently to warrant final action.

### **10.12 Adjudicator's Responsibilities under FOIA/Privacy Act.**

(a) General. As employees of USCIS, you work with personal information about other people. You cou perform your job (i.e., you could not determine an applicant's eligibility for benefits) without knowing so personal information about those people. The Freedom of Information and Privacy Acts (FOIA/PA) pla responsibility on USCIS, and the individual officer, for disclosure of information which the public has a ' know," while safeguarding individuals against an invasion of their personal privacy.

#### (b) The Freedom of Information Act.

(1) General. The Freedom of Information Act (FOIA) 5 U.S.C 552, provides access to all Federal records except those which are protected from release by exemptions (reasons an agency may c access to a requester). The FOIA can be used by anyone to access government records regardl citizenship. The FOIA only applies to the Executive Branch of the Federal government. It does not Congress, the courts, local governments or private organizations. Requests for access to USCIS under the FOIA must be in writing (by letter or by Form G-639 Freedom of Information/ Privacy Ac and when received must immediately be forwarded to the FOIA/PA officer for proper handling.

[See Appendices **10-1** and **10-2**.] [[Appendices 10-1 and 10-2 added as of 02-06-2006, AD06-17.](#)]

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