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The Affirmative Asylum Backlog Explained
By Cheri Attix, AILA Asylum and Refugee Liaison Committee
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What is the Backlog?

The backlog refers to the affirmative asylum applications that have been filed and are awaiting interview at all USCIS asylum offices nationwide. There are currently around 40,000 cases in the backlog and the number continues to increase. Twenty-eight thousand of those cases were filed in 2013 alone. USCIS Asylum Headquarters does not expect the numbers to improve until at least the end of the current fiscal year (FY).

For the most up-to-date statistics on the backlog, see “[Statistics on Asylum Cases Pending Interview by Office](#).” (AILA Doc. No. 14021957.)

What is Causing the Backlog?

In addition to adjudicating affirmative asylum applications, the asylum offices are responsible for conducting credible fear and reasonable fear interviews. Credible fear and reasonable fear interviews take priority in scheduling over affirmative interviews.

Beginning in FY 2012, the number of credible fear and reasonable fear cases began to increase, and FY 2013 set records. There were 36,000 new credible fear cases in FY 2013. This was nearly three times the number in FY 2012, and nearly four times the number in FY 2011. Reasonable fear case numbers have also been way up: there were over 7,000 in FY 2013 compared to a few hundred in previous years. The second-busiest year for reasonable fear only saw approximately 1,000 cases. The Houston and Los Angeles asylum offices have been the most affected by the surge in credible and reasonable fear interviews.

Both credible and reasonable fear case numbers have continued to increase. The asylum offices are on track to receive more credible fear cases in FY 2014 than last year: around 44,000 if levels continue as they are now, though the number may increase as the weather warms up.

At the same time that credible and reasonable fear numbers were increasing, affirmative application filings were also increasing. There were 45,000 new affirmative filings in FY 2013 alone, which was the most received since 2003.

This perfect storm of cases buried the asylum offices and they have yet to dig out.

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But I've Heard that Some Cases Are Getting Interviewed and Others Are Not. What Is Up With That?

Essentially, it is the luck of the draw. Affirmative interviews have a 60-day adjudication timeframe for completion. The asylum offices are scheduling as many new cases as they can, based on the number of asylum officers that are available after all credible fear and reasonable fear interviews have been scheduled. Those affirmative cases that can be scheduled for interview are still processed within 60 days, if possible. Those that can't be scheduled due to lack of officers go into the backlog.

Newly-filed cases are randomly selected by the computer for the available interview slots. If you file an affirmative asylum case and don't receive an interview notice within 30-45 days, your case was not one of the lucky ones and has gone into the backlog.

For a detailed description of how cases are scheduled for interview, see the "[Affirmative Asylum Procedures Manual \(AAPM\)](#)," at 9-13. (AILA Doc. No. 03111341.)

What Is Being Done About the Backlog?

The asylum offices are increasing their capacity. There are 50 new asylum officers in the most recent training group, which was scheduled to finish training on March 28, 2014. The next training group starts in March 2014 and will include another 304 officers. Asylum headquarters expects that there will be one more training group after that. They were authorized to hire 372 new asylum officers. There are 292 additional officers now on board, with around 250 adjudicating cases.

When fully staffed, there should be 83 officers in the Los Angeles asylum office, 62 in the Houston office, 54 in New York, and 55 in Newark. Houston has had problems with their facilities. Houston will hopefully be adding an additional 25 or 50 people to come up to full staffing.

The Los Angeles office, which has been hardest hit by the backlog, has close to 70 officers right now, up from 60 previously. They also just sent 15 people to training. The number of credible fear interviews that the Los Angeles office had to conduct in the first quarter has not been quite as large as before. The Los Angeles office is hoping that once all the people currently in training are in the office, they will be able to begin making progress on the affirmative caseload. Their capacity depends on the number of credible fear interviews, however, which is unpredictable.

As of the last USCIS Asylum Division Stakeholder meeting on January 29, 2014, Asylum Headquarters stated that they were also discussing opening up some interview slots at each asylum office for backlog cases.

For the unofficial notes from the most recent stakeholder meeting on January 29, 2014, see "[USCIS Asylum Division Stakeholder Meeting Agenda and Unofficial Notes](#)." (AILA Doc. No. 14031842.)

What Can/Should Practitioners Do In The Meantime?

1. Re-Scheduling

According to the AAPM, reschedule requests should be prioritized. AAPM, at 8. USCIS asylum headquarters reports that they have reminded their asylum offices of this fact. However, the high number of reschedule requests that all offices receive, coupled with the fact that they cannot keep up with their new receipts, means that not every reschedule request will be accommodated within a reasonable amount of time. Practitioners are reporting difficulty and long delays (months and years) in the asylum offices' accommodation of reschedule requests.

If your client is lucky enough to get an interview scheduled within the normal timeframe, the best practice is to avoid asking for rescheduling. If your reschedule request cannot be accommodated, the case will go into the backlog. Even more importantly, the EAD processing clock will stop because a rescheduling request is considered an applicant-caused delay. The clock will not start again until the applicant attends an interview—even if that interview is years from now.

If you have no other choice but to reschedule, the request must be made in writing and should be received at the asylum office as early as possible prior to the interview date. Practitioners should also keep in mind that, while the first reschedule request may be based on a variety of reasons, including lack of attorney availability, second requests to reschedule the same case must be for good cause—and the asylum offices do not generally consider conflicts with attorneys' schedules to be good cause.

For an explanation of how reschedule requests are handled, see the "[Affirmative Asylum Procedures Manual \(AAPM\)](#)," at 9-13. (AILA Doc. No. 03111341.) *See also* [USCIS Asylum Division Quarterly Stakeholder Meeting Q&A](#), Dec. 6, 2012, at 8.

2. Expedite Requests

It is possible for the asylum offices to override the system that schedules interviews and expedite cases if they feel the situation warrants it. Practitioners should document their expedite requests with proof of the need for expeditious handling. Due to the high volume of such requests, not all can be accommodated.

3. Changes of Address

Address changes cannot be made online with regard to a pending I-589 application. The change of address must be made in writing to the asylum office where the case is pending. For addresses and email contact information for each asylum office, see "[Asylum Offices Guide—Best Practices](#)." (AILA Doc. No. 12060844.) A change of address within the jurisdiction of the asylum office where the case was filed does not stop the EAD clock.

However, if the new address is under the jurisdiction of a different asylum office, the system will automatically change the jurisdiction of the case to the new asylum office. This is considered to be an applicant-caused delay and will stop the EAD clock. The clock will not start again until the applicant appears for interview, whenever that may be.

4. Travel Outside the United States

Asylum applicants and/or their derivatives who have an urgent need to travel outside the United States must first obtain an advance parole by filing form I-131. Traveling abroad without first obtaining an advance parole will result in the asylum application being considered abandoned.

Travel to the country from which asylum is being requested—without a life-or-death reason for doing so—is likely to have a very negative result on the asylum application.

When filing an I-131 for advance parole, you will notice that there is no specific guidance given for asylum applicants. At the USCIS Asylum Division Stakeholder meeting on October 23, 2013, AILA raised this issue. The response was that asylum applicants should follow the instructions for “all others.” The Asylum Division indicated that they would be raising the lack of specific instruction for asylum applicants at the next Service Center Operations (SCOPs) meeting to hopefully improve the I-131 instructions and the information provided on the USCIS website. See [USCIS Asylum Division Stakeholder Meeting Agenda and Unofficial Notes \(10/22/13\)](#). (AILA Doc. No. 13110860.)

5. Immigrating Through Other Means

Asylum applicants who become permanent residents while their asylum applications are pending should make sure to notify the asylum office in writing of their new status. It is not a good idea to assume that the asylum office will learn of the adjustment of status automatically; permanent residents who fail to notify the asylum office of their new status sometimes end up being placed in removal proceedings by the asylum office when they fail to appear for their asylum interviews.

If applicants want to proceed with their asylum applications after becoming permanent residents they may do so. It is necessary to provide the asylum office with written notice of the election to proceed as soon as possible after adjusting status. Failure to do so may result in the asylum application being deemed abandoned. If the applicant wants to withdraw the asylum application after adjusting status, this must also be done in writing.

6. Withdrawing the Application

Withdrawal of the asylum application must be made in writing to the asylum office where the case is pending and must be signed by the applicant. If the asylum office can verify that the applicant is in valid immigrant, non-immigrant, or temporary protected status, or parole that has not been terminated or expired, no NTA will be issued.

If, however, the applicant is out of status, the asylum office may decide to initiate removal

proceedings. Factors they consider include whether the file contains sufficient information to establish alienage and deportability/inadmissibility and whether the applicant may be eligible for adjustment of status in the near future. If the applicant is out of status and intends to depart the United States after withdrawal of the application, it would be a good idea to provide a copy of the plane ticket and/or itinerary with the withdrawal request to avoid the complication of being placed in removal proceedings.