

# REASONABLE FEAR PROCEDURES MANUAL

## Table of Contents

I. BACKGROUND INFORMATION.....	1
I.A. MANUAL CONTENTS .....	1
I.B. REFERENCES.....	1
1. Written Materials.....	1
2. Legal Authorities.....	2
3. Computer Databases .....	2
4. Acronyms .....	2
5. Jurisdiction .....	2
II. OVERVIEW OF THE PROCESS.....	4
II.A. LEGAL BACKGROUND.....	4
II.B. TYPES OF REASONABLE FEAR CASES .....	5
1. Reinstatement of a Prior Order .....	5
2. Administrative Removal Order.....	7
II.C. APSO REQUIREMENTS .....	8
II.D. FILE MANAGEMENT .....	8
III. THE REASONABLE FEAR PROCESS.....	10
III.A. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) ENFORCEMENT AND REMOVAL OFFICE (ERO) REFERS ALIEN TO THE ASYLUM OFFICE.....	10
III.B. ASYLUM OFFICE RECEIVES REFERRAL FROM ICE ERO.....	10
1. Initiation of Claim.....	10
2. Log of Referred Cases.....	11
3. Processing Timelines.....	12
III.C. ASYLUM OFFICE SCHEDULES INTERVIEW.....	12
1. Orientation.....	12
2. Interview Scheduling and Notification Procedures.....	13
3. Interview Space.....	14
III.D. ASYLUM OFFICE ARRANGES FOR INTERPRETER SERVICES.....	14
1. Contracting Telephonic Interpreter Services.....	14

**Reasonable Fear Procedures Manual**

2. Providing an interpreter with Forms..... 15

3. Interpreter’s Role ..... 15

4. Problems with Interpretation and Changing interpreters ..... 16

5. Conducting the interview without an interpreter in a Language other than English..... 16

6. Aliens Who Provide Their Own Interpreters ..... 16

7. Monitoring Interpreter Performance ..... 17

8. Administering an Oath to the Interpreter ..... 17

9. Documenting Interpreter Time ..... 17

III.E. CONDUCTING A REASONABLE FEAR INTERVIEW ..... 17

    1. Mode and Location of Interview..... 17

    2. Initial Steps in the Interview..... 18

    3. Eliciting Information During the Interview ..... 18

    4. Note-Taking..... 19

    5. Representation..... 20

    6. Witnesses ..... 21

    7. Aliens Unable to Effectively Communicate on Their Own Behalf ..... 22

    8. Aliens Unwilling to Testify on Their Own Behalf..... 22

    9. Recording an Interview ..... 22

    10. Concluding a Reasonable Fear Interview..... 22

    11. Informing the Alien About the Next Step in the Process..... 23

    12. Dismissing the Alien..... 23

    13. Updating APSS ..... 23

III.F. MAKING A DETERMINATION..... 23

    1. Completing Form I-899, Record of Determination/Reasonable Fear Worksheet..... 23

    2. Documenting the Determination..... 24

    3. SAPSO Reviews Determination ..... 25

III.G. DOCUMENTING A DETERMINATION..... 26

    1. Positive Reasonable Fear Determination ..... 26

    2. Negative Reasonable Fear Determination ..... 26

III.H. SUBMITTING THE CASE FOR HQ REVIEW..... 26

    1. Mandatory Review by HQ Asylum..... 26

**Reasonable Fear Procedures Manual**

2. Referral to HQ National Security Unit ..... 27

III.I. SERVING THE DECISION ON THE ALIEN ..... 28

    1. Preparing the Documents for Service ..... 28

    2. Method of Serving the Determination ..... 28

    3. Documents Served on the Alien ..... 29

III.J. POST-SERVICE PROCESSING ..... 30

    1. Positive Reasonable Fear Determination ..... 30

    2. Negative Reasonable Fear Determination ..... 31

IV. EXPANDED TOPICS (in alphabetical order by subject)..... 33

    IV.A. ABC..... 33

    IV.B. ALIENS WHO ARE NOT DETAINED ..... 33

        1. Referral..... 33

        2. Interview Scheduling and Notification Procedures ..... 33

        3. Orientation and 48-Hour Hiatus..... 34

        4. Determination Service..... 34

        5. Failure to Appear for Reasonable Fear Interview ..... 35

        6. Failure to Appear for Determination Pick-Up..... 35

    IV.C. CONFIDENTIALITY ISSUES ..... 35

    IV.D. DETENTION CONDITIONS ..... 35

    IV.E. MANDATORY BARS..... 36

    IV.F. WITHDRAWALS..... 36

    IV.G. REQUEST FOR RE-INTERVIEW..... 37

Appendix – List of Documents ..... 38

RF Memorandum..... 38

## I. BACKGROUND INFORMATION

### I.A. MANUAL CONTENTS

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

This Manual provides information on how to proceed with reasonable fear of persecution or torture determinations for aliens subject to expedited removal from the United States pursuant to section 238(b) or 241(a)(5) of the Immigration and Nationality Act (INA). Unless specifically indicated, an asylum office Director determines which personnel (i.e., asylum officer, asylum clerk) perform certain procedures outlined in this Manual.

The Manual is divided into four (4) sections. The first section, "Background Information," lists references that all asylum personnel should be familiar with in order to process a reasonable fear claim. The second section, "Overview," illustrates how an Immigration and Naturalization Service (INS) Officer refers an alien for a reasonable fear determination. The third section, "Reasonable Fear Process," follows the processing of a reasonable fear claim from the time an INS district officer refers the alien to the asylum office until the asylum office completes the adjudication and files the appropriate documents, if any, with the Immigration Court.

The fourth section, "Expanded Topics," provides more detail on some topics referred to in previous sections, and includes new subjects that bear upon the processing of a reasonable fear claim. While it is not possible to anticipate all possible issues that may arise in the reasonable fear process, this section addresses the most common issues.

Unless otherwise noted, "aliens" in this Manual refers to individuals subject to either reinstatement or administrative removal.

### I.B. REFERENCES

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

#### 1. Written Materials

This Manual is the main procedural guide to the reasonable fear process. Other reference materials are available to asylum office personnel and may be consulted for procedural guidance on other issues that may affect an alien in the reasonable fear process:

- Affirmative Asylum Procedures Manual

- ABC/NACARA Procedures Manual
- APSS User's Manual
- User's Guide to Entering Information in the Asylum Pre-Screening System (APSS)
- Inspector's Field Manual
- AOBTC Basic Training Materials (specific lesson plans are referred to in this Manual)
- Detention and Deportation Officers Field Manual, Section 15.7 "Reinstatement of Final Orders"
- Administrative Removal Proceedings Manual, June 1999.

## 2. Legal Authorities

The reasonable fear process is governed by:

- Immigration and Nationality Act (INA)
- Title 8, Code of Federal Regulations (8 CFR)
- Precedent Board of Immigration Appeals (BIA) decisions
- Precedent Federal Court decisions (including U.S. District Courts, U.S. Courts of Appeal, and the U.S. Supreme Court)
- INS General Counsel (GENCOU) Opinions.

## 3. Computer Databases

The Asylum Pre-Screening System (APSS) tracks the processing of a reasonable fear case. Many of its commands and screens are based upon those found in the Refugee, Asylum and Parole System (RAPS). Asylum office personnel have access to update and change information in APSS.

Asylum office personnel may wish to consult other databases to see if they contain any information about an alien in the reasonable fear process. These databases include:

- Refugee Asylum and Parole System (RAPS)
- Central Index System (CIS)
- Deportable Alien Control System (DACs)
- Computer Linked Information Management System (CLAIMS 3)
- National Automated Immigration Lookout System II (NAILS II)
- Nonimmigrant Information System (NIIS)
- Interagency Border Inspection System (IBIS)

See the Affirmative Asylum Procedures Manual section on computer databases for a description of these systems.

## 4. Acronyms

A supervisory asylum officer in charge of executing the day-to-day functions of an asylum office's APSO program is referred to in this manual as a supervisory asylum pre-screening officer (SAPSO). An asylum officer who makes reasonable fear determinations is referred to in this Manual as an asylum pre-screening officer (APSO).

## 5. Jurisdiction

8 CFR 100.4(f) outlines the jurisdiction of each asylum office. These jurisdictions encompass port-of-entry locations and detention sites. Normally, the alien's place of detention, not the place of apprehension, determines which asylum office processes the reasonable fear claim. For example, if an alien is

apprehended in Maine and is then transported to the Varick Street Detention Facility in Manhattan, which is within ZNK's jurisdiction, ZNK will conduct the reasonable fear interview, rather than ZNY).

## II. OVERVIEW OF THE PROCESS

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

### II.A. LEGAL BACKGROUND

Congress has provided for special removal processes for certain aliens who are not eligible for any form of relief from removal. This allows the INS to remove such individuals without giving them an opportunity to seek relief from removal in immigration proceedings. At the same time, however, obligations under Article 33 of the Refugee Convention relating to the Status of Refugees (Refugee Convention) and Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture) still apply in these cases. Therefore, withholding of removal under either section 241(b)(3) of the INA or under the Convention Against Torture may still be available in these cases. Withholding of removal is not considered to be a form of relief from removal, because it is specific to the country where the individual is at risk and does not necessarily result in the individual remaining in the United States.

To ensure compliance with U.S. treaty obligations, 8 C.F.R. § 208.31 requires the INS to evaluate whether an individual subject to removal under sections 241(a)(5) or 238(b) of the INA may require withholding of removal or deferral of removal to a country where the individual fears persecution or torture. The process is similar to the credible fear screening process used to determine whether a stowaway should be referred to an immigration judge for an asylum eligibility determination, except that it employs a higher screening standard. If an individual subject to these provisions indicates a fear of persecution or torture, the case must be referred to an APSO. The APSO shall determine whether the individual's fear of persecution or torture is reasonable, that is, whether there is a reasonable possibility the individual would be persecuted or tortured in the country to which he or she has been ordered removed.

If the APSO determines that the individual has a reasonable fear of persecution or torture, the APSO will refer the case to an immigration judge for a hearing on withholding of removal (under either section 241(b)(3) of the INA or the Convention Against Torture) or deferral of removal only. The alien will not be allowed to seek any other form of protection or relief before the immigration judge. Just as in the credible fear context, if the APSO determines that the individual does not have a reasonable fear of persecution or torture, the individual will be given the opportunity to request immigration judge review of the negative determination. The individual will be removed if he or she does not request review or if the immigration judge upholds the negative determination after review has been requested. If the judge reverses the negative reasonable fear finding, the individual will be placed in proceedings before the immigration judge for a determination on eligibility for withholding of removal or deferral of removal only.

## II.B. TYPES OF REASONABLE FEAR CASES

8 CFR section 208.31 establishes a process to evaluate applicability of Article 3 of the Convention Against Torture and eligibility for withholding of removal under section 241(b)(3) of the INA for two categories of individuals subject to special removal processes: 1) those subject to reinstatement of a prior order under section 241(a)(5) of the INA, and 2) those subject to an INS administrative removal order under section 238(b) of the INA.

Regulations provide that the INS has exclusive jurisdiction to make reasonable fear determinations, and EOIR has exclusive jurisdiction to review such determinations. 8 C.F.R. §208.31(a).

### 1. Reinstatement of a Prior Order

Section 241(a)(5) of the INA requires the INS to reinstate an exclusion, deportation, or removal order if an individual subject to the order is removed or leaves the United States while that final order is in effect and re-enters the United States illegally. Once a prior order has been reinstated, the person is not eligible to apply for any relief under the INA.

If an alien is apprehended after making an illegal entry, a deportation officer will determine whether the alien is subject to a prior removal order and will then determine whether to reinstate the prior order. The deportation officer will prepare a Form I-871, Notice of Intent/Decision to Reinstatement Prior Order, showing the date and place of the prior order, the date of removal, and the date and location of the illegal re-entry. The Form I-871 is given to the alien, who will have an opportunity to make a statement contesting this determination. If the district office decides to proceed with the reinstatement, the Form I-871 is signed by an INS official and served on the alien. If the alien expresses a fear of return to his or her country of origin, he or she must be referred to the appropriate asylum office for a reasonable fear interview with an APSO. The APSO will determine whether the alien has a reasonable fear of persecution or a reasonable fear of torture. Note: The Legal Immigration Family Equity Act of 2000 (LIFE Act) allows individuals otherwise subject to reinstatement to apply for and be granted relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA).

#### [Appendix A:](#)

Form I-871, Notice of Intent/Decision to Reinstatement Prior Order.

#### [Appendix B:](#)

Detention and Deportation Officers Field Manual, Section 15.7, "Reinstatement of Final Orders."

#### ***a. Circumstances where a prior order may NOT be reinstated***

No illegal re-entry, or alien has not left the U.S. since order issued: If an immigration judge has issued an order of exclusion, deportation, or removal, and the alien has not left the U.S. following the date of such order, that order is still in effect and does not need to be reinstated. The Asylum Division may not assume jurisdiction. EOIR retains jurisdiction over the case, and the alien's proper recourse is to file a motion to reopen the removal proceedings before an immigration judge.



Ninth and Sixth Circuit cases with illegal re-entry prior to 4/1/97: In the Ninth and Sixth Circuits, if the illegal re-entry that triggers reinstatement of a prior order is before the effective date of IIRIRA (4/1/97), the prior order may not be reinstated. See *Castro-Cortez v. INS*, 239 F.3d 1037 (9th Cir. 2001); *Bejjani v. INS*, 271 F.3d 670 (6th Cir. 2001) (both courts held 241(a)(5) does not apply to those whose re-entry was prior to IIRIRA)

Left during voluntary departure period: If an alien was granted voluntary departure and left the U.S. within the required time period, there is no removal order in effect and, therefore, it cannot be reinstated.

Apprehended at entry: If an alien is apprehended during re-entry and has thus failed to make an illegal re-entry, INS may not reinstate a prior order. See *Pacheco-Medina v. INS*, 212 F.3d 1162 (9th Cir. 2000) (an alien has not made an

It is the role of the district office to determine whether reinstatement is appropriate, and the role of the asylum office to conduct the reasonable fear determination. However, APSOs and SAPSOs should review the relevant documents to verify that the reinstatement appears appropriate and, in cases where a SAPSO or APSO believes that a reinstatement of a prior order has been improperly issued, the SAPSO should call this to the attention of the district office and notify HQASM Quality Assurance Unit (HQASM/QA) at the same time. If the district office disagrees and decides to proceed with the reinstatement, the asylum office should proceed with the reasonable fear interview.

#### ***b. Circumstances where a prior order may be reinstated***

If the Attorney General finds that an alien has re-entered the United States illegally after having been removed or having departed voluntarily under an order of removal, the prior order of removal is reinstated from its original date. This includes the following scenarios:

Illegal re-entry after expedited removal order: An alien who has entered the U.S. illegally after removal pursuant to an expedited removal order is subject to the reinstatement process and, if the alien expresses a fear of removal, he or she must be referred to an asylum office for a reasonable fear interview.

Illegal re-entry after prior order reinstated: If an alien who was previously removed after the reinstatement of a prior order and a reasonable fear interview makes a subsequent illegal re-entry, the prior order may be reinstated again and, if the alien expresses a fear of return to his or her country, the alien must be referred for another reasonable fear interview.

Illegal re-entry after overstaying voluntary departure period. If the alien remained in the United States after the time period to depart voluntarily expired, the voluntary departure order became a final removal order that must be reinstated if the alien subsequently left the United States and re-entered illegally.

"entry" if he or she has not been "free from official restraint.")

See INA § 241(a)(5)

#### ***c. Minors***

If the alien whose final removal order is being reinstated is a minor (under the age of 21), the APSO may proceed with a reasonable fear interview.

## 2. Administrative Removal Order

Section 238(b) of the INA permits the INS to order removed aliens who are not legal permanent residents (LPRs) and who have been convicted of an aggravated felony. In such cases, the alien is not placed in removal proceedings in Immigration Court and is not eligible for any form of relief under the INA.

Detailed procedures for this process, known as administrative removal, are covered in the Administrative Removal Proceedings Manual prepared by Field Operations. For aliens subject to administrative removal, an INS officer will prepare a Form I-851, Notice of Intent to Issue a Final Administrative Removal Order, showing specific information about the alien and the conviction and explaining the removal process. When the I-851 is served on the alien, he or she has the right to contest deportability and/or request withholding of removal, and the alien may specifically state a fear of persecution or of torture in the country of origin. The alien may waive a 14-day period for execution of the final removal order. If INS decides to proceed, a Final Administrative Removal Order, Form I-851A, will be served on the alien.

### [Appendix C: Form](#)

I-851, Notice of Intent to Issue a Final Administrative Removal Order

### [Appendix D: Form](#)

I-851A, Final Administrative Removal Order

An LPR cannot be removed under this process. However, an alien who is a conditional permanent resident under § 216 of the INA as the spouse, son, or daughter of a U.S. citizen or LPR is not a lawful permanent resident for purposes of administrative removal proceedings and may be removed. If a 238(b) case is referred to an asylum office for a reasonable fear interview and the individual is an LPR, the case has not been properly referred, and asylum does not have jurisdiction over the case. In such cases, the SAPSO should contact the district office.

### **a. Minors**

If the alien who is being removed using this process is a minor (under the age of 21), the APSO may proceed with a reasonable fear interview, provided there is a final removal order.

### **b. St. Cyr Procedures**

Under the Supreme Court decision, *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271 (2001), aliens with criminal convictions or guilty pleas entered prior to April 1, 1997, who are lawful permanent residents, may be eligible for relief under section 212(c) of the INA. Any alien with a criminal conviction prior to April 1, 1997, who has a final administrative removal order and is referred to an asylum office should receive a reasonable fear interview and determination in accordance with standard procedures. However, the SAPSO should seek guidance from District Counsel if he or she is concerned that *St. Cyr* may apply.

### [Appendix E:](#)

Pearson, Michael, INS Office of Field Operations, Memorandum to Regional Directors, Interim *St. Cyr* Guidance (Washington, D.C., 24 July 2001), 1 p.

## II.C. APSO REQUIREMENTS

Asylum officers require training and interviewing experience before being assigned to conduct reasonable fear interviews. To interview aliens in the reasonable fear process, asylum officers must have successfully completed APSO Basic Training and received a minimum of eight hours of training on the reasonable fear standard and procedures.

APSOs conducting reasonable fear interviews also must be experienced in conducting both affirmative asylum and asylum pre-screening credible fear interviews.

## II.D. FILE MANAGEMENT

Detention staff of the INS district office having jurisdiction over the detention site keep the A-files of detained aliens. Therefore, unless local arrangements have been made for the asylum office to control an A-file, an asylum office usually will not keep an alien's A-file during the reasonable fear process.

The Asylum Division (HQASM) requires an office to keep records of the reasonable fear cases that APSOs have completed. An asylum office must, therefore, create its own reasonable fear folders, which contain all documents related to the determination. At a minimum, the folders must contain copies (except for interview notes) of all documents that were served on the alien and immigration court, which include, but are not limited to, the following.

### 1. Positive Reasonable Fear Determination

- Form I-899, Record of Determination/Reasonable Fear Worksheet
- Final Removal Order (Form I-851A or Form I-871)
- Form I-863, Notice of Referral to Immigration Judge
- Record of Sworn Statement
- Assessment
- Comments and accompanying documents from HQASM/QA, if any
- Notes or memos to the file documenting contact with a representative, if any.

### 2. Negative Reasonable Fear Determination

- Form I-899, Record of Determination/Reasonable Fear Worksheet
- Final Removal Order (Form I-851A or Form I-871)
- Form I-898, Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge
- Form I-863, Notice of Referral to Immigration Judge, if applicable
- Record of Sworn Statement
- Assessment
- Comments from HQASM/QA regarding negative reasonable fear determination
- Notes or memos to the file documenting contact with a representative, if any.

An asylum office Director decides how the office will maintain its records. For example, an office may keep the reasonable fear folders, or scan the documents from the folder onto disks. Whatever system the Director chooses, it must enable an asylum office to provide information about a case in the event of an inquiry.

In the event the SAPSO and asylum office Director conclude that they lack space to continue storing their office's reasonable fear folders, they may dispose of the folders by shredding their contents. Before shredding, however, the SAPSO must ensure that

- More than two months have passed since the Decision Served Date
- The case has not been subjected to an unusual amount of scrutiny (unusual scrutiny for a case would include, but is not limited to, notification that a complaint related to the case has been filed with the DHS Office for Civil Rights and Civil Liberties (CRCL), a filing of an action related to the case in federal Court, or a filing of any other request that is delaying the removal of an individual who has received a negative determination that was subsequently upheld by an IJ), and
- All necessary Global updates to complete the case have been performed.

### III. THE REASONABLE FEAR PROCESS

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: Sections: III.I and III J. (09/24/2015), III.E. (09/22/2015), III.A. and III.B. (09/15/2015), III.F. and III.G. (08/03/2015), III.H.1. (6/12/2014), III.E.4. (05/09/2014), III.B.1. and III.B.3. (4/2012), III.C. (03/31/2017), III.E.2.b. (03/31/2017), III.J.1. and III.J.2.a. (2/10/2022)

#### III.A. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) ENFORCEMENT AND REMOVAL OFFICE (ERO) REFERS ALIEN TO THE ASYLUM OFFICE

8 CFR 235.3(b)(2)(iii) requires the detention of an alien whose inadmissibility is being considered or who has been ordered removed. Therefore, the alien’s detention is mandatory, unless parole of the individual is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. Once an Inspector places an alien into the credible fear process, the responsibility for the alien’s detention lies with Detention staff. See this Manual’s section IV.C, Expanded Topics, Detention and Parole of Aliens, for more information on detention and parole.

#### III.B. ASYLUM OFFICE RECEIVES REFERRAL FROM ICE ERO

##### 1. Initiation of Claim

For an Asylum Office to have jurisdiction over an alien in the reasonable fear process, the alien must have expressed a fear of return, and the Asylum Office must receive one of the following documents charging the alien with a ground of removal pursuant to section 238(b) or section 241(a)(5) of the Immigration and Nationality Act:

- Form I-851A, Final Administrative Removal Order (with signed Certificate of Service), or
- Form I-871, Notice of Intent/Decision to Reinstate Prior Order, including the prior order of removal (with Decision, Order and Officer's Certification at bottom signed)

The removal order(s) may be faxed or emailed to the Asylum Office or provided in person if the Asylum Office staff is onsite. The SAPSO or designated Asylum Office staff should carefully review the document(s). If the documents are not fully executed (with a signed certificate of service on the Form I-

851A, or a signed Decision, Order, and Officer's Certification on the Form I-871), it is not yet a proper referral and the Asylum Office must immediately, as is practicable, coordinate with ICE to obtain the required documentation. The SAPSO or designated Asylum Office staff should contact the appropriate person at the ICE field office to explain that either the Form I-851A or Form I-871 must be fully executed and served on the alien before the Asylum Office has jurisdiction and can conduct a reasonable fear interview. The SAPSO or designated Asylum Office staff should also keep a record of this contact in the reasonable fear work folder. When the Asylum Office has been made aware that the alien requires a reasonable fear interview and receives the fully executed Form I-851A or Form I-871, the Asylum Office has jurisdiction and the case must be clocked into APSS. The Asylum Office can request additional documents from ICE, but the determination must not be delayed for receipt of such documents.

The SAPSO or the APSO should confirm with the referring officer that the alien received the Information on Reasonable Fear Interview (Form M-488), as well as a relevant current list of legal service providers, prior to the interview. See [Appendix G](#). The contact person should also ask whether there is a G-28, Notice of Entry of Appearance of Attorney or Representative, in the A-file and, if so, request that the G-28 be faxed or emailed to the Asylum Office.

Once the Asylum Office has jurisdiction, Asylum Office staff updates information on the Preliminary Record (PREC) screen in APSS as soon as possible. The "CLOCK-IN DATE" on the PREC screen is the date the Asylum Office receives a proper referral package from the ICE field office. A proper referral package consists of: 1.) either a fully executed Form I-851A or fully executed Form I-871, and 2.) an indication (in oral, written, or electronic form) that the individual has made a fear claim during the reinstatement or administrative removal process.

Entering the case into APSS on the PREC screen initiates the batch IBIS TECS check and FBI name check on the alien's primary name and date of birth. Before issuing a charging document, the SAPSO and APSO must follow required security check procedures, including completing TECS and US-VISIT checks, and confirming initiation of FBI name check and FBI fingerprint checks. All security checks must be documented on the Credible Fear and Reasonable Fear Background Identity and Security Checklist (BISC) (ISCPM Appendix 38) according to existing procedures. The BISC and all related documentation must be forwarded to ICE along with the determination so that it can be included in the A-file. For non-detained applicants, an IVT biometric verification must also be completed for all individuals interviewed at a USCIS office. See ISCPM Chapter XII and Appendices 38 and 39.

## 2. Log of Referred Cases

Asylum Office staff may maintain a log of the aliens who were referred to the Asylum Office by a referring officer regardless of whether jurisdiction is established. This is called a "Log of Referred Cases." The log should contain all of the following:

- A-number of the alien referred
- Full name of the alien referred
- Date the Asylum Office received the referral from the referring officer
- Type of case (e.g., "reinstatement" or "administrative removal")
- If it is determined that the Asylum Office lacks jurisdiction, a brief explanation of the reason and the date the district office was notified that the office does not have jurisdiction.

### 3. Processing Timelines

Regulations require APSOs to conduct the reasonable fear interview and make the determination within ten (10) days after the case has been referred to the Asylum Office, unless there are exceptional circumstances. The ten days for completion of the reasonable fear determination are counted as ten business or court days. Exceptional circumstances do not include unusual but reasonably foreseeable circumstances, shall be determined on an individualized basis, and shall be of limited duration. Any determination that there are exceptional circumstances must be made by the Asylum Office management in coordination with Asylum Headquarters via the Asylum HQ Reasonable Fear Program Manager.

The APSS processing clock may only be tolled due to: a request by the alien or the alien's representative to defer the reasonable fear interview; refusal to participate in the reasonable fear interview or accept service of a reasonable fear determination; or exceptional circumstances. All reasons for tolling must be documented in APSS and the work folder. See User's Guide to Entering Information in the Asylum Pre-Screening System (APSS) at Appendix C, and this Manual, Section III.E.5. "Conducting a Reasonable Fear Interview," for additional information.

A positive or negative reasonable fear case is not considered completed (i.e. the DECISION SERVED DATE field on the APSO DECISION (ADEC) screen in APSS is entered), until the Asylum Office has:

- Served the determination on the alien and his or her representative of record, if represented;
- Served the Form I-863, Notice of Referral to Immigration Judge, on the Immigration Court, transferring jurisdiction; and
- Provided the determination to ICE for inclusion in the A-file.

See this Manual, section III.I., "Serving the Decision on the Alien," for more information on decision service.

A reasonable fear case that is administratively closed is not considered completed (i.e. the EFFECTIVE DATE is entered on the Close a Case (CLOS) screen in APSS), until the Asylum Office has notified:

- ICE of the closure of the case; and
- The alien, and his or her representative of record, if represented, of the closure of the case.

## III.C. ASYLUM OFFICE SCHEDULES INTERVIEW

### 1. Orientation

The orientation must be conducted before commencing a reasonable fear interview. The orientation must be conducted by DHS staff. The orientation may take place by telephone. An interpreter will be used by telephone connection, if necessary, in cases where the alien does not speak English. See this Manual, section III.F.1 on completing Form I-899, Record Of Determination. See also [Appendix I](#).

If an orientation has not already been conducted, Asylum Office staff should arrange for an orientation with the alien as soon as possible after notification and verification of jurisdiction. During the orientation, Asylum Office staff should confirm that the alien received and understood the M-488 (Information about

Reasonable Fear Interview), has the relevant legal provider list, and, if represented, confirms information regarding the representative. See Form M-488 at [Appendix G](#). The Asylum Office staff provides the Form M-488 to the alien or requests that the interpreter reads the Form M-488 to the alien. The Asylum Office staff should answer any questions from the alien and ask him or her to sign and date the M-488, acknowledging receipt of the information about the reasonable fear interview. If the alien refuses to sign the form, the APSO notes the alien's refusal in the alien's signature space. In addition, the APSO should ask the alien whether he or she has any medical problems and whether he or she will have any special needs for the interview, such as requesting a female interpreter or an interpreter for a rare language.

At the time of interview, the APSO must confirm that the alien understands the reasonable fear process, has received and understood the M-488 (Information about Reasonable Fear Interview), has the relevant legal provider list, and, if represented, confirms information regarding the representative. See Form M-488 at [Appendix G](#). If the APSO does not have a signed and dated Form M-488, the APSO is required to orient the individual about the reasonable fear process. If the alien indicates that he or she did not understand the form but there is a signed M-488, the APSO must review the process with the alien and answer any questions he or she may have about it.

## 2. Interview Scheduling and Notification Procedures

### **a. Scheduling an Interview**

Each Asylum Office has developed a local system for scheduling reasonable fear interviews in coordination with the district office having jurisdiction over the alien's place of detention. The interview should be scheduled to take place at least 48 hours after the initial orientation, during which the alien first received the M-488, unless the alien expresses readiness to proceed sooner. If the alien expresses readiness to proceed sooner, the APSO should have the alien sign a waiver of the 48 hour period between detention and interview. See [Appendix J](#): Waiver of 48 Hour Period Template.

If the alien is represented, Asylum Office staff should try to arrange the interview at a date and time when the representative may be present, but the availability of the representative cannot unreasonably delay the process. See this Manual, Section III.E.5. "Conducting a Reasonable Fear Interview," for additional information.

Representatives may be permitted to participate in the interview by telephone if travel to a remote location is difficult on short notice, as long as it is at no cost to the government and the interview location allows for such a system.

A SAPSO should document in the alien's work folder all contact with a representative, including any conversations about scheduling or rescheduling a reasonable fear interview. See this Manual, section III.B.3., "Processing Timelines," for more information on when the APSS processing clock may be tolled.

See this Manual, section III.E.5, "Conducting a Reasonable Fear Interview," for more information on the role of a representative.

### **b. Notifying the Alien of an Interview Date**

An Asylum Office shall provide a written notice of interview to an alien, unless it is impractical to do so due to complex ICE ERO and/or DHS district office scheduling and transportation situations. This will allow an alien the opportunity to prepare for the interview and to notify any representative the alien



wishes to have present. An Asylum Office uses Form G-56, Interview Notice, which includes Asylum Office contact information, and it is handed or faxed to the alien. A copy of this notice also is provided to the alien's representative. See [Appendix K: Form G-56, Interview Notice](#).

If a written notice of an interview is not given to the alien, Asylum Office staff coordinates with ICE ERO to verbally inform the alien of the interview date and time. Asylum Office staff provides this information to the alien's representative either verbally or by email or facsimile.

### 3. Interview Space

ICE ERO or DHS district office staff members must make available appropriate interview space for a reasonable fear interview, either on a permanent or ad hoc basis. Appropriate interview space includes, but is not limited to, the following:

- Provisions for APSO and alien safety
- Provisions for privacy so that the alien can discuss personal or confidential issues
- Installed telephone jack that supports a speaker phone
- Table
- Chairs
- Computers and/or outlets

#### **a. Safety or Privacy Concerns**

If an APSO has concerns about safety or privacy in a particular interview space, he or she notifies the SAPSO, who will speak with the ICE ERO or DHS district office staff members responsible for the interview space. If the Asylum Office and the ICE ERO or DHS district office cannot resolve conflicts over appropriate interview space, the Asylum Office Director elevates the problem to the Reasonable Fear Program Manager at Asylum Headquarters.

## III.D. ASYLUM OFFICE ARRANGES FOR INTERPRETER SERVICES

8 CFR 208.31(c) requires USCIS to arrange for the assistance of an interpreter in conducting a reasonable fear interview if the alien is unable to proceed effectively in English. Whether the alien is detained or not, APSOs must use the contract interpreter services to interpret or to monitor the interpretation if the alien provides an interpreter. Because APSOs routinely need to secure interpreter services on short notice, at remote locations, and in a variety of languages, USCIS uses telephonic interpreter services.

### 1. Contracting Telephonic Interpreter Services

It is a policy of the Asylum Program to allow a minimum of 48 hours to transpire between the arrival of an alien at a detention site and any credible fear interview. This 48-hour period provides an alien an opportunity to rest, collect his or her thoughts, and contact a relative, representative, attorney, or friend whom the alien may want to act as a consultant during the credible fear interview.

If DHS transfers an alien to a new detention site, the 48-hour period begins anew from the alien's arrival at the new detention location.

### **a. Obtaining an interpreter for an interview**

To improve the likelihood of rare language interpreter availability, the APSO should provide Language Line with as much notice as possible to locate a qualified interpreter for a future interview, including pre-scheduling if at all possible. It is also important to tell the interpreter service that reasonable fear interviews could run up to three hours, so the service makes certain that the interpreter can complete the call. If an interpreter has been pre-scheduled and the interview is postponed, the asylum office should notify the interpreter service as soon as possible to avoid charges for this call.

The APSO writes the name of the language that the interpreter and alien will use during the interview in box 1.6 of the Form I-899. If the APSO does not change an interpreter during the interview, the APSO checks off box 1.11 on Form I-899. If an interpreter was changed, see the instructions at III.D.4, "Problems with Interpretation and Changing Interpreters," below, for the proper Form I-899 updates.

### **b. Documenting an interpreter's identification**

The APSO checks off box 1.7 on Form I-899 and writes the name of the interpreter service and interpreter's ID information. Most interpreters who work for one of the interpreter services have an ID number, which is sufficient for identifying the individual. If the interpreter does not have an ID number, the APSO asks for another means of identifying the interpreter for that interview (last name, for instance).

An APSO does not allow an alien to request the interpreter's name or ask the interpreter questions about the interpreter's ethnicity or political affiliations. If such questions arise, the APSO reminds the alien that he or she can switch interpreters if the interpreter does not appear neutral or competent, and that the APSO also will be alert to such issues.

## **2. Providing an interpreter with Forms**

The interpreter should have a copy of an APSO reasonable fear packet, which consists of the following:

- Form M-488, Information about Reasonable Fear Interview ([Appendix G](#))
- Form I-899, Record of Determination/Reasonable Fear Worksheet ([Appendix I](#))
- Form I-863, Notice of Referral to Immigration Judge ([Appendix M](#))
- Form I-898, Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge ([Appendix N](#))

If the interpreter does not have a copy of any document necessary for the interview, the APSO should ask their SAPSO to coordinate with the interpreter liaison in the local office to inform the Management Branch POC, who will ensure the interpreter services vendor has the updated forms.

## **3. Interpreter's Role**

Interpreters are required to provide competent, neutral translation. In addition, interpreters are required to maintain the confidentiality of matters disclosed during the reasonable fear interview, including an alien's identity and the nature of the claim. All issues and concerns regarding the interpreter should be included in the Interpreter Log. See the *Interviewing – Working with an Interpreter* Lesson Plan for additional information.

#### 4. Problems with Interpretation and Changing interpreters

If the alien, the alien's representative, or the APSO believes that the interpreter is either not competent or not neutral, the APSO can request and use another interpreter. If another interpreter is not immediately available, the APSO reschedules the interview. If, either before or during the interview, the alien requests a male or female interpreter, the APSO should accommodate such a request, when possible.

If an APSO changes an interpreter, he or she checks off box 1.12 on Form I-899, indicating the reason for the change in boxes 1.13 – 1.18. The APSO also completes box 1.8 or 1.9 with the new interpreter's information.

If an APSO experiences problems with an interpreter, all issues should be documented in the interview notes and in the Interpreter Log so that Management Branch can address with the vendor as appropriate. For more information on abuse of an interpreter's role, see the [Affirmative Asylum Procedures Manual](#) section on interpreters.

#### 5. Conducting the interview without an interpreter in a Language other than English

APSOs may conduct interviews in the alien's preferred language, provided that the officer has been certified by the State Department.

The APSO must make a clear notation in the interview notes that the interview was conducted in a language other than English and indicate the language used by the APSO. In addition, the APSO updates box 1.6 on Form I-899, indicating the language used by the alien and that the interview was conducted in that language.

If there is any concern that the alien is having difficulty understanding the APSO, or might later claim that the APSO did not interpret correctly, the APSO should use the interpreter service and so indicate in box 1.7 on Form I-899.

#### 6. Aliens Who Provide Their Own Interpreters

If the alien requests to use a relative, friend, individual associated with a non-governmental organization, or other source as an interpreter, the APSO should proceed with the interview using the alien's interpreter. The APSO should verify that the alien's interpreter is not "a representative or employee of the alien's country or nationality, or if the alien is stateless, the alien's country of last habitual residence." APSOs are also required to use a telephonic interpreter to verify that the alien's interpreter is accurate and neutral while interpreting. 8 C.F.R. § 208.31(c).

The APSO explains to all parties, including the telephonic interpreter, that USCIS must verify that the alien's interpreter is accurate and neutral while interpreting. The APSO explains that the telephonic interpreter is to interject if he or she believes that the alien's interpreter is not accurate or is not neutral. If the telephonic interpreter notes that the alien's interpreter is not neutral or does not translate the alien's or the officer's statements and questions accurately, the APSO should inform the alien and his or her interpreter that the telephonic interpreter will be used exclusively to continue the interview.

The APSO checks off box 1.7 on the I-899 and writes the name and ID of the telephonic interpreter. The APSO also checks off box 1.8 and writes the name of the alien's interpreter, indicating that the individual is interpreting at the request of the alien.

If there is a change of interpreter due to the alien's interpreter misrepresenting an alien's statements, incompetence, or the use of abusive or intimidating language with the alien, the APSO informs the SAPSO. Depending upon the circumstances in the case, the asylum office Director or his or her designee may seek to bar the individual from interpreting in the future. Check local asylum office procedures on barring interpreters in the reasonable fear process.

## 7. Monitoring Interpreter Performance

The interpreter services may have supervisors monitoring some of their calls as a quality assurance measure. If the APSO, alien, or alien's representative expresses any reason for not wanting the interview monitored, the APSO informs the interpreter service that the call may not be monitored. If the interpreter service does not appear to be complying, the APSO notifies the SAPSO, who contacts the interpreter liaison in the local office to inform the Management Branch POC.

## 8. Administering an Oath to the Interpreter

The interpreter must be sworn in at the beginning of the interview. The following, which will be interpreted for the alien, shall constitute the interpreter's oath: "Do you affirm that you will truthfully, literally and fully interpret the questions asked by the asylum officer and the answers given by the applicant; that you will not add to, delete from, comment on, or otherwise change the matter to be interpreted; and that you will immediately notify the officer in this case if you become aware of your inability to interpret in a neutral manner on account of a bias against the applicant or the applicant's race, religion, nationality, membership in a particular social group, or political opinion?"

On the Form I-899, box 1.10 should be checked when the oath is completed. The oath should be documented in the officer's notes.

## 9. Documenting Interpreter Time

When the interview is finished, the APSO should note the time ended on the Record of Determination/Reasonable Fear Work Sheet, Form I-899, and on the Interpreter Log. As mentioned above, Asylum Division personnel are responsible for entering all calls into the interpreter log for every call that is attempted, regardless of whether the call is connected to an interpreter/monitor.

# III.E. CONDUCTING A REASONABLE FEAR INTERVIEW

## 1. Mode and Location of Interview

### *a. Determining the mode of interview*

Reasonable fear interviews may be done in person, via video teleconference or via telephone. Local office management has discretion to decide which mode should be used, but the interview may only be conducted via telephone if the alien is physically located in a DHS or DHS-contracted office or facility.

The I-899 and/or the interview notes must reflect the mode of interview. The mode also must be recorded in APSS. See the APSS Guide for more information.

### ***b. Ensuring confidentiality***

The interview must be conducted with the alien separate and apart from the general public. If the interview is being conducted via video teleconference or telephone, the APSO must ask the alien whether he or she is alone in order to ensure confidentiality. Note, however, that ICE or DHS contract staff may be present during the interview. The APSO must also have the alien confirm that he or she is able to testify freely. These questions and answers must be reflected in the interview notes.

## **2. Initial Steps in the Interview**

### ***a. Administering the Oath***

Before beginning an interview, the APSO places the alien, interpreter, and any witness under oath. It is not necessary for the alien, interpreter or any witness to sign a written oath form.

### ***b. Confirming proper orientation***

The APSO must conduct the interview in a non-adversarial manner. At the beginning of the interview, the APSO must:

- Explain the reasonable fear process to the alien and determine whether the alien understands it (see Section I, 1.19 of the Form I-899);
- Confirm that the alien has the relevant legal provider list;
- Confirm information regarding any representative, if represented; and,
- Confirm that the alien received and understood the Information on Reasonable Fear Interview, Form M-488.

If the alien's work folder does not contain a signed Form M-488, the APSO must follow procedures at section III.C.1 of this manual to ensure that the alien receives a proper orientation. If the M-488 is signed but the alien claims not to understand it, the APSO must review the process with the alien and answer any questions he or she may have about it. The alien's statement that he or she received the M-488 and understands it must be documented in the interview notes. .

## **3. Eliciting Information During the Interview**

### ***a. Biographical questions***

The APSO must gather all information requested on the Form I-899, Record of Determination/Reasonable Fear Worksheet. Biographical and background questions must include but should not be limited to the following:

- What is your complete and correct name?
- What is your date of birth?
- Have you used any other names or other date of birth?
- Where were you born?
- What is your country of nationality?
- What is your marital status?
- Do you have any children?

- Where is your spouse and/or children?
- How many times have you entered the United States?
- When did you last enter the United States?
- How did you enter the United States?

*b. Claim-related questions and credibility*

The APSO should spend most of the interview eliciting sufficient information about the claim to evaluate credibility and to determine whether there is a reasonable possibility the alien would be persecuted on account of a protected characteristic or tortured in the country to which the alien has been ordered removed. See the RAIO Combined Training Course – ADOTC Lesson Plan, Reasonable Fear of Persecution and Torture Determinations for additional information.

## 4. Note-Taking

*a. Taking notes in a Question & Answer format*

Interview notes must be taken in a Question & Answer (Q&A) format. It is preferable that the interview notes be typed. When the interview notes are taken longhand, the APSO must ensure that they are legible. Each page of the interview notes must include the alien’s A-number, the date of interview, and the APSO’s name or officer number. Interview notes must accurately reflect what transpired during the reasonable fear interview so that a reviewer can reconstruct the interview by reading the interview notes. In addition, the interview notes should substantiate the APSO's decision.

The reasonable fear Q&A interview notes are not required to be a verbatim transcript.

Although interview notes are not required to be a verbatim record of everything said at the interview, they must provide an accurate and complete 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 of persecution, or a reasonable fear of torture. In doing so, the 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 SAPSO 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.

*b. Reading back the summary of material facts*

Before ending the interview, the APSO must draft a summary of the material facts related to the protection claim and read it to the alien who, in turn, must have the opportunity to add or correct facts. The interview record is not considered complete until the alien agrees that the summary of the protection claim is complete and correct.

The interview notes are part of the Record of Proceedings and must be placed on the record side of the A-file.

## 5. Representation

### *a. Representative must submit a signed G-28*

The alien may be represented at the interview by counsel or an accredited representative. The attorney or accredited representative must submit a G-28, signed both by the attorney or accredited representative and by the alien.

The APSO may proceed with a reasonable fear interview of a represented, detained alien if the Asylum Office has a G-28 signed by the attorney or accredited representative and by the alien, even if the signatures are on different G-28s (as long as they contain the same information) and even if, at the time of the interview, the Asylum Office does not have original signatures from the attorney or accredited representative or the alien (i.e., the Asylum Office has a faxed or emailed copy of the G-28). APSOs shall inform the attorney or accredited representative that he or she must submit the G-28 with his or her original signature to the Asylum Office as soon as possible but no later than two days after the interview and that if he or she fails to do, he or she will not be treated as the attorney or accredited representative of record on the case and the case will proceed as if the alien is unrepresented. APSOs shall also ask ICE to send the G-28 with the alien's original signature to the Asylum Office. The original signatures of the alien and the attorney or accredited representative shall be matched up in the alien's A-file.

The APSO writes the name of the representative who has submitted a completed G-28 in box 1.4 on Form I-899, along with the address, telephone number and relationship to the alien.

Asylum office personnel update APSS using the Add Attorney/Representative to Interview (REPR) command; they also update the two appropriate fields on the "INTC" screen: CONSULTANT (N) and REPR ID. See the APSS Guide for more information.

A paralegal may not represent an alien, unless the paralegal is a law student or a "reputable individual" who meets the criteria set forth in 8 C.F.R. § 292.1. Otherwise, this representation may constitute the unauthorized practice of law and must be brought to the attention of office management. USCIS Counsel should also be consulted about possible action if there are any violations.

### *b. Addressing requests to delay interviews for reasons related to representation*

The alien or his or her representative may request to reschedule the interview, either for the alien to obtain representation, for the representative to prepare the case, or for the representative to participate in the interview, but this deferral may not be for an unreasonable length of time. The APSO must consult with the SAPSO on any such requests. Requests to reschedule the interview must be handled on a case-by-case basis and may be granted or denied at the discretion of the SAPSO.

An attorney or accredited representative requesting to reschedule an interview must submit a G-28 (signed by the attorney or accredited representative and the alien, per Section 5.a, above). If the alien requests to reschedule an interview to find representation or so that his or her attorney or accredited representative can participate in the interview, no G-28 is necessary to accommodate the alien's rescheduling request, but a G-28 signed by both (in accordance with Section 5.a., above) is required for the attorney or accredited representative to participate in the interview.

The APSO and SAPSO should make every effort to ensure that a representative is present at an interview if an alien desires such a person's presence and it does not unreasonably delay the process. A SAPSO may deny a request to reschedule an interview if, for example, the asylum office has documented chronic problems with a particular legal representative who consistently submits rescheduling requests or has failed to attend other reasonable fear interviews.

If the request to reschedule the interview is granted, the APSO, alien, and his or her representative, if applicable, should agree to a new interview date at the time the request is granted. If no time period is specified for deferring the interview, the interview must be rescheduled to occur no more than ten court days later. The APSO must inform the alien, and his or her representative, if applicable, of the new interview date. The APSO should also inform the representative that the interview may go forward without the representative present if the alien provides a written waiver and verbal consent.

#### *c. Conducting the interview without the representative present*

If the SAPSO or APSO made previous arrangements with a representative to appear (telephonically or in person) at the interview and the representative does not appear, the APSO may continue with the reasonable fear interview with the alien's written waiver and verbal consent. The APSO records the alien's consent to proceed with the interview by having the alien sign a waiver. A template is attached at [Appendix P](#). The APSO then checks off box 1.5 on Form I-899, indicating that no one other than the alien and the APSO were present at the interview.

#### *d. Representative's role*

The role of counsel or an accredited representative is the same as it is in the affirmative asylum context. If present at the interview (telephonically or in person), the representative is allowed to make a statement or ask the alien additional questions, as appropriate. See the Affirmative Asylum Procedures Manual section on representative appearances for more information.

If the representative appears for the interview (telephonically or in person), the APSO checks off the Representative box 1.5 on Form I-899, indicating that the representative was present. In general, the only non-DHS persons who should be present during an interview are representatives or witnesses.

#### *e. Providing the alien and/or representative with documents upon request*

The representative or the alien may request copies of documents from the A-file in order to prepare for the reasonable fear interview, such as immigration-related documents submitted by the alien at an earlier date or documents issued to the alien by DHS. A FOIA request is not necessary in order to release such documents. However, internal DHS documents and criminal records may not be shared with the representative or alien.

## 6. Witnesses

8 CFR 208.31 does not specifically allow an alien to present witnesses, as stated in a similar regulation at §208.9, which governs affirmative asylum interviews. Section 208.31(c) does state, however, that the alien may present evidence, if available, relevant to the possibility of persecution or torture. It also states that the APSO, in his or her discretion, may place reasonable limits on the number of persons who may be present at the interview.

An APSO should not refuse a witness the opportunity to testify; however, an APSO may place a reasonable limit on the length and subject matter of a witness' statement(s), and/or may request a witness' statement in writing, as long as the submission of the statement does not delay the determination.



The APSO checks off box 1.5. on Form I-899, places the witness' name on the "Other(s)" line, and indicates that he or she is acting as a witness.

### **7. Aliens Unable to Effectively Communicate on Their Own Behalf**

An alien may be incapable of testifying on his or her own behalf due to mental health or a physical and/or physiological condition. This includes individuals who suffer from acute mental disorders that make them unable to communicate.

If an APSO believes that a particular alien is unable to communicate effectively to be interviewed, he or she must contact the SAPSO for guidance. The APSO must also complete boxes 2.18 through 2.22 in Section II of Form I-899, which concerns aliens who have medical conditions. The SAPSO, local DHS personnel, and ICE Health Service Corps personnel should make every effort to determine whether the alien can testify on his or her behalf.

If, however, the alien is not capable of proceeding with an interview, the SAPSO must contact HQASM for guidance and update HQASM as the process continues.

### **8. Aliens Unwilling to Testify on Their Own Behalf**

An alien may be unwilling to testify on his or her own behalf due to an intentional resistance. After each question in the interview notes, the APSO should write, "Alien refused to answer." If the alien appears to understand the APSO's questions and has communicated coherently with the APSO in prior instances, but refuses to answer questions that would permit the APSO to make a positive finding, the APSO should make a negative reasonable fear determination based on the alien's failure to provide any evidence supporting a positive finding.

### **9. Recording an Interview**

The recording of a reasonable fear interview by an alien or representative is prohibited. If a representative or an alien requests to record an interview, the APSO informs the individual that HQASM policy prohibits such practice. An APSO also cannot record an interview without the express permission of the reasonable fear program manager at HQASM.

### **10. Concluding a Reasonable Fear Interview**

Before ending the interview, the APSO must provide a summary of the material facts related to the protection claim and read it to the alien who, in turn, must have the opportunity to add or correct facts. The interview record is not considered complete until the alien agrees that the summary of the protection claim is complete and correct.

## 11. Informing the Alien About the Next Step in the Process

The APSO may not inform the alien of the decision during the course of the interview or give any hint, suggestion or any other indication of what the determination will be at the interview's conclusion. The APSO must, however, tell the alien how and when (if possible) he or she will be informed of the determination.

## 12. Dismissing the Alien

An APSO must follow local ICE policy for alerting an ICE officer when the interview is finished. Unless permitted by local ICE policy, an APSO should not leave an alien unattended in an interview room.

## 13. Updating APSS

Once an interview is complete, an APSO completes the PREC screen. In addition, the APSO creates an interview record using the Interview Record (INTC) command. Asylum office staff must finish updating the PREC screen and update the INTC screen within seven (7) business days of the interview. See the APSS Guide for more information on required APSS entries.

# III.F. MAKING A DETERMINATION

## 1. Completing Form I-899, Record of Determination/Reasonable Fear Worksheet

The Form I-899 contains three (3) sections: Section I: Interview Preparation; Section II: Biographic Information; and Section III: Reasonable Fear Finding.

Each check-off box, or line, is numbered throughout the form. An APSO must update any numbered item on the form that applies to the alien's case. The following describes, in detailed steps, how an APSO updates each numbered item:

### **a. Section I: Interview Preparation**

- Boxes 1.1 through 1.2 – Indicate telephonic if applicable
- Box 1.3 – Before beginning an interview, an APSO ensures that the alien has received and signed a Form M-488. See this Manual's section on orientations, at III.C.1, if the alien's file does not contain a Form M-488.
- Boxes 1.4 and 1.5 – See this Manual's section on representation, at III.E.5, and the section on witnesses, at III.E.6.
- Boxes 1.6 through 1.18 – See this Manual's section on interpreters, at III.D.
- Box 1.19 – An APSO must read the paragraph to the alien at the beginning of the interview and check off the box to document that the paragraph was read.

### **b. Section II: Biographic Information**

- Boxes 2.1 through 2.13 – Self-explanatory
- Box 2.14 – An APSO checks and records the type of removal order
- Boxes 2.15 through 2.17 – An APSO records the alien's responses to these questions.
- Boxes 2.18 through 2.22 – An APSO reviews these questions with the alien, indicating whether any medical conditions may apply. An APSO should follow local procedures on notifying DHS officers

and/or ICE Health Service Corps if an alien claims to have a medical condition, or if the APSO observes that a medical condition, either physical or mental, may exist. In a case where a medical condition renders the alien unable to articulate a claim, the SAPSO and HQASM must be notified. See section III.E.7, "Aliens Unable to Competently Testify on Their Own Behalf," in this Manual.

### **c. Section III: Reasonable Fear Finding**

In this section of Form I-899, an APSO records information about the reasonable fear claim provided by the alien during the interview. In addition to completing all numbered items in Sections I and II and signing the completed form, the APSO must fully complete Section III and ensure that the information provided in one section is consistent with information in other sections.

This part of the form is divided into two (2) sections: A. Credibility Determination, which documents whether the APSO finds the alien's testimony credible, not credible, or credible in part and not credible in part; and B. Reasonable Fear Determination, which shows whether the APSO finds the alien established either a reasonable fear of persecution or torture, or that no reasonable fear of persecution or torture has been established.

- Boxes 3.1 through 3.3 – An APSO selects the box that summarizes the case's credibility determination
- Boxes 3.4 through 3.6 – An APSO selects the box that indicates the reasonable fear finding for the case
- Boxes 3.7 through 3.9 – An APSO completes these boxes upon completion of the preceding parts of the Form I-899. The date in box 3.9 is the date the APSO completes the case and submits it to the SAPSO for review.
- Boxes 3.10 through 3.12 – The SAPSO completes these boxes upon review and concurrence with the reasonable fear determination, before the case is forwarded to HQASM if applicable.

See the APSS Guide for more information on required APSS entries.

## **2. Documenting the Determination**

An alien has established a reasonable fear of persecution if the APSO finds that there is a reasonable possibility the alien would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.

An alien has established a reasonable fear of torture if the APSO finds that there is a reasonable possibility the alien would be subject to torture, as defined in the Convention Against Torture and at 8 C.F.R. § 208.18(a). See RAIIO Combined Training Course – ADOTC Lesson Plan, Reasonable Fear of Persecution and Torture Determinations, for further discussion.

While the APSO should elicit information related to possible bars to withholding, the APSO cannot make a negative reasonable fear of persecution or torture determination based on the possible applicability of a bar. See generally this Manual's section on mandatory bars, at IV.E.

The determination is documented using the Reasonable Fear Determination Checklist and Written Analysis as well as the interview record and completed I-899. See [Appendix T](#), Reasonable Fear Determination Checklist and Written Analysis, and [Appendix U](#), Reasonable Fear Determination Checklist and Written Analysis Instructions.

### 3. SAPSO Reviews Determination

#### **a. Case Review Checklist**

The SAPSO reviews each case for procedural and substantive accuracy and completeness, which includes the following:

- The APSO updated all numbered boxes and lines pertaining to the alien's case in Sections I and II of Form I-899.
- Section III: Reasonable Fear Finding on Form I-899:
  - For a positive determination, box 3.4 or 3.5 will be checked off, and the interview record and the checklist and written analysis support the decision.
  - For a negative determination, box 3.6 will be checked off, and the interview record and checklist and written analysis support the decision.
- The APSO signed Form I-899.
- Interview record is clear and sufficient to support the determination.
- Identifying information (e.g., name, A-number, etc.) is consistent in all determination documents.
- The APSO checks off the appropriate boxes on Form I-863 and the location of the Immigration Court is correct (if applicable).
- The APSO correctly updated the boxes in Section 1 on Form I-898 to match the reason for the negative finding on the Form I-899 (if applicable).
- APSS is properly updated.

#### **b. Signature on Documents**

A SAPSO's signature on a document means that he or she reviewed the case in accordance with the instructions in the previous section and concurs in the APSO's determination. After reviewing the determination, the SAPSO signs:

- Form I-899, and
- Form I-863.

Normally, an immigration court will only accept Form I-863 with a SAPSO's original signature. Therefore, depending upon arrangements that have been made with a court administrator for filing documents, and local asylum office policy, a SAPSO signs one I-863 that is photocopied, or signs multiple I-863s.

#### **c. Standard of Review**

It is not the role of the SAPSO to ensure that the APSO decided the case as she or he would have decided it. APSOs must be given substantial deference, but the SAPSO must establish that the analysis is legally sufficient.

In reviewing a determination, the SAPSO checks to make sure a negative decision includes analysis of both persecution and torture. A positive decision may include either an analysis of persecution or of torture, but does not need to include both. The determination must be written clearly so it is understandable.

In the event that the SAPSO disagrees with the APSO's decision, he or she discusses the case with the APSO. If the SAPSO and APSO are not able to resolve their differences, the SAPSO elevates the issue to the Director or Deputy Director.

As a complementary process to the above, in some instances, OCC attorneys stationed at local asylum offices may assist with resolving disagreements on cases. Where an APSO and SAPSO disagree on a case, they may consult with the OCC attorney embedded at the local asylum office to assist with a resolution.

OCC consultation on a case does not replace HQASM QA review for cases that require such review under current referral policies. Regardless of whether OCC was consulted on a case, if the case falls within a category of cases requiring HQASM QA review, the case must still be sent for such review.

### III.G. DOCUMENTING A DETERMINATION

Below is an outline of the documents and APSS updates associated with each type of determination for an alien in the reasonable fear process. Asylum office staff must update the ADEC screen as soon as possible following the determination.

#### 1. Positive Reasonable Fear Determination

- Interview Record
- Checklist and written analysis
- Form I-899, Record of Determination/Reasonable Fear Worksheet
- Form I-863, Notice of Referral to Immigration Judge, with Box 6 checked. For positive and negative cases, check with the local immigration court for instructions on how to complete the section for the hearing date and time on the Form I-863. In most locations, the date of the court hearing should be marked "to be determined."
- ADEC screen updated with "Y" for "PERSECUTION ESTABLISHED" and "REAS/CRED FEAR EST." If the positive reasonable fear determination is based upon torture only (negative reasonable fear of persecution, but positive reasonable fear of torture), update the ADEC screen with a "Y" for "TORTURE CONVENTION" in addition to the "Y" typed in the "REAS/CREDFEAR EST" field.

#### 2. Negative Reasonable Fear Determination

- Interview record
- Checklist and written analysis
- Form I-899, Record of Determination/Reasonable Fear Worksheet
- Form I-898, Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge (A-number and section 1 only). The boxes in section 1 must match the reasons for the negative determination on Form I-899.
- Form I-863, Notice of Referral to Immigration Judge. The APSO completes the top portion of the form and checks off box 5 in the event the alien requests immigration judge review. The APSO also checks off the boxes under the "Notice to Applicant" section, and in the boxes pertaining to the documents that will be presented to the immigration judge.
- ADEC screen updated with "N" for "PERSECUTION ESTABLISHED," "REAS/CRED FEAR EST" and "TORTURE CONVENTION."

### III.H. SUBMITTING THE CASE FOR HQ REVIEW

#### 1. Mandatory Review by HQ Asylum

The Headquarters Asylum Division Quality Assurance Branch (HQASM/QA) monitors the quality of reasonable fear determinations by conducting pre-decisional review of reasonable fear determinations. Pre-decisional review by HQASM/QA of the following types of cases is **mandatory**. An APSO may not

serve a determination on an alien whose case falls into one of the categories described below, until HQASM/QA concurs in the determination:

- Random sampling of positive and negative reasonable fear of persecution and torture determinations, at established numbers of sample.
- High-profile claims.
- Claims involving novel legal issues.
- Any case in which the Asylum Office Director seeks review by HQASM/QA.

Before sending the case to HQASM/QA for review, the SAPSO must have concurred in the decision. Once all necessary parties have concurred in the decision, the Asylum Office must send the following documents to HQASM/QA by sending an email to the Asylum QA – Reasonable Fear mailbox:

Required in all cases

QA Referral Sheet

Documents establishing jurisdiction:

- I-871 (reinstatement), prior removal order, and proof of prior removal, or
- I-851 and/or I-851A (FARO) and proof of conviction for the aggravated felony on which the FARO is based

I-213 and sworn statement taken by ICE/CBP at time of apprehension

I-899

Assessment

Interview Notes

M-488 (and list of free legal service providers given to applicant, if available)

I-898 (if negative)

I-863

Required, if present in A-file

G-28

Any supporting documents submitted by the alien

Any documents relied upon in making the determination (other than routine country conditions reports)

Any memorandum in file produced by USCIS

A member of HQASM/QA must respond to the SAPSO in writing (by e-mail), indicating whether HQASM/QA concurs in the decision or suggests modification. None of the comments from HQASM/QA remain part of the A-file.

## 2. Referral to HQ National Security Unit

Any reasonable fear case where the alien appears to be a human rights abuser or is suspected of being a terrorist must be referred to contacts covering these issues at HQASM/QA. HQASM/QA reviews cases of aliens who are associated with any of the organizations included in the State Department's List of Terrorist Organizations, who admit to having engaged in terrorist activities, who testify that they have been falsely accused of engaging in terrorist activities, or whose actions possibly fall within the guidelines as terrorist activities. HQASM/QA will notify the HQ Field Operations National Security Unit where appropriate.

[Appendix Q](#): Langlois, Joseph E.INS Asylum Division. Procedures for Contacting HQASM on Terrorist Cases, Memorandum to Asylum Office Directors, Supervisory Asylum Officer Contacts on Terrorist Issues, QA/Trainers, and HQASM Staff. (Washington, DC: 3 Jan. 2002) 2 p.

### III.I. SERVING THE DECISION ON THE ALIEN

#### 1. Preparing the Documents for Service

Once the SAPSO, the Training Officer, if applicable, and HQASM/QA, if applicable, have reviewed the case, Asylum Office staff prepare for decision service by photocopying and packaging the documents that will be served on the alien. The Asylum Office must maintain copies of all documents served on the alien, as outlined in this Manual's section on file management, at II.D. Check with local Asylum Office management for procedures on case processing.

If the alien has a representative, the Asylum Office prepares one additional copy of the documents for the representative.

#### 2. Method of Serving the Determination

For detained individuals, a reasonable fear determination may be served by Asylum Office staff either in person or via telephone with the assistance of ICE ERO. ICE ERO may assist in serving the decision, but Asylum Office staff must be present telephonically to explain the decision and answer questions.<sup>[1]</sup> An interpreter service must be used if necessary to communicate with the alien.

In the case of a non-detained alien, the Asylum Office may request that the alien appear at the asylum office for personal service. The alternative is certified mail, with 13 days to request IJ review.

The representative may be present either in person or telephonically when the decision is served, as long as arranging the representative's presence does not unreasonably delay service. If the representative is not physically present at the time of service, the representative's copy will be sent by mail.

If the alien is represented but the representative is not present (in person or telephonically) when a negative reasonable fear determination is served, the alien must be referred to an immigration judge for review of the negative reasonable fear determination.<sup>[2]</sup>

Depending upon the determination, the alien receives one of the following sets of documents. The same documents must be given to the representative of record, if any.

---

<sup>[1]</sup> Any deviations from this method of serving the determination must obtain advance authorization from Asylum Headquarters.

<sup>[2]</sup> If there are any questions about the validity of the representation, or any indication that the applicant wishes to terminate the attorney's representation, Asylum Office staff should contact Asylum Headquarters.

### 3. Documents Served on the Alien

#### **a. Positive Reasonable Fear Determination**

If reasonable fear of persecution or torture is found, the Asylum Office should provide the alien with the following:

- Form I-899, Record of Determination/Reasonable Fear Work Sheet, completed- copy
- Interview notes- copy
- Determination checklist- copy
- Form I-863, Notice of Referral to Immigration Judge, with box 6 checked- copy of original signed by SAPSO or one of several that the SAPSO signed
- Form I-851A, Final Administrative Removal Order, or I-871, Notice of Intent/Decision to Reinstate Prior Order – copy (only if the alien was not previously given a copy of the form)
- EOIR- 33, Change of Address.
- List of Free Legal Services Providers

When serving the decision, Asylum Office staff:

- Explains to the alien that USCIS found him or her to have a reasonable fear of persecution or torture, and he or she will appear before the immigration court to request withholding or deferral of removal.
- Completes, fully and correctly, the Certificate of Service section on the I-863, indicating that the document was personally served, or served by certified mail, if applicable. If an ICE ERO officer assists the Asylum Office in serving the decision telephonically, the ICE ERO officer completes the certificate of service section on the I-863.
- Explains to the alien that, if ICE ERO releases him or her from detention, the alien must notify the immigration court of any change in address within 5 days of the change using the EOIR-33 Change of Address form. The alien also must notify DHS of any change in address, using form AR-11, within 10 days of the change.

Asylum Office staff must notify ICE ERO that the alien has received his or her reasonable fear decision and provide ICE ERO with the Form I-899 and other reasonable fear documents for inclusion in the A-File on the record side.

#### **b. Negative Reasonable Fear Determination**

If a reasonable fear of persecution or torture is not found, Asylum Office staff:

- Explains to the alien that USCIS did not find him or her to have a reasonable fear of persecution or torture by reading the relevant portion of Section I of the Form I-898 to him or her.
- Asks the alien whether he or she wants an immigration judge to review the negative decision.

If the alien refuses to sign the I-898 or refuses to request or decline immigration judge review, the alien should be referred to an immigration judge for review of the negative reasonable fear decision.

i. No IJ review requested



If the alien affirmatively declines immigration judge review of a negative decision, the alien should be provided with a copy of the following relevant paperwork:

- Form I-899, Record of Determination/Reasonable Fear Work Sheet, completed- copy
- Form I-898, Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge, with question 2 marked "No" and the bottom portion completed- original
- Interview notes- copy
- Determination checklist- copy
- Form I-851A, Final Administrative Removal Order, or I-871, Notice of Intent/Decision to Reinstate Prior Order – copy (only if the alien was not previously given a copy of the form)

ii. IJ review requested, or refusal to request or decline review

If the alien either requests immigration judge review, refuses to sign the I-898, or refuses to request or decline immigration judge review, the alien must be referred to an immigration judge for review of the negative reasonable fear decision. The alien should be provided with the following documents:

- Form I-899, Record of Determination/Reasonable Fear Work Sheet – copy
- Form I-898, Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge, with question 2 marked "Yes" and the bottom portion and certificate of service section completed – original.
- Form I-863, Notice of Referral to Immigration Judge, with box 5 checked – copy of original that was signed by SAPSO or one (1) of several I-863 forms that the SAPSO signed
- List of Free Legal Services Providers
- Interview notes- copy
- Determination checklist- copy
- Form I-851A, Final Administrative Removal Order, or I-871, Notice of Intent/Decision to Reinstate Prior Order (only if the alien was not previously given a copy of the form)- copy

## III.J. POST-SERVICE PROCESSING

### 1. Positive Reasonable Fear Determination

The asylum office shall refer the noncitizen to the immigration court having jurisdiction over the noncitizen's place of detention for a determination of withholding or deferral of removal only. As of February 11, 2022, all new court packets must be electronically submitted to the EOIR Courts & Appeals System (ECAS), which is accessed through the [DHS Portal](#). ECAS is an EOIR system that is managed and updated by EOIR on a regular basis. For more information regarding how to properly upload documents into the DHS Portal/ECAS, please review the resources provided by EOIR on their [ECAS DHS Resources](#) webpage. Form I-863 is the only document filed with the immigration court; however, if a particular

immigration court requests additional documents, the Asylum Office should provide the requested documents.

In instances where Asylum personnel are unable to upload supporting evidence into the DHS Portal/ECAS, for example where an NTA was previously paper filed and not yet available in ECAS, Asylum personnel should contact the local EOIR court for guidance on how to submit the court.

Asylum Office staff must notify ICE ERO that the noncitizen has received his or her reasonable fear decision and provide ICE ERO with the Form I-899 and other reasonable fear documents for inclusion in the A-File on the record side.

## 2. Negative Reasonable Fear Determination

### ***a. Alien Requests Review of the Determination, or Refuses to Request or Decline Such Review***

The asylum office files the following documents with the immigration court:

- Form I-863, Notice of Referral to Immigration Judge
- Form I-899, Record of Determination
- Form I-898, Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge
- Interview notes
- Form I-851A, Final Administrative Removal Order, or I-871, Notice of Intent/Decision to Reinstate Prior Order

8 C.F.R. § 208.31(g) requires immigration judges to review a negative determination within ten (10) days of the filing of Form I-863 with the court. As of February 11, 2022, all new court packets must be electronically submitted to the EOIR Courts & Appeals System (ECAS), which is accessed through the [DHS Portal](#). ECAS is an EOIR system that is managed and updated by EOIR on a regular basis. For more information regarding how to properly upload documents into the DHS Portal/ECAS, please review the resources provided by EOIR on their [ECAS DHS Resources](#) webpage. Form I-863 is the only document filed with the immigration court; however, if a particular immigration court requests additional documents, the Asylum Office should provide the requested documents.

In instances where Asylum personnel are unable to upload supporting evidence into the DHS Portal/ECAS, for example where an NTA was previously paper filed and not yet available in ECAS, Asylum personnel should contact the local EOIR court for guidance on how to submit the court.

If the immigration judge vacates the APSO's negative determination and finds that the noncitizen has a reasonable fear of persecution or torture, the noncitizen may submit Form I-589, Application for Asylum and Withholding of Removal before the court.

***b. Alien Affirmatively Declines IJ Review of the Determination***

If the alien declines immigration judge review of his or her determination, the Asylum Office files no documents with the immigration court.

## IV. EXPANDED TOPICS (in alphabetical order by subject)

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: IV.E. (07/22/2015)

### IV.A. ABC

It is imperative that all APSOs doing reasonable fear interviews follow ABC procedures, where applicable, as well as reasonable fear procedures. APSOs should check the A-file of any Guatemalan or Salvadoran national to ensure that all required ABC procedures have been followed. Questions about the applicability of ABC procedures should be raised with the SAPSO and the asylum office's ABC/NACARA coordinator.

### IV.B. ALIENS WHO ARE NOT DETAINED

#### 1. Referral

An asylum office may receive a reasonable fear referral directly from ICE ERO for an individual who is not in immigration detention. If the asylum office has the proper jurisdiction documents in accordance with RFPM Section III.B., the office should move forward with conducting the reasonable fear interview.

If an asylum office receives an affirmatively filed Form I-589 from an individual whose prior order was reinstated pursuant to INA § 241(a)(5) or who was ordered removed under INA § 238(b), the office should treat the asylum claim as a reasonable fear referral, provided that the asylum office has all the required DHS forms for the individual prior to conducting the reasonable fear interview. See RFPM Section III.B. for the documents that could establish jurisdiction. In this circumstance, the asylum office must notify ICE that the asylum office has all the required documents for the individual and it will treat the case as a reasonable fear referral. On the other hand, if the asylum office does not have all the required forms for the individual, inform the individual that he or she may contact ICE if he or she wishes ICE to make a proper reasonable fear referral. See AAPM section III.S.

#### 2. Interview Scheduling and Notification Procedures

Asylum offices may conduct the reasonable fear interview at the time of the previously scheduled affirmative asylum interview, if possible. If an affirmative asylum interview has not been scheduled, then asylum offices should use Form G-56 (Notice of Reasonable Fear Interview) to schedule a non-detained alien for a reasonable fear interview. Interview notices should be mailed to the non-detained alien approximately 21 days before the scheduled reasonable fear interview date. In the alternative, ICE may also serve the Form G-56 on the non-detained alien in-person approximately 21 days before the scheduled reasonable fear interview. Documentation of an in-person service of a non-detained alien must be noted in the file.

If there is a properly executed G-28, then the asylum office should provide a copy of the interview notice to the alien's legal representative.

See Form G-56 at [Appendix K](#).

### 3. Orientation and 48-Hour Hiatus

The Form M-488 (Information about Reasonable Fear Interview) and relevant List of Legal Services Providers should accompany the interview notice. At the time of the interview, the APSO must confirm that the alien understands the reasonable fear process, has received Form M-488 and has understood its contents, has the relevant List of Legal Services Providers and, if represented, information regarding the legal representative. See Form M-488 at [Appendix G](#).

If a signed and dated Form M-488 is not included in either the referral documents or the A-file, the APSO is required to conduct a reasonable fear orientation for the individual at the time of the interview. If the alien indicates that he or she did not understand the form but there is a signed M-488, the APSO should review the process with the alien and answer any questions he or she may have about it. If the alien refuses to sign the M-488, the APSO should note the alien's refusal in the alien's signature space at the time of the reasonable fear interview, prior to beginning the substantive part of the interview. In addition, the APSO should ask the alien whether he or she has any medical problems and whether he or she will have any special needs for the interview such as, requiring a special accommodation, a sign language interpreter, an interpreter for a rare language, or a request for an interpreter of a specific gender.

Asylum offices are not required to wait 48 hours from the time a non-detained alien receives a reasonable fear orientation to the time a reasonable fear interview is conducted. Therefore, a Waiver of the 48-Hour Period form is not required for non-detained aliens.

### 4. Determination Service

Asylum offices should serve the reasonable fear determination on a non-detained alien on the same day as the reasonable fear interview, unless it is impracticable to do so. If the office is unable to serve the determination on the same day, then it should adhere to the procedures discussed below. There are different procedures for positive and negative determinations.

#### ***a. Positive reasonable fear determination***

Asylum offices may serve positive reasonable fear determinations by mail. To serve positive determinations, officers must fully and correctly complete the certificate of service section on Form I-863 (Notice of Referral to Immigration Judge), indicating the type of mail (certified or regular) that was used to serve the document. The "date of service" refers to the date that the notice is placed in an envelope and in outgoing mail. Local asylum office policy as to whether the Form I-863 (Notice of Referral to Immigration Judge) is mailed by regular or certified mail must take into account differing interpretations of "proof of service" by local immigration courts. The documents that must be served are listed at RFPM section III.I.3.a, Positive Reasonable Fear Determination.

#### ***b. Negative Reasonable fear determination***

Asylum offices may not serve negative reasonable fear determinations by mail. Instead, asylum offices should issue a Reasonable Fear Determination Pick-Up Notice (Non-Detained) to the alien to appear in

person at the asylum office or other location. A signed copy of the Reasonable Fear Determination Pick-Up Notice (Non-Detained) should also be retained for the asylum office's records. The procedures that must be followed while serving the negative determination, including which documents to include are listed at RFPM section III.I.3.b, Negative Reasonable Fear Determination. See Reasonable Fear Determination Pick-Up Notice (Non-Detained) at Appendix W.

## 5. Failure to Appear for Reasonable Fear Interview

If a non-detained alien fails to appear for one (1) reasonable fear interview, regardless of the reason for the failure to appear, then asylum offices should write a Memorandum to File explaining that the asylum office was unable to complete the reasonable fear determination due to the alien's failure to appear for the interview. Asylum offices also should notify ICE that the alien failed to appear. See Sample Memo to File (Failure to Appear for RF Non-Detained Interview or Determination) at [Appendix V](#).

Should the alien present himself or herself for the reasonable fear interview at a later date, asylum offices will then process the case.

## 6. Failure to Appear for Determination Pick-Up

If the alien fails to appear for determination pick-up, then asylum offices should write a Memorandum to File explaining why the asylum office was unable to complete the reasonable fear process. Asylum offices also should notify ICE that the alien failed to appear. See Sample Memo to File (Failure to Appear for RF Non-Detained Interview or Determination) at [Appendix V](#).

Should the alien present himself or herself for the determination pick-up at a later date, asylum offices will then process the case. Asylum officers may need to revisit the reasonable fear determination depending on the amount of time that has elapsed from the time of the first interview to the time the alien is physically present to be served the reasonable fear determination.

## IV.C. CONFIDENTIALITY ISSUES

The confidentiality provisions outlined in 8 CFR 208.6 protect information pertaining to a reasonable fear interview and determination, as well as an asylum interview and determination. For more information on confidentiality protections, see the Affirmative Asylum Procedures Manual.

## IV.D. DETENTION CONDITIONS

Questions concerning an alien's health or access to medical treatment, access to telephones and visitors or attorneys, application of detention standards, parole of detainees, work authorization for paroled detainees, and transfers to another facility are handled by the Officer in Charge of the detention facility, the Assistant District Director for Detention and Removal, or the District Director.

HQASM/QA should be notified if problems are directly related to the interview process, such as an attorney's inability to meet with an alien before a scheduled interview. While an alien may notify an APSO

of problems concerning detention conditions, particularly if the detainee is not able to communicate easily with Detention and Removal or PHS staff, any dispute that requires resolution must be brought to the attention of the Assistant District Director for Detention and Removal, the District Director, the Regional Director and, if necessary, to HQ Field Operations. The credible fear program manager at HQASM also should be notified about such problems.

#### IV.E. MANDATORY BARS

Mandatory bars to being granted asylum or withholding of removal do not affect the determination of whether an alien has a reasonable fear of persecution or torture. However, whenever a mandatory bar appears to apply to an alien, an asylum office must flag the possible bar in APSS.

Asylum offices must also complete a Memo of Adverse Information whenever an APSO, in conjunction with the SAPSO, has reasonable grounds to believe that a mandatory bar may apply to an alien, except for the mandatory bar of firm resettlement. The memo should include a detailed explanation for the basis for believing that the alien may be subject to a bar as well as an explanation of how the possible bar was discovered (for example, through testimony or security check).

When a Memo of Adverse Information is completed the asylum office must send the memo to ICE ERO to notify them of the possible mandatory bar to asylum.

##### [Appendix R: Memo of Adverse Information](#)

The APSO must include the original memo on the non-record side of the A-file and place a copy in the alien's W-file.

Whenever the possible mandatory bar relates to terrorism, the asylum office must also email an electronic copy of the Memo of Adverse Information to the ASYLUM QA – REASONABLE FEAR mailbox at Asylum Headquarters with the subject line, "ZXX RF Adverse Info Memo TRIG A000000000." The memos should be saved using that same naming convention..

#### IV.F. WITHDRAWALS

A person referred for a reasonable fear determination may later seek to withdraw the request. In any case in which an alien seeks to withdraw the request after the request has been referred to an asylum office, an APSO must go over the Withdrawal of Request for Reasonable Fear Determination form with the alien. In cases where an alien wishes to withdraw but an APSO is not physically present at the detention facility, the APSO should fax a copy of the withdrawal form to an INS immigration officer (IO) at the place of detention. The APSO will conduct a brief interview, with the assistance of a telephonic interpreter, if necessary, to apprise the alien of his or her rights and make sure the alien still wants to withdraw. The IO at the detention site will obtain the alien's signature, and he or she also will sign the form.

If an IO reviews the withdrawal form with the alien, the APSO must telephonically contact the alien to ensure that the alien has been informed of his or her rights. After the IO faxes the signed withdrawal form to the APSO, the APSO must note on the withdrawal form that he or she spoke with the alien before faxing the withdrawal to HQASM/QA for concurrence

#### [Appendix S](#):Withdrawal of Request for Reasonable Fear Determination

Interpreter services should be used if the alien does not speak English or the officer is not qualified to interpret the form for the alien (see this Manual's section III.D regarding interpretation). After an alien signs the form, it should be faxed to HQASM/QA, which must concur by fax or cc:mail before the alien is allowed to withdraw.

An alien may withdraw at any time while the asylum office has jurisdiction over the case. In other words, an alien may withdraw the reasonable fear request up to the time a determination has been filed with the immigration court, at which time the court assumes jurisdiction, or until a negative determination and related documents have been returned to the district office, at which time the district office assumes jurisdiction over the case.

### IV.G. REQUEST FOR RE-INTERVIEW

Requests for a re-interview should be treated in the same manner as such requests in the asylum context. Requests for a re-interview are decided on a case-by-case basis, but the person must have a compelling reason for the request to be granted. If there is strong evidence that a misunderstanding occurred at the first interview or that the alien was unable to fully present his or her claim, the asylum office Director may, in his or her discretion, grant the request for the re-interview.



## Appendix – List of Documents

- A. [Form I-871 - Notice of Intent Decision to Reinstate Prior Order](#)
- B. [Detention and Deportation Officers Field Manual, Section 15.7, Reinstatement of Final Orders](#)
- C. [Form I-851 - Notice of Intent to Issue a Final Administrative Removal Order](#)
- D. [Form I-851A - Final Administrative Removal Order](#)
- E. [20010724 Pearson, Michael, INS Office of Field Operations, Memorandum to Regional Directors, Interim St. Cyr Guidance](#)
- F. [19991026 Davidson, Christine, Office of International Affairs, Memorandum to SAPSOs, Removal Orders in RF Cases](#)
- G. [Form M-488 - Information about Reasonable Fear Interview](#)
- H. X
- I. [Form I-899 - Record of Determination Reasonable Fear Worksheet](#)
- J. [Template - Waiver of the 48-Hour Period](#)
- K. [Form G-56 - Reasonable Fear Interview Notice](#)
- L. [19970701 Perryman, Brian R., INS Office of Field Operations, Security and Privacy Provisions for Credible Fear Interviews](#)
- M. [Form I-863 - Notice of Referral to Immigration Judge](#)
- N. [Form I-898 - Record of Negative Reasonable Fear Finding and Request For Review by Immigration Judge](#)
- O. [Language Services Record \(Daily Log\)](#)
- P. [Template - Waiver of Presence of Representative During a Reasonable Fear Interview](#)
- Q. [20020103 Langlois, Joseph E., Procedures for Contacting HQASM on Terrorist Cases](#)
- R. [Memo of Adverse Information](#)
- S. [Withdrawal of Request for Reasonable Fear Determination](#)
- T. [Reasonable Fear Determination Checklist and Written Analysis](#)
- U. [Reasonable Fear Determination Checklist and Written Analysis Instructions](#)
- V. [Memo - Failure to Appear for RF Non-Detained Interview or Decision.crg.06.01.17.FieldComments](#)
- W. [Reasonable Fear Determination Pick Up Notice \(Non-Detained\)](#)
- X. New Document – for Demo Purposes Only

## [RF Memorandum](#)