



Homeland  
Security

December 9, 2022

MEMORANDUM FOR: Ur M. Jaddou  
Director  
U.S. Citizenship and Immigration Services

Ashley Tabaddor  
Chief Counsel  
U.S. Citizenship and Immigration Services

FROM: Dana Salvano-Dunn (b) (6)  
Director, Compliance Branch  
Office for Civil Rights and Civil Liberties

Susan Mathias /s/  
Assistant General Counsel, Legal Counsel Division  
Office of the General Counsel

SUBJECT: Notification of Section 504 Finding  
and Additional Recommendations  
Complaint No. 003144-22-USCIS

### *Purpose*

The purpose of this memorandum is to inform U.S. Citizenship and Immigration Services (USCIS) of the finding by the Office for Civil Rights and Civil Liberties (CRCL) that USCIS discriminated against (b) (6) in violation of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. § 794(a). This memorandum also describes the remedy required by CRCL and provides USCIS additional related recommendations.

### *Background*

Ms. (b) (6) representative alleged that USCIS failed to respond to requests for a modification to the biometrics requirement of Ms. (b) (6) extension of status applications. Following an investigation by CRCL, the Deputy Officer for Civil Rights and Civil Liberties issued a determination letter to Ms. (b) (6) representative finding that USCIS failed to engage in an interactive process following Ms. (b) (6) requests for a disability modification, resulting in a delay that required additional and unnecessary efforts by Ms. (b) (6) counsel, Ms. (b) (6), to receive a service that Ms. (b) (6) should have been provided expeditiously.<sup>1</sup>

<sup>1</sup> Department regulations require the Officer for Civil Rights and Civil Liberties to coordinate the implementation of compliance procedures for investigating allegations of disability discrimination in violation of Section 504. 6 C.F.R.

## *Analysis*

The attached letter to the complainant contains CRCL's analysis detailing how the complaint establishes a *prima facie* case of disability discrimination, CRCL's findings of fact, conclusions of law, and remedy. Therefore, we will not repeat our analysis. However, CRCL will discuss additional details that we did not address in our letter to Ms. (b) (6).

As outlined in the attached letter, Ms. (b) (6) has severe intellectual disabilities and was unable to wear a face mask to comply with COVID-19 policies in place at the USCIS Application Support Centers (ASCs) when she applied to extend her non-immigrant status in 2020 and 2021. The biometric appointment notice sent to Ms. (b) (6) advised that disability modification requests should be submitted electronically via the USCIS website, or by calling the USCIS Contact Center. Ms. (b) (6) submitted a modification request via the USCIS website but received a boilerplate response which stated that "all special accommodation biometrics appointments were suspended due to COVID-19," but provided no alternative solution. This led Ms. (b) (6) to erroneously believe that USCIS was providing no disability modifications, regardless of the circumstances, to individuals who were unable to attend an in-person biometrics appointment and leaving those individuals with no recourse.

We appreciate that USCIS suspended home visits and instituted masking policies during the period at issue to ensure the safety of both USCIS personnel and members of the public. We also recognize that, once alerted to the circumstances surrounding Ms. (b) (6) failure to attend her biometrics appointment, USCIS exercised its discretion to reopen Ms. (b) (6) previously denied application, granted a biometrics waiver, and approved several consecutive requests for extension filed by Ms. (b) (6). CRCL especially wishes to recognize the work of the USCIS Office of Equal Opportunity and Inclusion (OEIO), who assisted Ms. (b) (6) in renewing Ms. (b) (6) biometrics waiver.

USCIS policies and procedures require USCIS to engage in an interactive process when a member of the public who self-identifies as an individual with a disability requests a disability modification. CRCL found that USCIS did not engage in the interactive process in response to the online modification request Ms. (b) (6) submitted through the USCIS website. Instead, Ms. (b) (6) described to CRCL an ongoing process through which she submitted an online modification request, called the USCIS Contact Center to request to reschedule while the modification request was pending, and directly reached out to an individual in OEIO to facilitate a renewed biometrics waiver for Ms. (b) (6).

Although CRCL does not have direct knowledge of the interactions between Ms. (b) (6) and USCIS, Ms. (b) (6) claims that she has never received a phone call from USCIS in response to the disability modification requests she has submitted online, and that she has received

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Part 15. Through DHS Delegation No. 19001, the Officer for Civil Rights and Civil Liberties delegated this responsibility to the Deputy Officer for Civil Rights and Civil Liberties for Programs and Compliance. The regulations require the Department to issue a letter containing findings of fact, conclusions of law, a description of a remedy for each violation found, and a notice of the right to appeal to the complainant. *See* 6 C.F.R. § 15.70(g)(1)(i)-(iii).

erroneous information from USCIS Contact Center employees when attempting to submit requests by phone.<sup>2</sup> Ms. (b) (6) also claims that the USCIS Contact Center automated response system repeatedly advises callers to visit the USCIS website and submit a request online, despite the fact that website provides the USCIS Call Center as an alternate avenue for submitting a request.

CRCL is concerned with the multiple steps that Ms. (b) (6) has repeatedly taken to secure a disability modification for Ms. (b) (6) and is concerned that other individuals may be unable to successfully request a disability modification using the instructions currently being provided by USCIS. While CRCL appreciates that Ms. (b) (6) was ultimately granted a biometrics waiver, changes are needed to ensure that individuals with disabilities can successfully request modifications in connection with biometrics or other USCIS appointments, even without the assistance of an attorney.

### *Conclusion*

As stated in the attached letter containing CRCL's findings of fact, conclusions of law, and remedy regarding this complaint, we have concluded our investigation and determined that USCIS discriminated against the complainant on the basis of her disability in violation of Section 504 and the Interim Regulation.

### *Remedy Issued Pursuant to CRCL's Section 504 Authority*

Under 6 C.F.R. § 15.70(g)(1)(ii), CRCL may determine an appropriate remedy for individual complainants for each Section 504 violation found. If the complainant does not appeal to the Officer for CRCL, under 6 C.F.R. § 15.70(h), the remedy is part of the final agency decision. If the complainant appeals, the Officer for CRCL will issue the final agency decision, which may include appropriate corrective action to be taken by the Department. 6 C.F.R. § 15.70(i). The remedy under 6 C.F.R. § 15.70(g)(1)(ii) that is contained in our decision letter to the complainant is:

Within 30 days, issue a reminder to relevant staff on the appropriate procedures to capture, document, and respond to any request for a disability modification made in connection to a biometrics appointment. This reminder should ensure that disability modification requests are appropriately recognized by the relevant USCIS employees, and trigger USCIS to initiate the interactive process.

The above remedy is issued pursuant to CRCL's authority under 6 C.F.R. § 15.70(g)(1)(ii) and DHS Delegation Number 19001, which delegates responsibility for coordinating the enforcement of the Department's regulations issued pursuant to the requirements of Section 504 to the Officer for CRCL. USCIS's cooperation in implementation of this resolution is authorized per 6 C.F.R. § 15.70(g)(2). Please inform CRCL within 120 days of how and when this remedy will be

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<sup>2</sup> Ms. (b) (6) relayed to CRCL that she was advised by a USCIS Contact Center employee that "requests for accommodations for biometrics appointments must be sent via e-mail to foiaquestions@uscis.dhs.gov," despite explaining that her request was not related to the Freedom of Information Act.

implemented by contacting (b) (6). CRCL will share your response with (b) (6), the Senior Policy Advisor who conducted this investigation.

*Recommendations Issued Pursuant to CRCL's Section 345 Authority*

While 6 U.S.C. § 345(a)(4) affords no remedies to individuals, it authorizes CRCL to make recommendations to components regarding our investigative findings. The recommendation below, which is based on our findings and addresses compliance with Section 504 and the Interim Regulation, is pursuant to CRCL's 6 U.S.C. § 345 authorities. As stated in the DHS Instruction, Components must formally concur or non-concur with CRCL recommendations and must provide CRCL an implementation plan for any concurred with recommendations.

CRCL is concerned that the systems in place for processing modification requests via the USCIS website and through the Contact Center are not adequate to identify and relay such requests. Accordingly, CRCL recommends that USCIS undertake the following measures within one year:

- (1) USCIS should revise the automated response systems in place at the USCIS Contact Center to ensure that individuals can successfully submit disability modification requests via phone.
- (2) USCIS should ensure that callers can request to speak to an operator, rather than being directed to the USCIS website, and that operators can successfully process and route requests for disability modifications.
- (3) USCIS should take appropriate measures to ensure that USCIS timely captures and responds to all disability modification requests (regardless of whether they are submitted online, by phone, in person, or by mail), and that such requests trigger USCIS to initiate the interactive process with the individual seeking a modification.

It is CRCL's statutory role to oversee DHS's compliance with constitutional, statutory, regulatory and policy requirements relating to the civil rights and civil liberties of all individuals affected by DHS programs and activities. In turn, CRCL advises department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. The above recommendation is made pursuant to that role; we believe it will assist you in meeting USCIS's important mission. We request that USCIS provide a response to CRCL within 120 days indicating whether it concurs or does not concur with this recommendation. If you concur, please include an action plan. Please send your response and any questions to (b) (6). CRCL will share your response with (b) (6), the Senior Policy Advisor who conducted this investigation.

Enclosure

Copy to:

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