U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

SEP 30 2014

Memorandum

TO: Maria Odom
Citizenship and Immigration Services Ombudsman

FROM: León Rodríguez
Director

SUBJECT: Response to Citizenship and Immigration Services Ombudsman Formal Recommendation, "Improving the Quality and Consistency in Notices to Appear"

On June 11, 2014, the Department of Homeland Security (DHS) Citizenship and Immigration Services Ombudsman (CISOMB) published a comprehensive review of the current process for issuance of Form I-862, Notice to Appear (NTA), in accordance with section 239 of the Immigration and Nationality Act (INA). The DHS Secretary has delegated authority to issue NTAs to U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). The NTA is then filed with the immigration court, which is under the jurisdiction of the Department of Justice's Executive Office for Immigration Review (EOIR).

USCIS appreciates the CISOMB's recommendation on this subject. Given the interactions of three DHS components and two executive departments, removal proceedings are a complex, administrative legal process. Additionally, this process has undergone considerable changes in recent years. Current USCIS policy guidance strives to "promote the sound use of the resources of the Department of Homeland Security and the Department of Justice to enhance national security, public safety, and the integrity of the immigration system."[1] USCIS also recognizes the CISOMB's previous interest in this subject as documented in its 2010 and 2011 annual reports to Congress.

CISOMB Recommendations

The CISOMB recommends that USCIS:

1. Provide additional guidance for NTA issuance with input from ICE and EOIR;
2. Require USCIS attorneys to review NTAs prior to their issuance and provide comprehensive legal training; and
3. Create a working group with representation from ICE and EOIR to improve tracking, information sharing, and coordination of NTA issuance.

[1] "Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens," November 7, 2011, PM-602-0050.

1. Provide Additional Guidance for NTA Issuance with Input from ICE and EOIR.

USCIS concurs with this recommendation. Not only have certain issues raised by CISOMB already been addressed, USCIS is currently reviewing agency guidance for NTA issuance. This review will consider the outstanding issues presented in this recommendation and USCIS will continue to seek input from ICE as we develop further guidance.

Currently, USCIS has updated the NTA section in the Consolidated Handbook of Adjudications Procedures (CHAP) to provide uniform guidance to all service centers and field offices on the creation and issuance of NTAs.[2] One of the key issues clarified in the CHAP is NTA issuance to P.O. boxes. The CHAP lists instructions no longer precluding NTA issuance to P.O. boxes, which aligns with recent EOIR practices. This update should help to mitigate the non-delivery issues identified in the CISOMB recommendation.

The updated NTA guidance in the CHAP also provides instructions for written notification to the alien to document an NTA cancellation determination made by USCIS due to prosecutorial discretion, a key issue for applicants who face serious consequences for lack of written notification. Prior guidance did not include this written notification requirement, which led to miscommunication and unnecessary customer or attorney inquiries. This change in processing should also address concerns stated in the CISOMB recommendation.

2. Require USCIS Attorneys to Review NTAs Prior to Their Issuance and Provide Comprehensive Legal Training.

USCIS concurs with the recommendation to provide legal training. At this time, however, USCIS cannot concur with the recommendation regarding attorney review of all NTAs prior to issuance; accordingly, USCIS is taking this recommendation under further advisement.

While the report mentions purported problems with NTAs issued by USCIS field offices and service centers, there is no clear data on the number of NTAs that were issued incorrectly. OCC currently reviews NTAs when requested by an officer and officers can consult with OCC at any time regarding NTA questions. Additionally, OCC reviews certain NTA categories determined to be more complex. To determine whether additional review of NTAs by USCIS attorneys is necessary or whether the concerns raised by the report can be addressed through training, additional data is needed. Accordingly, USCIS will work to assess whether additional review by attorneys of NTAs issued by the field offices, service centers, and asylum offices is merited.

OCC currently has a training module addressing NTA legal issues ("How to Issue an NTA") that is available for agency-wide presentation. OCC will coordinate with USCIS operational components to assess training needs and will update its existing NTA training or create new NTA training based on this assessment, if necessary. OCC will also work with operational components to incorporate this NTA training into component training programs.

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[2] "USCIS CHAP Consolidated Handbook of Adjudication Procedures, Volume One: General Policies and Procedures," Part G: Notice to Appear. These procedures do not apply to the Refugee, Asylum and International Operations Directorate's Asylum Division, which follows the Affirmative Asylum Procedures and Credible Fear Procedures Manuals for NTA generation.

3. Create a Working Group With Representation from ICE and EOIR to Improve Tracking, Information-Sharing, and Coordination of NTA Issuance.

USCIS concurs with this recommendation. USCIS will create a working group to improve tracking, information sharing, and coordination of NTA issuance with ICE and EOIR.

USCIS NTA issuance is authorized throughout the eight asylum offices, the 26 district offices, the National Benefits Center, and the four service centers. Since 2012, USCIS has categorized NTAs by the following four types: regular, fraud, customer request, and other. Regular NTAs are administratively required by current regulations and policies. Fraud NTAs are issued in conjunction with a Fraud Found Summary of Findings. Customer Request NTAs are issued on a case-by-case basis in accordance with current policy and the CHAP. Other NTAs are very rarely issued.

The Office of Performance and Quality maintains NTA statistics. The working group will determine the adequacy of current NTA tracking requirements. The following table summarizes USCIS NTA issuance by NTA type for FY 2014 through June 2014.

Table 1.0. NTA Issuance FY 2014 to Date by Type[3]

NTA Type	Regular	Fraud	Customer Request	Other	Total NTAs
Type Total	**39,396**	**1,236**	**239**	**2**	**40,807**

NTAs are documented in the Enforcement Integrated Database (EID), a computer information system maintained by ICE. The NTAs issued by the Field Office Directorate and the Service Center Operations Directorate are created in EAGLE (EID Arrest Graphic User Interface for Law Enforcement), an ICE computer system that has been customized for USCIS use as of April 14, 2014. EAGLE interfaces with EID and transfers NTA information to EID. Prior to this date, NTAs were created in another ICE computer system called ENFORCE. The Asylum Division does not use EID to create NTAs but rather uses the RAPS Forms Generation Module (RFGM) to create NTAs for affirmative asylum cases.[4] RAPS transfers NTA information to EID. USCIS Adjudication Officers are required to complete training on EAGLE or RFGM prior to being authorized to draft NTAs. The working group will review current computer system capabilities.

After updating the appropriate computer systems, the final steps in USCIS NTA issuance include the authorized official reviewing, signing, and issuing the NTA. The NTA is then issued to the alien in person or by regular mail delivery. Current DHS policy authorizes either USCIS or ICE to serve the NTA with the immigration court. Local practices determine whether USCIS forwards the NTA to ICE prior to serving the charging document with the immigration court.

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[3] USCIS NTA production statistics by NTA type for FY 2014 through June 2014.
[4] The Asylum Division manually creates NTAs using local templates for credible fear cases and customer service requests. The NTA information in these situations is not transferred electronically to EID.

The working group will be tasked to review current issuance practices and make recommendations for further improvements.

USCIS looks forward to continuing our partnership with CISOMB on the review of the NTA process. At the time of this response, NTA guidance is also under DHS review. Any further changes in DHS policy may impact the ability of USCIS to fully implement these recommendations.