

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services
Office of the Director
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

APR 11 2008

Memorandum

TO: FIELD LEADERSHIP

FROM: Jonathan R. Scharfen, Deputy Director

A handwritten signature in black ink that reads "Jonathan R. Scharfen".

SUBJECT: Policy for Vetting and Adjudicating Cases with National Security Concerns

I. Purpose

This memorandum outlines USCIS policy for identifying and processing cases with national security (NS) concerns,¹ and rescinds existing policy memoranda pertaining to reporting and resolving NS concerns. It also identifies Headquarters' Office of Fraud Detection and National Security (HQFDNS) as the point of contact for technical advice to assist the field² with vetting and adjudicating cases with NS concerns. This policy, known as the Controlled Application Review and Resolution Program (CARRP), establishes the following:

- The field is responsible for vetting and documenting Non-Known or Suspected Terrorist (Non-KST)³ NS concerns, and adjudicating all NS-related applications and petitions.⁴

¹ A **NS concern** exists when an individual or organization has been determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4) (A) or (B) of the Immigration and Nationality Act (the Act). This determination requires that the case be handled in accordance with CARRP policy outlined in this memorandum.

² **Field** refers to Field Offices, Service Centers, the National Benefits Center, and equivalent offices within the Refugee, Asylum, and International Operations Directorate (RAIO).

³ **Known or Suspected Terrorist (KST)** is a category of individuals who have been nominated and accepted for placement in the Terrorist Screening Database (TSDB), are on the Terrorist Watch List, and have a specially-coded lookout posted in TECS/IBIS, and/or the Consular Lookout Automated Support System (CLASS), as used by the Department of State. **Non-KST** is the category of remaining cases with NS concerns, regardless of source, including but not limited to: associates of KSTs, unindicted co-conspirators, terrorist organization members, persons involved with providing material support to terrorists or terrorist organizations, and agents of foreign governments. Individuals and organizations that fall into this category may also pose a serious threat to national security.

⁴ This policy applies to all applications and petitions that convey immigrant or non-immigrant status. This policy does not apply to petitions that do not convey immigrant or non-immigrant status. See Operational Guidance for instructions.

~~FOR OFFICIAL USE ONLY / LAW ENFORCEMENT SENSITIVE~~

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy governing the use of FOUO information. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This document and the information contained herein are not to be distributed outside of DHS.

www.uscis.gov

Policy for Vetting and Adjudicating Cases with National Security Concerns

Page 2

- The FDNS-Data System (FDNS-DS) is the primary system for recording vetting, deconfliction, and other resolution activities.⁵
- HQFDNS maintains responsibility for external vetting⁶ of Known or Suspected Terrorist (KST) hits; and, upon request from the field, provides advice, technical assistance (including draft decisions), and operational support on KST and Non-KST cases with NS concerns.

II. Effective Date and Implementation

Operational Guidance implementing this policy will soon be issued by the Domestic Operations Directorate⁷ (DomOps) and individual components of the Refugee, Asylum, and International Operations Directorate (RAIO). This policy will be effective upon issuance of each directorate's respective guidance.

III. Rescission of Prior Policy and Procedures

Upon issuance of the Operational Guidance, the following policy memoranda and procedures will be rescinded:

- *Processing of Applications for Ancillary Benefits Involving Aliens Who Pose National Security or Egregious Public Safety Concerns*, dated May 11, 2007;
- *Processing of Forms I-90 Filed by Aliens Who May Pose National Security or Egregious Public Safety Concerns*, dated May 11, 2007;
- *National Security Reporting Requirements*, dated February 16, 2007;
- *National Security Record Requirements*, dated May 9, 2006;
- *Permanent Resident Documentation for EOIR and I-90 Cases*, dated April 10, 2006;
- Appendix A of the Inter-Agency Border Inspection System (IBIS) Standard Operating Procedure, dated March 1, 2006;

⁵ If FDNS-DS is not currently available at any specific field office, officers must document CARRP procedures by another method as identified in Operational Guidance.

⁶ **External Vetting** consists of inquiries to record owners in possession of NS information to identify: (a) facts or fact patterns necessary to determine the nature and relevance of the NS concern, including status and results of any ongoing investigation and the basis for closure of any previous investigation; and (b) information that may be relevant in determining eligibility, and when appropriate, removability. See section IV.C for further instruction.

⁷ The **Domestic Operations Directorate** comprises Service Center Operations and Field Operations.

Policy for Vetting and Adjudicating Cases with National Security Concerns

Page 3

- *Revised Instructions for Processing Asylum Terrorist/Suspected Terrorist Cases*, dated January 26, 2005; and
- Section VIII of the Asylum Identity and Security Check Procedures Manual.

Officers should refer to relevant Operational Guidance⁸ when adjudicating the following, *if* found to involve NS or Egregious Public Safety⁹ concerns:

- Petitions that do *not* convey immigrant or non-immigrant status;
- Applications for employment authorization;
- Applications for travel authorization;
- Replacement Lawful Permanent Resident cards;
- *Santillan*¹⁰ cases.

IV. Policy Guidance

This policy, in conjunction with Operational Guidance, provides direction to identify and process cases containing NS concerns in the most efficient manner. The process allows sufficient flexibility to manage the variety of cases encountered by USCIS.

Officers should note that at any stage of the adjudicative process described below, deconfliction may be necessary before taking action on a KST or Non-KST NS concern. Deconfliction is a term used to describe coordination between USCIS and another government agency owner of NS information (the record owner) to ensure that planned adjudicative activities (e.g., interview, request for evidence, site visit, decision to grant or deny a benefit, or timing of the decision) do not compromise or impede an ongoing investigation or other record owner interest.

A. Identifying National Security Concerns

As a result of the security checks¹¹ or at any stage during the adjudicative process, the

⁸ Including Policy Memorandum 110 (*Disposition of Cases Involving Removable Aliens*) issued July 11, 2006. That memorandum is not rescinded and does not apply to asylum applications.

⁹ An Egregious Public Safety (EPS) case is defined in Policy Memorandum 110.

¹⁰ *Santillan et al. v. Gonzales, et al.*, 388 F. Supp2d 1065 (N.D. Cal. 2005).

¹¹ Security checks may consist of the FBI Name Check, FBI Fingerprint Check, Treasury Enforcement Communications System/Inter-Agency Border Inspection System (TECS/IBIS), or United States Visitor and Immigrant Status Indicator Technology/Automated Biometrics Identification System (US VISIT-IDENT). Specific checks or combinations of checks are required for each application or petition type, pursuant to each component's procedures.

Policy for Vetting and Adjudicating Cases with National Security Concerns

Page 4

officer may identify one or more indicators¹² that may raise a NS concern. In such cases, the officer must first confirm whether the indicator(s) relates to the applicant, petitioner, beneficiary, or derivative (“the individual”).¹³ When a Non-KST NS indicator has been identified, the officer must then analyze the indicator in conjunction with the facts of the case, considering the totality of the circumstances, and determine whether an articulable link exists between the individual and an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(A) or (B) of the Act.

1. For Non-KST NS indicators, the officer should refer to the Operational Guidance for instruction on identifying those indicators that may raise a NS concern.
2. After confirming the existence of a KST NS concern via a TECS/IBIS check, the officer must contact the Terrorist Screening Center (TSC), as instructed in the content of the TECS/IBIS record, and must determine whether the KST NS concern relates to the individual. Officers are not authorized to request from the record owner any NS information related to a KST NS concern other than identification of the subject.

The officer must also consider and evaluate, in all cases, indicators related to family members or close associates of the individual to determine whether those indicators relate to the individual as well.

B. Internal Vetting and Assessing Eligibility in Cases with National Security Concerns

For both Non-KST and KST concerns, once the concern has been identified, the officer must conduct a thorough review of the record associated with the application or petition to determine if the individual is eligible for the benefit sought. The officer must also conduct internal vetting¹⁴ to obtain any relevant information to support adjudication and, in some cases, to further examine the nature of the NS concern.¹⁵

For Non-KST NS concerns, the field is authorized to perform internal and external vetting. See step IV.C below for an explanation of external vetting.

For KST NS concerns, the field is only authorized to perform internal vetting. Record owners in possession of NS information are not to be contacted. HQFDNS has sole responsibility for external vetting of KST NS concerns.

¹² Guidelines for types of indicators that may be encountered during adjudication will be provided as an attachment to the Operational Guidance to assist officers in identifying NS concerns.

¹³ For purposes of this memorandum, the term “individual” may include a petitioner.

¹⁴ **Internal vetting** may consist of DHS, open source, or other systems checks; file review; interviews; and other research as specified in Operational Guidance.

¹⁵ If an exemption is granted under section 212(d)(3)(B)(i) of the Act for a terrorist-related inadmissibility ground, and if no other NS concern is identified, no further vetting is necessary and the application may continue through the routine adjudication process.

Policy for Vetting and Adjudicating Cases with National Security Concerns

Page 5

The purpose of the eligibility assessment is to ensure that valuable time and resources are not unnecessarily expended externally vetting a case with a record owner when the individual is otherwise ineligible for the benefit sought. When this is the case, the application or petition may be denied on any legally sufficient grounds.¹⁶

When a NS concern exists, the NS information may be of a restricted or classified nature. These NS or law enforcement operations-based restrictions are often directly linked to protecting sensitive sources, methods, operations, or other elements critical to national security. Access to this information is therefore limited to those with a direct need to know and, when applicable, appropriate security clearance. As a policy matter, USCIS requires that a thorough eligibility assessment and completion of internal vetting precede any outreach for access to NS information.

C. External Vetting of National Security Concerns

1. Non-KST NS Concerns

In a case with a Non-KST NS concern, the officer must initiate the external vetting process before the case may proceed to final adjudication if:

- the application or petition appears to be otherwise approvable, and internal vetting is complete;
- there is an identified record owner in possession of NS information; and
- the NS concern remains.

At this stage, the officer confirms with the record owner the earlier USCIS identification of the NS concern (*see* step IV.A above) and obtains additional information regarding the nature of the NS concern and its relevance to the individual. This is accomplished by obtaining from the record owner facts and fact patterns to be used in confirming whether an articulable link exists between the individual and an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F) or 237(A) or (B) of the Act.

Additionally, the officer seeks to obtain additional information that may be relevant in determining eligibility and, when appropriate, removability. This process requires close coordination with law enforcement agencies, the Intelligence Community,¹⁷ or other record owners. If the external vetting process results in a finding that the NS concern no longer exists, and if the individual is otherwise eligible for the benefit sought, the application or petition is approvable.

¹⁶ All references in this memorandum to “denying” a case also encompass the possibility of referring an asylum case to an Immigration Judge.

¹⁷ Officers are not authorized to contact Intelligence Community members; such outreach is conducted by HQFDNS.

Policy for Vetting and Adjudicating Cases with National Security Concerns

Page 6

When USCIS obtains information from another government agency during the external vetting process, DHS policy guidance¹⁸ requires that authorization from the record owner be obtained prior to any disclosure of the information. Therefore, in order to use the information during adjudication, prior written authorization must be obtained from the record owner. If the information indicates that the individual is ineligible for the benefit sought, and if permission from the record owner has been secured for the use of unclassified information,¹⁹ the application or petition may be denied based on that unclassified information.

2. KST NS Concerns

For KST NS concerns, field officers are not authorized to conduct external vetting with record owners in possession of NS information. As stated above, only internal vetting of KST NS concerns is permitted at this stage. HQFDNS has sole responsibility for external vetting of KST NS concerns, which must be conducted in cases with a confirmed KST hit that have been determined to be otherwise approvable.

D. Adjudicating National Security Cases

Upon completion of required vetting, if the NS concern remains, the officer must evaluate the result of the vetting and determine any relevance to adjudication, obtain any additional relevant information (e.g., via a request for evidence, an interview, and/or an administrative site visit), and determine eligibility for the benefit sought. Adjudication of a case with a NS concern focuses on thoroughly identifying and documenting the facts behind an eligibility determination, and, when appropriate, removal, rescission, termination, or revocation under the Act.

If the individual is ineligible for the benefit sought, the application or petition may be denied.

If the vetting process results in a finding that the NS concern no longer exists, and if the individual is otherwise eligible for the benefit sought, the application or petition may be approved.

Non-KST NS Concerns

Officers are not authorized to approve applications with confirmed Non-KST NS concerns without supervisory approval and concurrence from a senior-level official (as

¹⁸ See DHS Management Directive 11042.1, *Safeguarding Sensitive But Unclassified (For Official Use Only) Information*, dated 1-6-2005; and DHS Memorandum, *Department of Homeland Security Guidelines for the Use of Classified Information in Immigration Proceedings* ("Ridge Memo"), dated 10-4-2004.

¹⁹ Requests for declassification of information and use of classified information during adjudication may only be made by HQFDNS. Officers should refer to Operational Guidance for further instruction.

Policy for Vetting and Adjudicating Cases with National Security Concerns

Page 7

defined in Operational Guidance). That official also has discretion to request additional external vetting assistance from HQFDNS in accordance with Operational Guidance.

2. KST NS Concerns

Officers are not authorized to approve applications with confirmed KST NS concerns. If the senior-level official concurs, external vetting assistance must be requested from HQFDNS in accordance with Operational Guidance.

V. Conclusion

Officers should make every effort to complete NS cases within a reasonable amount of time, by taking into consideration the nature of the concern and the facts contained in each individual case. HQFDNS is available to provide technical expertise in answering questions that may arise in these cases. Any questions or issues that cannot be resolved in the field regarding identification, vetting, or adjudication of cases with NS concerns are to be promptly addressed through the established chain of command.

Distribution List: Regional Directors
 District Directors
 Field Office Directors
 Service Center Directors
 Asylum Office Directors

U.S. Citizenship and Immigration Services
Office of International Operations
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Memorandum

TO: Overseas District Directors
Field Office Directors
HQ International Operations Staff

FROM: Alanna Ow 
Acting Chief, International Operations

DATE: April 28, 2008

SUBJECT: **Guidance for the International Operations Division on the Vetting, Deconfliction, and Adjudication of Cases with National Security Concerns**


I. Introduction

The purpose of this memorandum is to provide interim operational guidelines to implement the April 11, 2008 policy memorandum entitled *Policy for Vetting and Adjudicating Cases with National Security Concerns* (copy attached). This policy, known as Controlled Application Review and Resolution Program (CARRP) provides a process to identify, record, and complete applications/petitions where a National Security (NS) concern is identified. This memorandum sets forth interim procedures by which the offices within International Operations will identify cases with NS concerns, transfer them to International Operations Headquarters (IO HQ) if applicable, as well as the procedures by which IO HQ staff will vet, deconflict, and adjudicate such cases. See Attachment D for a glossary of terms.

II. Procedures for Staff Encountering an Application or Petition with National Security (NS) Concerns

As a result of security and systems checks (Attachment C), interviews, tip letters, or at any stage of the adjudicative process, an officer may identify one or more indicators that raise a NS concern.

There are two types of NS concerns: (b)(7)(e)

1. Known or Suspected Terrorist (KST): A Known or Suspected Terrorist (KST) is a subject on the Terrorist Watch List¹ and is identified as a result of a TECS query. 



2. Non-KST: A Non-KST NS concern includes all other NS concerns, regardless of source, including but not limited to: family members, close associates of KST(s), unindicted co-conspirators, terrorist organization members, persons involved with providing material support to terrorists or terrorist organizations, and agents of foreign governments. While designated as Non-KSTs and handled separately from KSTs as described below, individuals in this category may pose a commensurate threat to national security as KSTs. As such, officers must still apply vigilance when screening cases having a non-KST NS concern.

In order to identify an NS concern, the following procedures apply:²

1. Determine whether the information is a NS concern and whether it is a KST or Non-KST concern. Attachment A is provided as a tool to help officers identify what indicators may constitute a NS concern. Attachment A is not an exhaustive list of indicators; it is intended to serve as a supplemental tool to help officers analyze the indicator(s) in conjunction with the facts of the case, consider the totality of the circumstances, and determine whether an articulable link exists between the individual and a NS activity defined in INA sections 212(a)(3)(A), (B), or (F) or 237(a)(4)(A) or (B). In any case, if a determination cannot be made as to whether the information is a potential NS concern, the overseas field offices must confer with their respective chain of command to make a determination.



(b)(7)(e)

~~FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE~~

2.

3.

4.

5. If the applicant or petitioner is not eligible for the benefit sought for reasons independent of the NS concern, the officer must contact the owner of the derogatory information that supports an NS concern to determine whether a denial disposition will affect an ongoing investigation. This step is called deconfliction.
 - a. If the owner/investigating official indicates that the denial of the petition will not jeopardize his or her agency's operations, the USCIS officer may deny the case and document the deconfliction contact in the A file and obtain supervisory concurrence, if applicable, (supervisory concurrence is not necessary for a FOD Field Officer Director) on the Background Check and Adjudicative Assessment (BCAA, Attachment B). After completion of the denial, the officer must forward the case to IO HQ for entry into FDNS-DS.
 - b. If the owner/investigating official indicates that an investigation will be affected and recommends that USCIS not issue a decision, the USCIS officer should document the reasons by completing a memorandum, temporarily hold adjudication of the case, and refer the case to IO HQ. Again the officer must document the deconfliction contact in the A file and if applicable obtain supervisory concurrence, if applicable, on the BCAA and forward to IO HQ.
6. If the application or petition is otherwise eligible at this time based on eligibility grounds, the officer shall refer the case to IO HQ for both internal and external vetting of the NS concern, deconfliction, and adjudication. HQFDNS will conduct all external vetting on KSTs cases that are status conveying petitions (N-400's).

~~FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE~~

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

7. All cases forwarded to IO HQ must contain the BCAA and if applicable the appropriate supervisory signatures on the BCAA. The officer should assign an A number if one does not already exist, update NFTS, and send the documents to:

USCIS International Operations
ATTN: CARRP Officer
20 Massachusetts Ave NW Suite 3300
Washington DC 20529

Send classified information by diplomatic pouch and unclassified information by express mail (FedEx, DHL, etc...). If a NS concern is identified during a humanitarian parole request received by the Humanitarian Parole Unit at IO HQ, the Humanitarian Parole Unit will handle all further activities.

III. Procedures for Vetting NS Referrals Received by IO HQ

All NS concerns received by IO HQ must be entered into the FDNS Data System (FDNS-DS). The following procedures are required for any officer vetting NS concerns:

A. General Procedures for Vetting NS Concerns

1. IO HQ officers will assess the NS concern for general benefit eligibility via appropriate systems checks (Attachment C) and file review.
2. After thorough system checks, the concern will be vetted internally and externally (see attachment D). All KST external vetting will be completed by HQFDNS. While HQFDNS is conducting external vetting of KST NS concerns, the designated officer must notify HQFDNS whenever new factors arise that may affect the timing or outcome of the adjudication of the application/petition. Such factors may include, but are not limited to, Congressional inquiries, management inquiries, law enforcement requests, and litigation. The IO HQ officer will follow up with HQFDNS periodically to ensure timely processing of the case.
3. The officer must document all vetting results in FDNS-DS and on the BCAA.
4. If, after internal and external vetting the NS concern remains active or unresolved, the officer will document the vetting results in FDNS-DS and the case will remain with the IO HQ officer for evaluation. The officer may request assistance as needed from HQFDNS Background Check Analysis Unit (BCAU) by sending an e-mail to FDNS-NSB@dhs.gov detailing any assistance requested and indicating the NS Hit Number assigned to the entry in FDNS-DS.
5. If the application or petition is otherwise approvable officers must request assistance from HQFDNS Background Check Analysis Unit (BCAU) by sending an e-mail to FDNS-

NSB@dhs.gov detailing any assistance requested and indicating the NS Hit Number assigned to the entry in FDNS-DS.

6. With approval of the Chief of International Operations, applications or petitions in which the NS concerns have been resolved may be adjudicated by IO HQ. The officer must record the results of the vetting process and the record of supervisory concurrence on the BCAA form and attach it to the record in FDNS-DS.

B. Vetting Procedures when there is litigation and the referral is still being vetted

In addition to the general procedures for vetting NS concerns, officers must contact local USCIS counsel when informed that legal action has been filed against USCIS and the Assistant US Attorney (AUSA) contacts an adjudicator to receive an update on the case. HQ counsel will coordinate appropriate information-sharing activities with the AUSA. Any investigative information is treated like evidence (chain of custody) and legally the AUSA may be compelled to share any information about the NS concern, provided by a USCIS entity, with the applicant.

C. Additional Procedures for Vetting and Adjudicating Applications or Petitions with Derivatives, Family Members, and Close Associates

In some instances, the officer may be aware that the petitioner, beneficiary, applicant, dependent, or derivative is a family member or close associate of a subject with a NS concern. Such information may impact the individual's eligibility for the benefit sought and/or may indicate a NS concern with respect to the individual. In these cases, the officer must determine if the NS concern relates to the individual, and if so, if it gives rise to a NS concern for the individual. A close associate includes but is not limited to a roommate, co-worker, employee, owner, partner, affiliate, or friend.

To establish an articulable link between the NS concern and the family member or close associate, one should consider the following questions:

(b)(7)(e)

1. 
2. 
3. 

If each question is answered affirmatively, one can apply the CARRP procedures to vet and substantiate concerns. If appropriate, an interview may be used to elicit further information.

As long as an NS concern exists and there is an articulable link, the case should remain under the auspices of CARRP guidance, which includes the performance of vetting, to include reaching out to the record owner to determine whether the indicator on the family member/close associate relates to the person seeking a benefit from USCIS.

IV. Procedures for Deconfliction and Law Enforcement Coordination for Non-KST concerns

IO HQ officers must adhere to the following procedures when deconflicting cases:

1. Contact the Law Enforcement Agency (LEA) record owner telephonically and/or through e-mail. Document each telephonic and e-mail contact activity in the activities tab of FDNS-DS. In the event there is no response to the initial contact within 10 business days, the officer may contact the appropriate JTTF office for assistance if appropriate. In the event the applicant is the target of, or referenced in, multiple investigations, all appropriate entities/record owners and JTTF offices must be contacted.
2. The officer is required to advise the record owner of contemplated adjudicative action and to ensure that adjudicative activities neither conflict with nor compromise ongoing sensitive investigations.
3. In situations where the LEA is unwilling to state that there is no NS concern, declines to discuss the details of the case, or where the LEA cannot describe how the NS concern was resolved, the officer will treat the case as unresolved and request assistance from HQFNDS as previously stated above.

V. CARRP Adjudication to be completed by IO HQ

Officers are not authorized to approve applications with KST concerns on applications (N-400) and status conveying petitions. Officers are authorized to approve applications with KST concerns with supervisory concurrence on non-status conveying petitions (e.g., I-130).

Officers are authorized to adjudicate Non-KST applications/petitions with NS concerns only with concurrence from the Chief of International Operations. In situations where the NS concern is confirmed and/or remains unresolved, the assigned officer must confirm that:

1. The BCAA has been completed;
2. All A, T, W, and receipt files are obtained for review and consolidation;
3. The information in the referral meets the criteria as a NS concern (Attachment A);
4. Supervisory concurrence has been obtained at the completion of the assessment and vetting processes (documented on the BCAA);
5. All vetting and deconfliction has been completed, including close coordination with law enforcement to ensure that adjudicative activities neither conflict with nor compromise ongoing sensitive investigations.

IO HQ Officers will then take the following steps:

1. Review the background check vetting results recorded on the BCAA to determine if any information is applicable to the adjudication of the NS concern. The results of security checks and information obtained from LEA may reveal potential derogatory information about the applicant or beneficiary, and that information may impact eligibility and must be assessed as part of the adjudication. Officers should keep in mind that those who pose a NS concern may attempt to perpetrate fraud. If fraud concerns are identified, the case should be referred to FDNS/FDU for further evaluation.
2. Evaluate the file for eligibility for the benefit sought. If the applicant or beneficiary is not otherwise eligible for the benefit sought the officer may deny the benefit. Please note, however, the officer is not authorized to deny the benefit on the basis of classified information, although classified information may be used for lead purposes. When the same information can be obtained from open sources, verified, and added to the record, it may be used as grounds for a denial. Normal production timelines may be temporarily suspended in these cases if necessary, and all adjudicative tools and techniques (site visits, RFE, interview) may be considered if they would be helpful in the eligibility determination or in the implementation of a case resolution strategy. (Technical advice and assistance in the development, coordination, and implementation of case resolution strategies can be obtained from HQFDNS National Security Advisory Unit NSAU.) In the event that a site visit or interview is required, the case will be returned to the Overseas Field Office who may request assistance from HQFDNS. When the decision is made to transfer a case, the transferring office will fully document the results of adjudicative activities to date in FDNS-DS and the BCAA, and ensure that all relevant information is either posted to the file or transferred with the file.
3. Record a summary and results of their adjudication actions in the “activities/notes” section of the NS Case tab in FDNS-DS as appropriate and complete the Adjudication portion of the BCAA, and attach it to the record in FDNS-DS.
4. For denied NS cases, if the record suggests the applicant is located in the United States and appears amenable to removal proceedings, field offices will coordinate with the appropriate ICE Office of Chief Counsel (ICE OCC) to determine the best strategy prior to issuance of the NTA. USCIS legal counsel should be copied on any coordination efforts with ICE OCC, and will assist in those cases in which the ICE OCC expresses concerns regarding the legal strategy or legal sufficiency of planned NTA.
5. If information arises during the adjudication of an application or petition that indicates a NS concern regarding an individual in the United States, the officer shall coordinate with the appropriate entity within DHS to investigate and resolve any NS concern.
6. Officers may request adjudicative assistance from HQFDNS National Security Advisory Unit (NSAU) by sending an e-mail to FDNS-NSB@dhs.gov detailing any assistance requested and indicating the NS Hit number assigned to the entry in FDNS-DS.

~~FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE~~

7.

Approval of petitions by IO HQ involving a beneficiary with NS or criminal concerns

When eligibility for a benefit has been established, but a criminal or NS concern relating to the beneficiary remains (e.g., I-130), the officer must follow the guidance issued below in order to notify the consular officer overseas or the USCIS officer with adjudicative responsibilities that derogatory information exists which needs to be reviewed and considered prior to issuance of a visa or the granting of any benefit:

1.

2.

Application for Action on an Approved Petition (Form I-824 and I-800A Supplements 1 and 3)

The following procedures must be followed for Forms I-824 and I-800A supplements with NS concerns:

1.

2.

~~FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE~~

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

3.

(b)(7)(e)

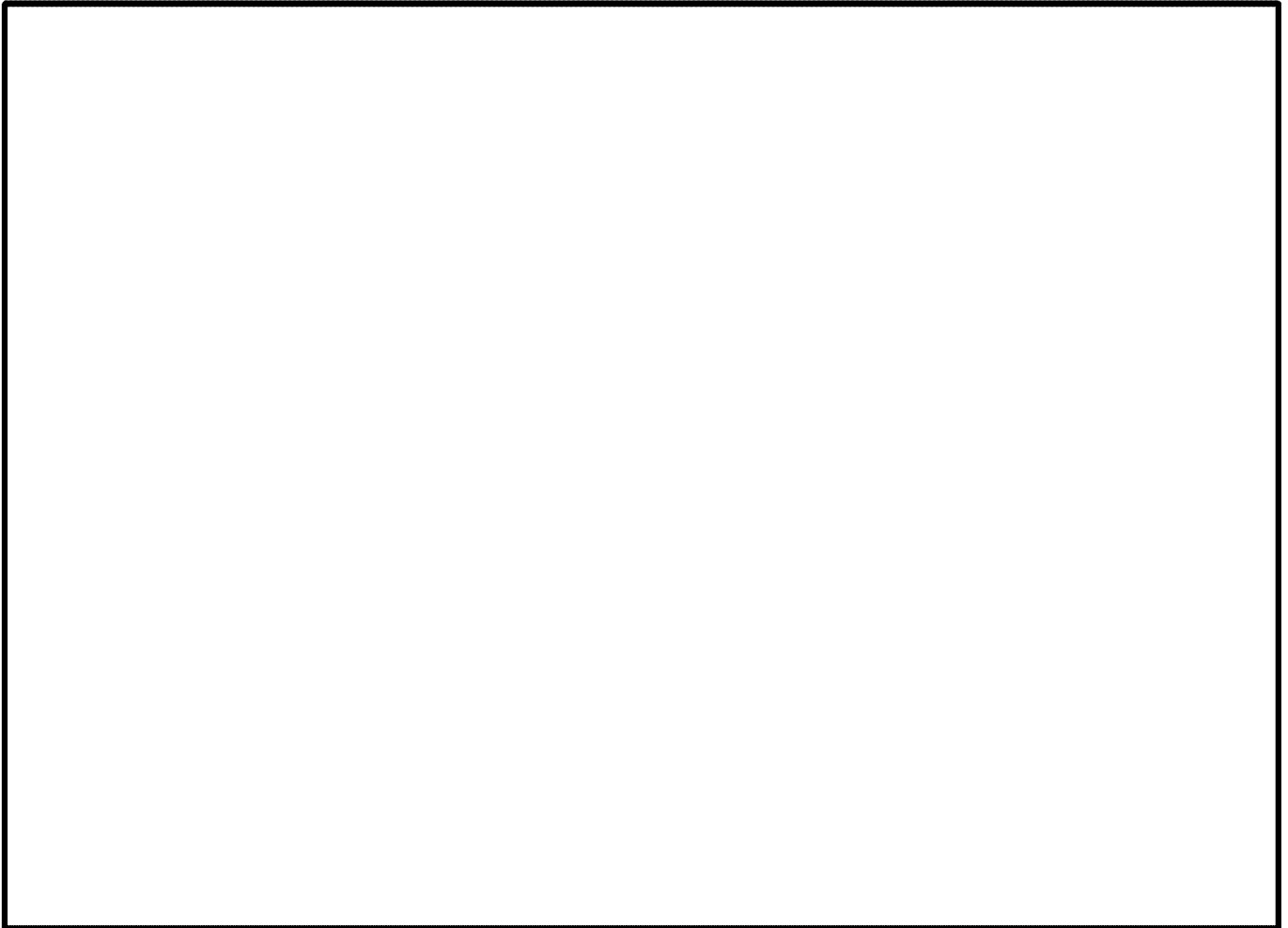


Post Approval Actions

If the petitioner is a USC and obtained citizenship via naturalization, following action on the petition, the officer will forward the case to IO HQ. IO HQ will evaluate the case for potential grounds of denaturalization and forward to ICE if warranted. If the petitioner is a Lawful Permanent Resident the adjudicator will forward the case to IO HQ for review. If warranted, IO HQ will coordinate the NTA with ICE for removal and hold the case pending removal proceedings.

Simultaneous Hits for Egregious Public Safety (EPS) and National Security Concerns (e.g., Military Naturalization Cases)

(b)(7)(e)



Exemptions for the INA section 212(a)(3)(B) Terrorist-Related Provisions and NS Concerns

Under the Immigration and Nationality Act (INA), aliens who fall under the terrorist-related inadmissibility provisions of section 212(a)(3)(B) are ineligible for most immigration benefits. However, under INA section 212(d)(3)(B)(i), as amended by the Consolidated Appropriations Act of 2008, the Secretary of Homeland Security or the Secretary of State, after consultation with each other and with the Attorney General, may exercise discretionary authority to exempt certain terrorist-related inadmissibility provisions of INA section 212(a)(3)(B) with respect to either an undesignated terrorist organization or to an individual alien. Therefore,

1. When a determination is made that an exemption is available and will be granted under INA section 212(d)(3)(B), and no other NS concern is identified, the application/petition with a NS concern will be released for routine adjudication as a non NS concern. No FDNS-DS entry or BCAA documentation is required.
2. When a determination is made that an exemption under INA section 212(d)(3)(B) is available but will not be granted for reasons related to NS concerns, the individual is inadmissible or otherwise barred from receiving an immigration benefit and the application must be denied. If the

(b)(7)(e)



Officers should follow existing guidance for NTA issuance.

Note: Material support and other terrorist-related exemption determinations should be made in accordance with existing policies and procedures, including the memorandum dated March 26, 2008, from Deputy Director Jonathan Scharfen, entitled "Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups," which is beyond the scope of this Operational Guidance. The guidance provided here applies to material support and other terrorist-related inadmissibility cases only after a determination regarding the availability of and eligibility for existing exemptions has been made in accordance with operational guidance.

Use of Classified Information in Adjudicating Applications/Petitions with an NS Concern

Officers are not authorized to use classified information to deny a benefit.

Classified information may be considered³, but may not be disclosed to the individual or the individual's representative during the adjudicative process (e.g., during an interview or in a decision).⁴ Classified information may be relied upon during the adjudicative process as authorized by law and only as a last resort⁵ after receiving consent from the record owner and the Secretary of the Department of Homeland Security (DHS).⁶

When grounds of ineligibility in an application/petition with an NS concern cannot be supported except by reliance upon classified information, the Field must seek assistance from HQFDNS. HQFDNS is responsible for making requests to the record owner for declassification of pertinent sections if such information is necessary to support a legally sufficient denial. On a case-by-case basis, HQFDNS may seek permission from the DHS Secretary and the record owner to rely upon classified information in a written decision.

Information Sharing Considerations – Third Agency Rule

All DHS components are considered part of one "agency" for information sharing purposes. As such, there is no restriction on internal (within DHS) information exchange and sharing provided the person has an authorized purpose for accessing the information in the performance of his or her duties (i.e., a valid need-to-know), possesses the requisite security clearance (there is no requirement for a security clearance to access sensitive but unclassified For Official Use Only (FOUO) information), and assures adequate safeguarding and protection of the information.

Sensitive but unclassified (FOUO) information may be shared with other agencies or organizations outside of DHS, provided: a need-to-know has been established; the information is shared in the furtherance of a coordinated and official governmental activity, to include homeland defense; and if the information requested or to be discussed does not belong to USCIS, comply with the originating agency's policy concerning third party discussion and dissemination.

Classified information originated by another DHS component, or classified information originated by another government agency shall not be further disseminated outside of DHS without prior approval of the originator.

³ "Considered" means used for lead purposes to identify open source information that can be used to form the basis for a Request for Evidence (RFE) or a line of questioning during an interview intended to discover material facts relevant to a USCIS decision.

⁴ Additionally, under the Third Agency Rule, USCIS may not disclose information provided by the record owner to a third agency without the record owner's prior written authorization.

⁵ "Last resort" means that classified information will be used in an adjudicative process only where other options have been examined and weighed, no alternative option exists that will ensure success on the merits, and the case presents a compelling need for use of such information.

⁶ Refer to Department of Homeland Security Memorandum, *DHS Management Directive 11042.1 Guidelines for the Use of Classified Information Immigration Proceedings*, dated October 4, 2004 (also referred to as the "Ridge Memo").

Confidentiality

Federal law and agency policy protect against unauthorized disclosure of information collected and maintained in USCIS systems of records both in the electronic and paper form. The Privacy Act, 5 U.S.C. 552(a), restricts disclosure of information relating to U.S. citizens and LPRs in the absence of a written waiver from the individual to whom the information pertains or a routine use contained in a DHS System of Record Notification (SORN). By policy, DHS has extended the protections afforded by the Privacy Act, 5 U.S.C. 552(a), to personally identifiable information contained in mixed records systems (i.e., systems containing information on visitors and aliens as well as on LPRs and U.S. citizens).

Specific categories of data collected and maintained by USCIS may also have their own confidentiality provisions. For example, sections 210 and 245A of the Immigration and Nationality Act limit the use and disclosure of information provided by "amnesty" applicants under the 1986 Immigration Reform and Control Act. Section 384 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, as amended, 8 U.S.C. 1367, limits the use and disclosure of information relating to aliens seeking protection under the Violence Against Women Act (VAWA), as amended, or as T or U non-immigrants. Under 8 C.F.R. section 208.6, information regarding an individual's status as an asylum seeker or asylee, information contained in or pertaining to his or her application and records pertaining to any credible fear or reasonable fear determination generally must not be disclosed without the written consent of the applicant, or a waiver from the Secretary of DHS. By policy, the confidentiality provisions of 8 C.F.R. section 208.6 have been extended to information contained in or pertaining to refugee applications.

Finally, even if no specific confidentiality provision applies, much of the information contained in USCIS systems and files is confidential and the disclosure and use of the information is governed by laws and regulations relating to sensitive but unclassified (i.e., For Official Use Only and/or Law Enforcement Sensitive (FOUO/LES)) information.

Attachment A – Guidance for Identifying National Security Concerns

Attachment B – Background Check and Adjudicative Assessment (BCAA)

Attachment C – Recommended Systems Checks

Attachment D – Glossary of Terms

Attachment E – DOS Cover Letter



U.S. Citizenship
and Immigration
Services

JUN - 5 2009

HQ 70/43

Memorandum

TO: Field Leadership
FROM: *fa* Donald Neufeld
Acting Associate Director, Domestic Operations

SUBJECT: Clarification and Delineation of Vetting and Adjudication Responsibilities for Controlled Application Review and Resolution Program (CARRP) Cases in Domestic Field Offices

I. Purpose

The purpose of this memorandum is to provide guidance to define the vetting and adjudication responsibilities for Controlled Application Review and Resolution Program (CARRP) cases in the domestic Field Offices. It outlines the distinctions between the duties and responsibilities of Fraud Detection and National Security – Immigration Officer (FDNS-IO) and CARRP-trained Immigration Services Officer (CARRP-ISO). It also explains the roles of Supervisory Immigration Services Officer (SISO) and FDNS-Supervisory Immigration Officer (FDNS-SIO) at each field office.

II. Background

On April 11, 2008, USCIS released the memorandum, *Policy for Vetting and Adjudicating Cases with National Security Concerns* (CARRP memo). This memo instituted the CARRP process, a disciplined approach for identifying, recording, and adjudicating applications and petitions where a National Security (NS) concern is identified. CARRP involves four unique, but overlapping, processing steps. These include:

1. Identifying a NS Concern
2. Assessing Eligibility in Cases with a NS Concern, consisting of:
 - i. Eligibility Assessment
 - ii. Internal Vetting
3. External Vetting
4. CARRP Adjudication

Moreover, CARRP decentralized the process of vetting and adjudicating cases with NS concerns. Prior to CARRP, all such cases were handled at the Headquarters Office of Fraud Detection and National Security (HQFDNS). With the release of CARRP, responsibility for vetting and

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

adjudicating most cases with NS concerns was placed with Field Offices, allowing USCIS to leverage field resources and experienced officers for handling these difficult cases.

After the release of the CARRP memo, Domestic Operations (DomOps), Refugee Affairs Division, International Operations, and the Asylum Division issued separate, but coordinated, Operational Guidance for the implementation of CARRP within their programs. The following guidance is provided to help define the vetting and adjudication responsibilities for CARRP cases in the Domestic Operations Field Offices.

III. Policy Guidance

The current *Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns (Operational Guidance)*, issued by Domestic Operations, provides general guidelines for the processing of cases with National Security (NS) concerns under CARRP, stating the various steps of the process will be completed by a “designated officer”

While the *Operational Guidance* states that a “designated officer” may be “an Immigration Analyst, Immigration Officer, Adjudications Officer, Asylum Officer or Refugee Officer,” the Office of Field Operations (OFO) is issuing this memorandum in order to establish the assignment of specific CARRP duties and responsibilities to the FDNS-IOs and the CARRP-ISOs who perform CARRP adjudications within each Field and District Office or on temporary duty at a Field or District Office. Per the *Operational Guidance*, a Field Office Director (FOD) will designate a specific Immigration Services Officer(s) to be trained in both CARRP procedures and the use of the Fraud Detection and National Security Data System (FDNS-DS).

In addition, the memorandum entitled, *Actions to be Taken to Standardize CARRP File Identification and the Movement of CARRP Cases Between the Components of USCIS*, dated March 26, 2009, authorizes the FOD to also designate one or more SISOs in each Field Office to perform some or all of the duties described herein for a SISO if he or she chooses. The SISO will play a central role in managing the CARRP process by coordinating the movement of CARRP files, assigning CARRP cases to a CARRP-ISO for adjudication, and providing supervisory concurrence for final adjudication of CARRP cases. Additionally, the FOD will outline local procedures regarding supervision, coordination and actions of the FDNS-IO and CARRP-ISO when there is no FDNS-Supervisory Immigration Officer (FDNS-SIO) located in the Field Office.

Clarification of Duties and Responsibilities within the CARRP Process:

As mentioned earlier, The *Operational Guidance* breaks down the CARRP process into four steps.

1. Identifying a NS Concern – Step 1 of CARRP Process:

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

As noted in section III of the *Operational Guidance*, indicators of a NS concern may be identified at any time during the adjudicative processing of an application or petition. When such an indicator is noted for a case within a Field Office, the FDNS-IO is responsible for completing the identification of the NS concern. To do this, the FDNS-IO does the following:

(b)(7)(e)

-
-
-
-

More detailed guidelines on completing the identification of a NS concern are available in the *Operational Guidance*, section III.

In many instances, CARRP cases received in a Field Office will have gone through Step One of the *Operational Guidance*, “Identifying a NS Concern” at either a Service Center or the National Benefits Center (NBC). In such cases, the SISO overseeing the CARRP process in each Field Office will coordinate with the FDNS-SIO, if available, or follow local procedures to have the case assigned to the appropriate FDNS-IO for Step Two of the *Operational Guidance*, “Assessing Eligibility in Cases with a NS Concern.” The SISO will also assign a CARRP-ISO to adjudicate the application or petition in each CARRP case.

2. Assessing Eligibility in Cases with a NS Concern – Step 2 of CARRP Process:

Step 2 of the *Operational Guidance* includes both an *eligibility assessment* and *internal vetting* of the CARRP case. The purpose of Step 2 is two-fold: First, it is at this point in the CARRP process where both the FDNS-IO and the CARRP-ISO are required to thoroughly review the case file. The FDNS-IO completes required systems checks and internal vetting, and the CARRP-ISO completes an eligibility assessment of the CARRP case to determine

(b)(7)(e)



The FOD in each Field Office will decide on the workflow of the CARRP case for this step of the CARRP process. More detail about the features of the elements of step two are described below:

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

a. The Eligibility Assessment

The CARRP-ISO assigned to adjudicate the CARRP case will conduct a complete review of the case file in order to assess the individual's eligibility for the benefit sought and identify any questions and/or issues for discussion with the Record Owner during deconfliction. **Any denial** at this stage in the CARRP process shall be issued **only** after proper deconfliction, completion of required systems checks and supervisory concurrence. No denial shall be issued at this stage in the CARRP process based solely on discretionary grounds. See Section IV, "Assessing Eligibility in Cases with a NS Concern – Step 2 of CARRP Process" of the *Operational Guidance*. **The CARRP-ISO is responsible for documenting their actions related to the adjudication process in FDNS-DS at all stages of the adjudications process.**

b. Internal Vetting

The FDNS-IO is responsible for conducting the internal vetting of a CARRP case. This includes a complete review of the file to obtain any relevant information to support the adjudication, to perform the required systems checks, ensuring all systems checks are current, and, in some cases, to further examine the nature of the NS concern. A complete list of both the required and suggested systems checks which are a part of the internal vetting process can be found in Section IV, "Assessing Eligibility in Cases with a NS Concern – Step 2 of CARRP Process" of the *Operational Guidance*. **The FDNS-IO is responsible for documenting his or her actions in FDNS-DS throughout the CARRP process.**

As in the Eligibility Assessment part of this step, **any denial** at this stage in the CARRP process shall be issued **only** after proper deconfliction, completion of required systems checks and supervisory concurrence. No denial shall be issued at this stage in the CARRP process based solely on discretionary grounds. See Section IV, "Assessing Eligibility in Cases with a NS Concern – Step 2 of CARRP Process" of the *Operational Guidance*.

Performance of the eligibility assessment, internal vetting and deconfliction processes must be closely coordinated between the CARRP-ISO and the FDNS-IO. The FOD or SISO must ensure that there is efficient communication between CARRP-ISOs and FDNS-IOs so that mistakes are not made.

c. Deconfliction

As the Field Office's primary point of contact and liaison with Law Enforcement Agencies (LEA), the FDNS-IO is responsible for deconfliction with the Record Owner

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

for all CARRP cases. FDNS-IOs are reminded that deconfliction may be necessary at any stage of the CARRP process and that deconfliction may need to be completed more than once before the final adjudication of a CARRP case. Again, this emphasizes the need for the FDNS-IO to maintain efficient communication with the appropriate CARRP-ISO and the SISO.

When contacting an LEA, it is also important for FDNS-IOs to remember that they must be careful to observe all security and special handling precautions in accordance with DHS and originating Record Owner requirements. Maintaining good security protocols promotes close and productive relationships with USCIS' law enforcement partners.

As per the *Operational Guidance*, the FDNS-IO may ask the Record Owner whether their agency has additional information (other than NS related information) that would affect the eligibility for the benefit sought. The FDNS-IO may also seek to resolve any other relevant concerns (i.e., criminal, public safety, fraud) identified through the security check process or review of the file. The FDNS-IO should explain the benefit sought to the Record Owner and bring up any questions or issues requested by the CARRP-ISO during the eligibility assessment in order to gain as much information as possible for the adjudication of the case. When possible, the FDNS-IO should include the CARRP-ISO when contacting the Record Owner for deconfliction.

Complete instructions for deconfliction are in Section IV, part C, "Deconfliction" of the *Operational Guidance*.

d. Documenting Eligibility Assessment and Internal Vetting

The results of the eligibility assessment, internal vetting and deconfliction must be fully documented in FDNS-DS. A copy of the Background Check and Adjudicative Assessment (BCAA) Report should then be printed from FDNS-DS and placed in the A-File.

Both the FDNS-IO and the CARRP-ISO are responsible for entering their activities, documentation, etc. into the FDNS-DS system throughout the CARRP process. USCIS policy requires that each action taken while working on a CARRP case is immediately entered into FDNS-DS and that each process phase be immediately updated as it is completed in order to ensure accurate reporting for each NS case. Field Offices may have varying local procedures to ensure FDNS-DS is fully up-to-date at the end of each and every stage of the CARRP process. Such procedures are permissible provided that all information pertaining to each CARRP case is entered into FDNS-DS at the appropriate time as dictated by FDNS-DS User Guidelines. (See the FDNS web site on the USCIS intranet).

e. Individual Deemed Eligible for the Benefit

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

Per the *Operational Guidance*, when a NS concern remains and the individual is deemed eligible for the benefit at the Eligibility Assessment/Internal Vetting stage, no benefit may be granted until external vetting is complete, unless an exception applies. See Section VIII, “Case Specific Exceptions and Miscellaneous Guidance”, which includes ancillary benefits, I-90s, Santillan cases, motions, appeals, exemptions and dealing with classified information.

3. External Vetting – Step 3 of CARRP Process:

a. KST NS Concerns

Pursuant to current CARRP guidance, FDNS-IOs in the Field are not authorized to conduct external vetting with a Record Owner in possession of NS information where NS concerns indicate the subject is a KST. FDNS-IOs are authorized to conduct internal vetting of KST cases, as designated earlier in this memo, while CARRP-ISOs are authorized to conduct an initial eligibility assessment of KST cases. HQFDNS has sole responsibility for external vetting of KST NS concerns and conducts external vetting only as a last resort when the NS Concern remains and ineligibility grounds have not been identified.

If, following internal vetting and an initial eligibility assessment, the applicant or petitioner is found to be otherwise eligible, either the FDNS-IO or the CARRP-ISO must proceed as follows:

- The CARRP-ISO must complete the initial eligibility assessment and update FDNS-DS accordingly;
- The FDNS-IO must complete all internal vetting and deconfliction and update FDNS-DS accordingly; and
- Per local procedure established by the FOD, either the SISO in charge of CARRP or the FDNS-SIO, must verify that the internal vetting and deconfliction was completed, documented in the physical file by including a copy of the BCAA report (printed from FDNS-DS), and all actions are properly updated within FDNS-DS. Supervisory concurrence must be indicated in FDNS-DS.

Per the *Operational Guidance* “local management” (either the FOD or the District Director (DD) which is to be determined in each Field Office) must review the case to confirm that no grounds of ineligibility have been identified. Local management (FOD and/or DD as per local policy) concurrence must be indicated in FDNS-DS.

Per local office procedures, the FOD or designated supervisor (“Designated supervisor” may be an SISO or FDNS-SIO, depending on local staffing), in charge of CARRP will designate which officer, the FDNS-IO or the CARRP-ISO, must complete a Request for Assistance (RFA) to HQFDNS as noted in Section II.B of the *Operational Guidance*.

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

Also per local office procedures, the FOD or SISO will designate which personnel will charge the file to COW FD0004 in NFTS and forward the physical file to HQFDNS, attention Milagros Castillo, Staff Assistant. FDNS-IOs and CARRP-ISOs are reminded that they may request both vetting and adjudicative assistance from HQFDNS, and should do so in cases involving KSTs or cases in litigation.

b. Non-KST NS Concerns

The FDNS-IO in each Field Office is responsible for conducting external vetting of Non-KST cases. Complete instructions for Section V, “External Vetting – Step 3 of CARRP Process” are available in the *Operational Guidance*.

The FDNS-IO must seek any additional information that may be relevant to a determination of eligibility. This may include information concerning indicators of fraud, foreign travel and information about employment or family relationships that would otherwise not rise to the threshold necessary for criminal prosecution. It is vital for the FDNS-IO to clearly document any facts or fact patterns found during the external vetting process for use by the CARRP-ISO in the final adjudication of the case.

As stated earlier, the FDNS-IO is the primary point of contact and liaison for external vetting of Non-KST CARRP cases with any LEA, Record Owner and relevant agency. Complete instructions for Section V, “External Vetting – Step 3 of CARRP Process” are available in the *Operational Guidance*.

Throughout the CARRP process, FDNS-IOs must conduct deconfliction as necessary. This is done to ensure that planned adjudicative activities (e.g., interview, request for evidence, site visit, decision to grant or deny a benefit, or timing of the decision) do not compromise or impede an ongoing investigation or other Record Owner interest. This requires close coordination with the CARRP-ISO regarding any interview that may be necessary or required to complete the adjudicative process.

It is vital for the FDNS-IO to fully document all activities and their results connected with external vetting in FDNS-DS. This documentation must be completed before the case moves forward in the CARRP process.

The FDNS-IO must also ensure deconfliction is complete and documented properly in FDNS-DS before any CARRP case goes forward for adjudication.

4. CARRP Adjudication – Step 4 of CARRP Process:

CARRP-ISOs are responsible for the adjudication of CARRP cases assigned to them by the SISO in charge of CARRP, or the FOD, in each Field Office. The CARRP-ISO must check

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

FDNS-DS to ensure deconfliction is complete before adjudicating any CARRP case. If the deconfliction does not appear in the FDNS-DS record, the CARRP-ISO shall inform the SISO responsible for CARRP cases. The SISO must then contact the FDNS-SIO, if one is located in the Field Office, to direct the FDNS-IO to either complete the required deconfliction and document this action in FDNS-DS or, if deconfliction has been completed, direct the FDNS-IO to complete the documentation of the deconfliction in FDNS-DS. If a Field Office does not have an FDNS-SIO, the SISO must follow local procedures to contact an FDNS-IO to complete and/or document the required deconfliction in FDNS-DS.

a. Adjudicating Applications with KST NS Concerns

Upon completion of all external vetting, HQFDNS will return cases to the submitting officer when:

1. HQFDNS has determined that the information obtained during external vetting is sufficient to support a denial of the pending application or petition; or
2. HQ senior leadership and the USCIS Deputy Director recommend approval of the application or petition. Following this recommendation, the HQ program office with jurisdiction over the case, in coordination with HQFDNS and Office of Chief Counsel, will issue written direction to the field on how to proceed with adjudication.

b. Adjudicating Applications or Petitions with Non-KST NS Concerns

The CARRP-ISO must obtain supervisory approval and concurrence from the FOD in order to approve any application or petition that grants a benefit to an individual with remaining Non-KST NS concerns. Once the FOD concurs that the individual is otherwise eligible for the benefit, the FOD may use his or her discretion to have the CARRP-ISO grant the benefit or the FOD may designate either the FDNS-IO or the CARRP-ISO to request further assistance from HQFDNS/ASU (Adjudication Support Unit). (See Section VI, "Requesting Vetting Assistance from HQFDNS" in the *Operational Guidance*.) If, after consultation with the respective HQ component, the FOD decides to grant the benefit, the FOD, or FOD's designee, must document all adjudicative actions in FDNS-DS, and print out the BCAA report for inclusion in the case file.

REMEMBER: Both FDNS-IOs and CARRP-ISOs have distinct duties to perform in the processing of CARRP cases; however, close cooperation and coordination of effort between Officers is necessary in order to bring each case to completion.

Field Office personnel are reminded to follow the guidelines for confidentiality, Privacy Act requirements (e.g., DHS Handbook for Safeguarding Sensitive Personally Identifiable Information) and handling sensitive but unclassified (For Official Use Only – FOUO)

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

information while working on all CARRP cases. Specific guidelines may be found in Sections C & D, pages 7 & 8 of the *Operational Guidance*.

In addition, Field Office personnel are reminded to adhere to all security-related policies related to protecting FOUO and classified information. Specific guidelines regarding the provisions of Executive Order are found in the *Operational Guidance*. Information regarding the specific regulations governing the protection of FOUO and Executive Order 12958, as amended, Classified National Security Information, is available at the intranet site of the USCIS Office of Security and Investigations.

IV. Contact Information

Questions regarding this memorandum may be directed through official channels to HQ, Office of Field Operations.

Distribution List:

- Regional Directors
- District Directors
- Service Center Directors
- Field Office Directors
- National Benefits Center Director

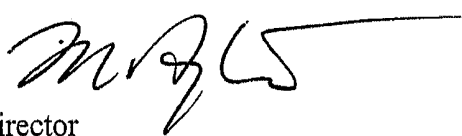


U.S. Citizenship
and Immigration
Services

FEB - 6 2009

Memorandum

TO: Field Leadership

FROM: Michael Aytes 
Acting Deputy Director

SUBJECT: Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases
Involving National Security Concerns

I. Purpose

This memorandum provides further guidance for adjudicating National Security (NS) cases/concerns. It specifically addresses the following:

- Cases that involve pending NS concerns but appear to be otherwise approvable;
- Cases that involve indicators of NS concerns that have been “removed” by the record owner;
- The level of review required for the adjudication of Known or Suspected Terrorist (KST)¹ NS concerns; and
- Deconfliction.

Most notably, under this guidance cases with unresolved KST NS concerns can be granted only after concurrence by the USCIS Deputy Director.

II. Background

On April 11, 2008, USCIS released a memorandum entitled, “Policy for Vetting and Adjudicating Cases with National Security Concerns” (CARRP memo). This memorandum instituted the Controlled Application Review and Resolution Program (CARRP), a disciplined, agency-wide approach for identifying, processing, and adjudicating applications and petitions

¹ KST is a category of individuals who have been nominated and accepted for placement in the Terrorist Screening Database (TSDB), are on the Terrorist Watch List, and have a specially-coded lookout posted in TECS/IBIS, and/or Consular Lookout and Support System (CLASS), as used by the Department of State (DOS). A KST in IBIS has a record number beginning with a “P” for person and ending in a “B10,” and should indicate that the individual is a “Suspected Terrorist.” A KST in NCIC has a record number beginning “NIC/T.” See Operational Guidance for each USCIS component.

~~FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE~~

Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns

Page 2

involving an identified National Security (NS) concern. CARRP involves the following four separate, but often overlapping, procedures:

1. Identifying NS concerns;
2. Internal Vetting and Assessing Eligibility in Cases with NS concerns;
3. External Vetting of NS concerns; and
4. Adjudicating cases with NS concerns ("CARRP Adjudication").

CARRP decentralized the process of vetting and adjudicating cases with NS concerns. Thus, the field² assumed responsibility for vetting cases involving Non-KST concerns and adjudicating all NS-related cases.

After the release of the CARRP memorandum, Domestic Operations and Refugee, Asylum, and International Operations issued coordinated Operational Guidance³ to implement CARRP within their respective directorates. In June 2008, to enhance the accuracy of NS records maintained by HQFDNS, USCIS conducted a Worksheet Inventory Audit of previously reported NS concerns. This audit, which included significant input from the field, disclosed the need to clarify CARRP policy and procedures. This memorandum aims to address that need for clarification as well as various questions that have arisen since the issuance of the above referenced Operational Guidance.

III. External Vetting in Cases Involving KST NS Concerns

Current CARRP guidance prohibits the external vetting of KST cases by the field. HQFDNS has sole responsibility for conducting external vetting when a case appears to be otherwise approvable after internal vetting and the completion of an eligibility assessment.⁴

² The term "field" refers to Field Offices, Service Centers, the National Benefits Center, and equivalent offices within the Refugee, Asylum, and International Operations Directorate.

³ Neufeld, Don, *Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns*, Memorandum for Field Leadership, April 24, 2008.

Ow, Alanna, *Guidance for the International Operations Division on the Vetting, Deconfliction, and Adjudication of Cases with National Security Concerns*, Memorandum for Overseas District Directors, April 28, 2008.

USCIS Asylum Division, *Identity and Security Checks Procedures Manual – Section VIII Cases Involving Terrorism or Threats to National Security*, Procedures Manual, revised August 2008. (The ISCPM revised to incorporate CARRP procedures was issued via the Joseph E. Langlois memo *Issuance of Revised Section of the Identity and Security Checks Procedures Manual Regarding Vetting and Adjudicating Cases with National Security Concerns*, Memorandum for Asylum Division, May 14, 2008.)

USCIS Refugee Affairs Division, *Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns*, Standard Operation Procedure, May 12, 2008.

⁴ This policy applies to all applications and petitions that convey immigrant or non-immigrant status. This policy does not apply to petitions that do not convey immigrant or non-immigrant status. See Operational Guidance for instructions.

Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns

Page 3

Note: External vetting is not to be confused with deconfliction, which officers⁵ are required to complete for cases involving KST NS concerns. Deconfliction involves coordination between USCIS and the LEA/record owner to ensure that planned adjudicative activities (e.g., interview, RFE, final decision, NTA issuance, etc., and the timing of such) do not compromise or impede an ongoing investigation or other record owner interest. External vetting consists of making inquiries to record holders in possession of NS information specifically to determine the nature and relevance of the NS concern to a determination of eligibility and/or removability.⁶ If, following internal vetting and an initial eligibility assessment, an officer determines that the applicant or petitioner appears to be otherwise eligible for the benefit sought, the following steps must be followed:

- The officer must complete all deconfliction (if the record owner is known) prior to forwarding the physical file⁷ to HQFDNS for external vetting; (Note: HQFDNS will return cases where internal vetting and/or deconfliction were not properly completed and/or documented by the officer);
- As required by Operational Guidance, a supervisor must verify (and concur) that the internal vetting and deconfliction was completed, that the Fraud Detection and National Security Data System (FDNS-DS) was properly updated with all relevant information, and that the physical file was properly documented with a Background Check and Adjudicative Assessment (BCAA) (generated by FDNS-DS or created manually using the Word template when generated from FDNS-DS is not possible).⁸ Supervisory concurrence that internal vetting and deconfliction was completed must be indicated in FDNS-DS ('activities' tab) prior to forwarding the file;
- The officer must complete a Request for Assistance to HQFDNS following current guidance⁹; and
- The officer must charge the file to COW FD0004 in NFTS and forward the physical file to HQFDNS, attention Milagros Castillo.

Officers are reminded that they may request both vetting and adjudicative assistance from HQFDNS simultaneously, and should do so in cases involving KSTs or in litigation.¹⁰

⁵ The term "officer" is used here generally to refer to any officer with CARRP responsibilities. Operational Guidance will dictate the specific officer (e.g. FDNS-IO or CARRP-trained adjudications officer) responsible for each specific task.

⁶ Exact definitions can be found in the Operational Guidance for each component.

⁷ The Asylum Division has sent electronic copies of the contents of the files in the past and may continue to do so unless HQFDNS indicates that the physical file is necessary for external vetting. The Refugee Affairs Division interviews applicants overseas often in remote locations and, in most cases, uses a work file rather than an A-File when processing the case. As such, in the overseas Refugee context, copies of the contents of the file may be sent to HQFDNS for external vetting.

⁸ Officers must ensure that all data included in a manually created BCAA has been entered into FDNS-DS.

⁹ Current guidance can be found in the Operational Guidance for each component.

¹⁰ Officers may also request adjudicative assistance (as opposed to external vetting assistance) from HQFDNS in cases where a basis for denial has been identified, but, after seeking both supervisory and legal review at the local level, the officer has concerns about the strength of the proposed denial or concerns regarding whether it is

Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns

Page 4

HQFDNS will perform external vetting including certain high-side (classified intelligence databases) checks. In cases where HQFDNS does not uncover grounds of ineligibility or inadmissibility that would support a ground of denial, they will seek declassification of any information that could be used to support a denial, or seek permission to use such information in a denial, as outlined in the "Ridge Memo."¹¹

Upon completion of all external vetting, HQFDNS will return cases to the submitting officer when¹²:

- It has determined that the information obtained during external vetting is sufficient to support a denial of the pending application/petition; or
- HQ senior leadership¹³ and the USCIS Deputy Director recommend approval of the application; and
- The HQ program office with jurisdiction over the case, in coordination with HQFDNS and Office of Chief Counsel, has issued written direction to the field on how to proceed with the adjudication.¹⁴

IV. Handling Cases in which KST Hits have been Removed from TECS/IBIS



(b)(7)(e)

appropriate to issue a denial under the circumstances of the case and the senior-level official (as defined in Operational Guidance) concurs with the officer's request for HQFDNS assistance.

¹¹ *Department of Homeland Security Guidelines for the Use of Classified Information in Immigration Proceedings*, October 4, 2004.



(b)(7)(e)

¹³ HQ Senior leadership may include senior representatives from Domestic Operations or Refugee, Asylum and International Operations, depending on program jurisdiction, along with National Security and Records Verification, and Chief Counsel.

¹⁴ Guidance on how to proceed with the adjudication will be provided to senior-level officials in writing by HQ senior leadership.

Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns

Page 5

(b)(7)(e)





V. Elevation of Cases Involving Non-KST NS Concerns

Any denial, referral, or Notice of Intent to Deny (NOID) an application or petition with NS concerns must be based on statutory or regulatory grounds of ineligibility that can be cited in a decision.¹⁸ If upon the completion of all required vetting and deconfliction, an applicant or petitioner with an unresolved Non-KST NS concern appears to be otherwise eligible for the benefit sought, the officer may:

1. Recommend approval of the application or petition and must elevate this recommended approval to the senior-level official¹⁹ for consideration/concurrence; or
2. Recommend further review of the application or petition and must elevate this recommendation to the senior-level official.

If the senior-level official concurs with the recommendation to approve the pending application or petition, and adjudication of the case has not been ordered withheld in accordance with 8 CFR 103.2(b)(18), the senior-level official must sign and date the BCAA (generated by FDNS-DS)²⁰ and the officer must update FDNS-DS ('activities' tab) to reflect the concurrence. These cases must be updated in FDNS-DS to reflect a case status of 'Closed' and sub-status of 'NS concern Not Resolved.'

Supervisors must verify that the above was completed, documented in the physical file, and properly updated within FDNS-DS prior to final adjudication.

In the case where the officer recommends further review and the senior-level official determines that the application should be approved, the senior-level official will return the application to the officer for adjudication consistent with the official's guidance.

In the case where the senior-level official does not concur with the officer's recommendation to approve the pending application or petition, or would like assistance from HQFDNS, the senior-level official may submit a formal Request for Assistance (to include Vetting Assistance or Adjudicative Assistance, as desired) to HQFDNS. If, upon the completion of additional vetting by HQFDNS the subject remains eligible for the benefit sought, the senior-level official may:

1. Provide final concurrence to the officer for approval; or

¹⁸ **NOTE:** Where a basis for denial of an NS case has been identified, but the officer has concerns about its strength or concerns regarding whether it is appropriate to issue a denial under the circumstances of the case, officers are strongly encouraged to seek supervisory and/or legal review of the proposed denial before issuing a final decision. Upon review of a case involving a Non-KST NS concern, the senior-level official may determine that the denial should be issued, the case should be approved, or the case should be elevated to the HQ program office with jurisdiction over the case for additional guidance.

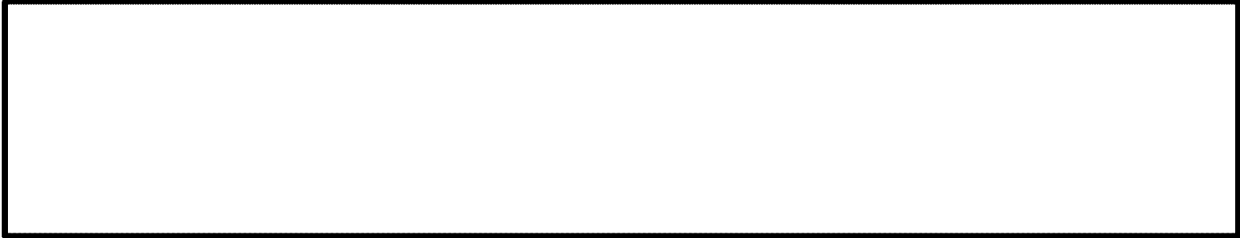
¹⁹ The term "senior-level official" refers to local management for domestic Field Offices and Service Centers and HQ components within the Refugee, Asylum, and International Operations Directorate.

²⁰ The officer may annotate the BCAA to indicate that senior level approval was received and attach a copy of the written directive from the senior-level official.

Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns

Page 7

2. Request written direction on how to proceed with the adjudication from the HQ program office with jurisdiction over the case.



(b)(7)(e)

VI. Additional Deconfliction Guidance

Federal Bureau of Investigation (FBI) - Law Enforcement Agency (LEA) or Intelligence Community Member (IC)

The CARRP Operational Guidance for Domestic Operations listed the FBI as both an LEA and a member of the IC, and indicated that officers in the field were not permitted to contact members of the IC for vetting or deconfliction. This created confusion as to whether officers in the field were permitted to contact the FBI in connection with carrying out their responsibilities under CARRP. Officers in the field are permitted to contact the FBI record owner in order to vet and deconflict cases with Non-KST NS concerns, unless otherwise specified in the Operational Guidance. Officers are reminded that they are not permitted to perform external vetting for KST hits. However, they must perform deconfliction with KST record owners (including the FBI) prior to taking any adjudicative action.

Withholding of Adjudication

As part of the deconfliction process, officers are required to contact the LEA/record owner to advise the owner of contemplated adjudicative actions and determine if the LEA/record owner has an open investigation on the subject. The purpose of this deconfliction is to ensure that USCIS's adjudicative action will not interfere with an open investigation. In performing deconfliction, officers should make an effort to explain the scope and nature of the immigration benefit sought by the subject from USCIS. Officers should also present the LEA/record owner with the opportunity to formally request that the application be held in abeyance in accordance with 8 CFR 103.2(b)(18). Any requests for abeyance must be made to the District Director²¹ in writing on agency letterhead (can be received via fax or email attachment), reviewed by the local Office of Chief Counsel (OCC), and recorded in FDNS-DS.

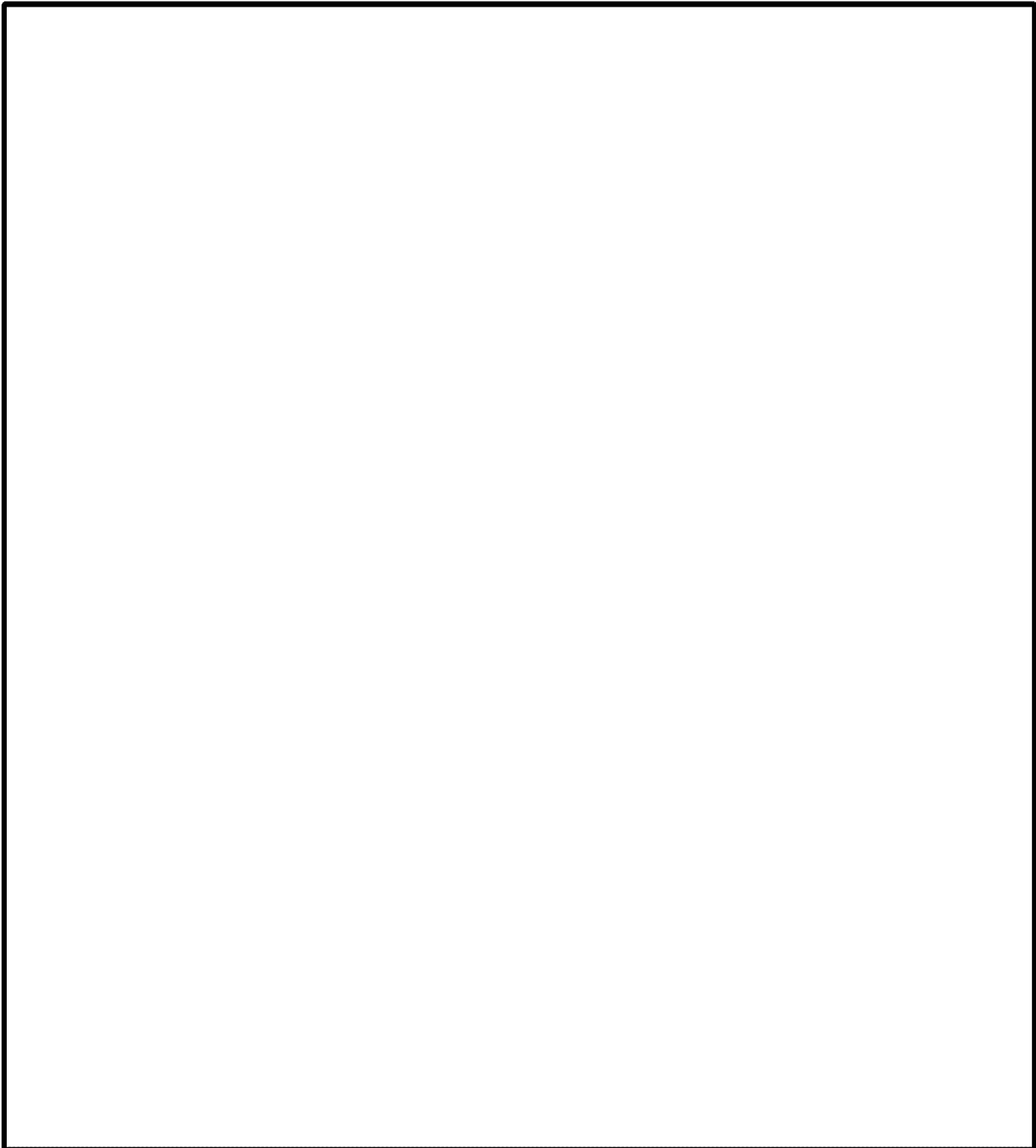
(b)(7)(e)



²¹ For purposes of exercising the authority provided under 8 CFR 103.2(b)(18) to hold a case in abeyance, the term "District Director" means District Director, Service Center Director, and any equivalent Director within the Refugee, Asylum, and International Operations Directorate. See 8 CFR 1.1(o).

Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns

Page 8



(b)(7)(e)

Handling Cases where there is No TECS/IBIS Record or Identified Record Owner

There may be cases where a Non-KST NS concern is identified during an interview or other interaction with the applicant or petitioner. In the absence of TECS records, IBIS information, or other indication of a record, an evaluation of the NS concern must be made based on information obtained from the applicant, deconfliction with external sources, and public information.²² Per

²² Officers may request assistance from HQFDNS at the completion of internal vetting and eligibility assessment.

Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns

Page 9

the CARRP Memo, external vetting is not required if there is no identified record owner.²³ Where an applicant or petitioner is denied a benefit based on the Non-KST NS concern identified through interactions with the subject or by other means, the officer must enter a record into TECS/IBIS for future reference by law enforcement.

VII. Additional Ancillary Benefit Adjudication Guidance

Field offices may approve ancillary benefit applications²⁴ with both KST and Non-KST NS concerns after 60 days²⁵ if vetting is not complete. The purpose of the 60-day evaluation period is to enable the officer to verify the individual's identity and to make an initial determination as to whether rescission and or removal proceedings may be appropriate. Officers are reminded that 8 C.F.R. 274a.13(d) requires that I-765 applications be adjudicated within 90 days of receipt unless an interim Employment Authorization Document (EAD) is issued or an exception applies. This guidance does not apply to I-765 applications for initial EADs under 8 C.F.R. 274a.12(c)(8) and 208.7 based on an underlying asylum application that has been pending for at least 150 days at the time of filing. In such cases USCIS must adjudicate the I-765 within 30 days of receipt.

When an ancillary benefit with an unresolved NS concern is approved and there is no other pending application or petition, FDNS-DS must be updated to reflect 'Closed' and the sub-status to reflect 'NS concern Not Resolved.'

VIII. Conclusion

This memorandum is provided as guidance to officers for the handling of cases involving national security concerns. If officers have further questions regarding policy and procedures related to these cases, such questions should be raised through the officers' chain of command. If the chain of command is unable to provide further guidance, supervisory officers may send a Request for Assistance for policy or procedure guidance to the FDNS-NSB mailbox, according to current procedures.

²³ Scharfen, Jonathan R., *Policy for Vetting and Adjudicating Cases with National Security Concerns*, Memorandum for Field Leadership, April 11, 2008. Section IV, Part C reads: "in a case with a Non-KST NS Concern, the officer must initiate the external vetting process before the case may proceed to final adjudication if... there is an identified record owner in possession of NS information..." Programs may require external vetting in some circumstances as identified in Operational Guidance.

²⁴ Form I-765, Application for Employment Authorization and Form I-131, Application for Travel Document.

²⁵ Future agency policy may have an effect on the currently required 60-day evaluation period for Form I-90, Application to Replace Permanent Resident Card.



Fact Sheet

April 2011

FREQUENTLY ASKED QUESTIONS (FAQ) CARRP POLICY AND OPERATIONAL GUIDANCE

List of Questions:

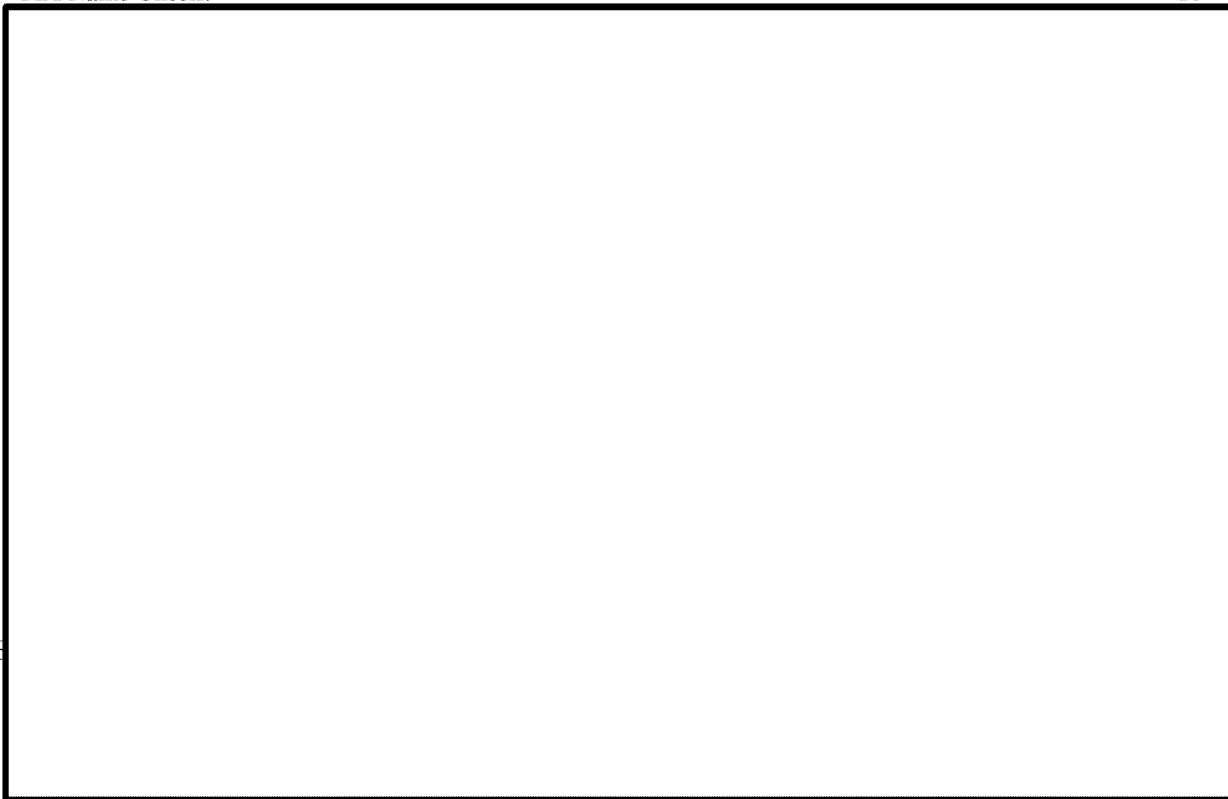
A. List of CARRP Policy and Operational Guidance	4
B. National Security Concerns	5
1. Do material support cases require processing under CARRP and an entry into FDNS-DS?	5
2. How should officers handle NS concerns relating to U.S. citizen (USC) petitioners and/or associates?	6
3. How should USCIS field offices handle derogatory information that is received post-adjudication?	7
4. How should officers handle NS concerns that are provided by non-TECS/IBIS sources? (Such as Department of Defense or Federal Bureau of Investigation Letterhead Memorandum)	8
5. What should an officer do if there are officer safety concerns relating to a site visit for an application or petition with an NS concern?	8
C. Eligibility Assessment/Internal Vetting	9
1. What is the purpose of Eligibility Assessment/Internal Vetting and what is the expectation of the field?	9
2. If an officer identifies fraud while conducting an eligibility assessment, must the officer create a new lead or case in the fraud tabs of FDNS-DS for that record?	9
D. KST Hits	11
2. Can the field offices work closely with the law enforcement/case agent in connection with KST cases in carrying out their responsibilities under CARRP?	11
E. Contacting Third Agencies	12
F. Requesting Assistance from HQFDNS	13
1. When can the field offices seek assistance from HQFDNS?	13

(b)(7)(e)

- 2. What actions should the field offices complete before seeking assistance from HQFDNS? 13
- 3. How does an officer request assistance from HQFDNS? 14
- 4. What if the officer sent a request for assistance to the FDNS-NSB@dhs.gov mailbox but has not received a response? 15
- 5. The Operational Guidance indicates that the officer should send the A-File to HQFDNS when requesting external vetting or adjudicative assistance. To whom should the file be sent? 15
- 6. What is the role of HQFDNS in providing adjudicative assistance concerning KST cases? 16
- 7. What is the role of HQFDNS in providing adjudicative assistance concerning Non-KST cases? 17
- 8. How should the field respond to a Request for a Hearing on a decision in naturalization proceedings (Form N-336) for a denied Form N-400? 17

G. FBI Name Check/Letterhead Memoranda 18

- 1. When should an officer contact HQFDNS for assistance with a Third Agency Referral resulting from the FBI Name Check? 18



(b)(7)(e)

I. Legal Sufficiency 26

- 1. Whom should the field contact for assistance in reviewing denials (strength of a denial) or Notices to Appear for legal sufficiency? 26

J. Specific Questions on FDNS-DS 27

- 1. How should officers get answers to procedural questions about the NS Concerns tab in FDNS-DS? 27
- 2. What should an officer do if his or her name is not on a record in FDNS-DS? 27
- 3. How does an officer obtain access to FDNS-DS? 27
- 4. How does an officer delete a NS concern record keyed in by mistake in FDNS-DS? 28
- 5. How does an officer merge FDNS-DS records remove duplicate records? 28

6.	What are the procedures for FDNS-DS account password resets, general account concerns, account deactivation, and change requests?	28
7.	What happened to the FDNSDATASYSTEM mailbox?	29
8.	What happened to the Background Check and Adjudicative Assessment (BCAA) Worksheet, CARRP Worksheet and CARRP Update Worksheet?	29
9.	How does an officer update FDNS-DS to show withholding of adjudication?	30
10.	How does an officer update CARRP NS records with HQFDNS Request for Assistance (RFA) in FDNS-DS?	31
11.	How does an officer close CARRP NS records in FDNS-DS?	31
12.	Should officers remove existing applicant/beneficiary information from petitioner records?	36
13.	When and for whom should officers create individual FDNS-DS records when the NS concern is for another family member?	36
14.	If the concern relates to the petitioner and the concern is identified after the petition has been adjudicated, is the officer required to create an FDNS-DS record for that approved petition and link the created spousal FDNS-DS record to the petitioner record?	37
15.	Should the petitioner FDNS-DS record remain open (whether newly created or in existence) without a pending petition to document CARRP processing?	37
16.	If the petitioner's FDNS-DS record remains closed, should the FDNS-DS record still be updated and hours reported into the closed FDNS-DS record for the time spent vetting that subject?	37
17.	Do children require their own FDNS-DS records? TECS checks/FBI name checks are required for children once they reach age 14; would DS records be created and linked for this population of children even if they do not have TECS hits?	37
18.	If separate FDNS-DS records are not required for children, would the children's Adjustment of Status (AOS)/Employment Authorization Document (EAD)/travel document applications be included with the AOS applicant parent for a family pack?	37
19.	If the AOS applicant parent is the identified concern, would each of his or her children require separate DS record creation and record linkage?	38
20.	How does an officer update derogatory information that is received post adjudication in FDNS-DS?	38
21.	What does the new OV tab do?	38
22.	What does the new CISCOR function do?	39

A. List of CARRP Policy and Operational Guidance

All CARRP Policy and Guidance can be found on the FDNS portion of USCIS Connect:
<http://dhsconnect.dhs.gov/uscis/org/FDNS/Documents/Forms/National%20Security.aspx>

CAARP Policy Memoranda

“Policy for Vetting and Adjudicating Cases with National Security Concerns (CARRP Memorandum),” signed by Deputy Director Jonathan R. Scharfen, April 11, 2008.

“Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns (Clarification Memorandum),” signed by Acting Deputy Director Michael Aytes, February 6, 2009.

“Uniform Instructions for Standardized CARRP File Identification and Movement of CARRP Cases within USCIS (File Movement Memorandum),” March 26, 2009.

Domestic Operations Division: “Clarification and Delineation of Vetting and Adjudication Responsibilities for Controlled Application Review and Resolution Program (CARRP) Cases in Domestic Field Offices,” signed by Donald Neufeld, June 5, 2009.

CARRP Operational Guidance

Domestic Operations (Field Operations and Service Center Operations): “Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns,” signed by Don Neufeld, April 24, 2008.

International Operations: “Guidance for International Operations Division on the Vetting, Deconfliction, and Adjudication of Cases with National Security Concerns,” signed by Alanna Ow, April 28, 2008.

Asylum Division: “Issuance of Revised Section of the Identity and Security Checks Procedures Manual Regarding Vetting and Adjudicating Cases with National Security Concerns,” signed by Joseph Langlois, May 14, 2008.

Refugee Affairs Division: “Operational Guidance for Vetting and Adjudicating Refugee Cases with National Security Concerns,” signed by Barbara Strack, May 14, 2008.

“Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups,” signed by Jonathan Scharfen.

- USCIS Acting Deputy Director on July 28, 2008:

“Implementation of Section 691 of Division J of the Consolidated Appropriations Act, 2008, and Updated Processing Requirements for Discretionary Exemption to Terrorist Activity Inadmissibility Grounds,” signed by Michael L. Aytes.

- Domestic Operations and RAIO on December 2, 2008:

“Reviewing Terrorist-Related Inadmissibility Grounds in Adjudicating Adjustment of Status Applications Based on Asylum or Refugee Status”, signed by Donald Neufeld and Lori Scialabba.

- Domestic Operations and NSRV on March 26, 2009.

“Uniform Instruction for Standardized CARRP File Identification and Movement of CARRP Cases within USCIS”, signed by Donald Neufeld, and Gregory B. Smith.

Questions concerning TRIG and the INA (i.e., availability of and eligibility for existing exemptions) must be referred to the appropriate POCs at the HQ program office: **RAIO; OFO and SCOPS**.

2. How should officers handle NS concerns relating to U.S. citizen (USC) petitioners and/or associates?

If derogatory NS information is identified relating to a USC who is petitioning for an individual to obtain immigration status, that information must be considered to determine how it affects eligibility for the benefit sought and whether an NS concern exists for the individual.

If an NS concern does exist for the individual, an entry in FDNS-DS and designated worksheet(s) in accordance with current guidance are required. FDNS-Immigration Officers (FDNS-IOs) are also required to notify the appropriate official in the Law Enforcement Agency (LEA) and the record owner of any contemplated adjudicative action for de-confliction purposes.

Derogatory information relating to USC petitioners must be treated in the same manner as any derogatory information related to a family member or close associate of the individual. The FDNS-IO must determine whether the individual is or has been involved in, or is aware of, the NS concern as it relates to the family member or close associate (or USC petitioner). If the FDNS-IO determines that the individual is not involved in, and is not aware of, the NS concern, the application/petition may be released for routine adjudication. If the designated officer determines that the individual has been involved in, or is aware of, the NS concern, the application/petition must be adjudicated in accordance with CARRP policy and procedures. The FDNS-IO determines whether an NS concern exists by reference to Attachment A of the CARRP Operational Guidance. Specifically, an NS concern exists when an articulable link is found to connect the individual to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A),(B), or (F), or 237(a)(4)(A) or (B) of the INA.

Regardless of the form type, all confirmed known or suspected terrorists (KST) and Non-KST NS concerns (from TECS/IBIS, LHM, or other sources) must be documented in FDNS-DS. Please refer to the FDNS-DS section in this document for further guidance.

4. How should officers handle NS concerns that are provided by non-TECS/IBIS sources? (Such as Department of Defense or Federal Bureau of Investigation Letterhead Memorandum)

Officers in the field may encounter cases where the Non-KST NS concern is provided by non-TECS/IBIS sources (such as Department of Defense (DoD) or Federal Bureau of Investigation (FBI) via Letterhead Memorandum (LHM)) and the information available indicates that the subject may be somehow linked to terrorism, but is not listed as a known or suspected terrorist in TECS/IBIS. These cases will be considered Non-KST NS concerns and must proceed through the CARRP process as such.

The field may also identify an indicator of an NS concern through the following: testimony elicited during an interview; review of the petition or application, supporting documents, the A-File, or related files; leads from other U.S. Government agencies or foreign government; and other sources, including open sources. Once such indicators are identified, the officer must evaluate whether an NS concern exists. The officer must consider the totality of circumstances to determine whether an articulable link exists between the individual and an NS activity described in sections 212(a)(3)(A), (B), or (F), or 237 9a)(4)(A) or (B) of the INA.

If the identified NS concern is related to material support or other terrorism-related inadmissibility provisions of section 212(a)(3)(B), refer to Question B.1 above.

5. What should an officer do if there are officer safety concerns relating to a site visit for an application or petition with an NS concern?

Officer safety is always paramount. If an FDNS officer has safety concerns regarding a site visit, the officer should consult the Fraud Detection Standard Operating Procedures (SOP) and contact the local ICE office or law enforcement office.

In all field inquiries, an officer should not enter any area that appears threatening. He or she should promptly remove themselves from any situation that appears threatening or potentially unsafe.

(b)(7)(e)

D. KST Hits



2. Can the field offices work closely with the law enforcement/case agent in connection with KST cases in carrying out their responsibilities under CARRP?

When HQFDNS officers are making inquiries to the LEA/record owner in possession of NS information as part of external vetting of a KST, the record owner may indicate that he/she is interested in working collaboratively with the USCIS field office to review the case and share additional information that could affect benefit eligibility. Under this circumstance, the field office should work with the record owner and follow the guidance provided in the Statement of Facts (SOF) by HQFDNS.

It is not unusual for the LEA/record owner to request that USCIS ask specific questions when interviewing an applicant. It is important to note that while there is no legal or policy prohibition on asking questions or inquiring into areas suggested by the LEA, the questions or areas of inquiry suggested by the LEA must be germane to USCIS's determination of the alien's eligibility for the immigration benefit. Local USCIS counsel must approve any actions or questions suggested by the LEA/record owner. As a rule, LEAs, are not to participate in the interview, however, there are select exceptions. These exceptions must be approved by counsel and local management

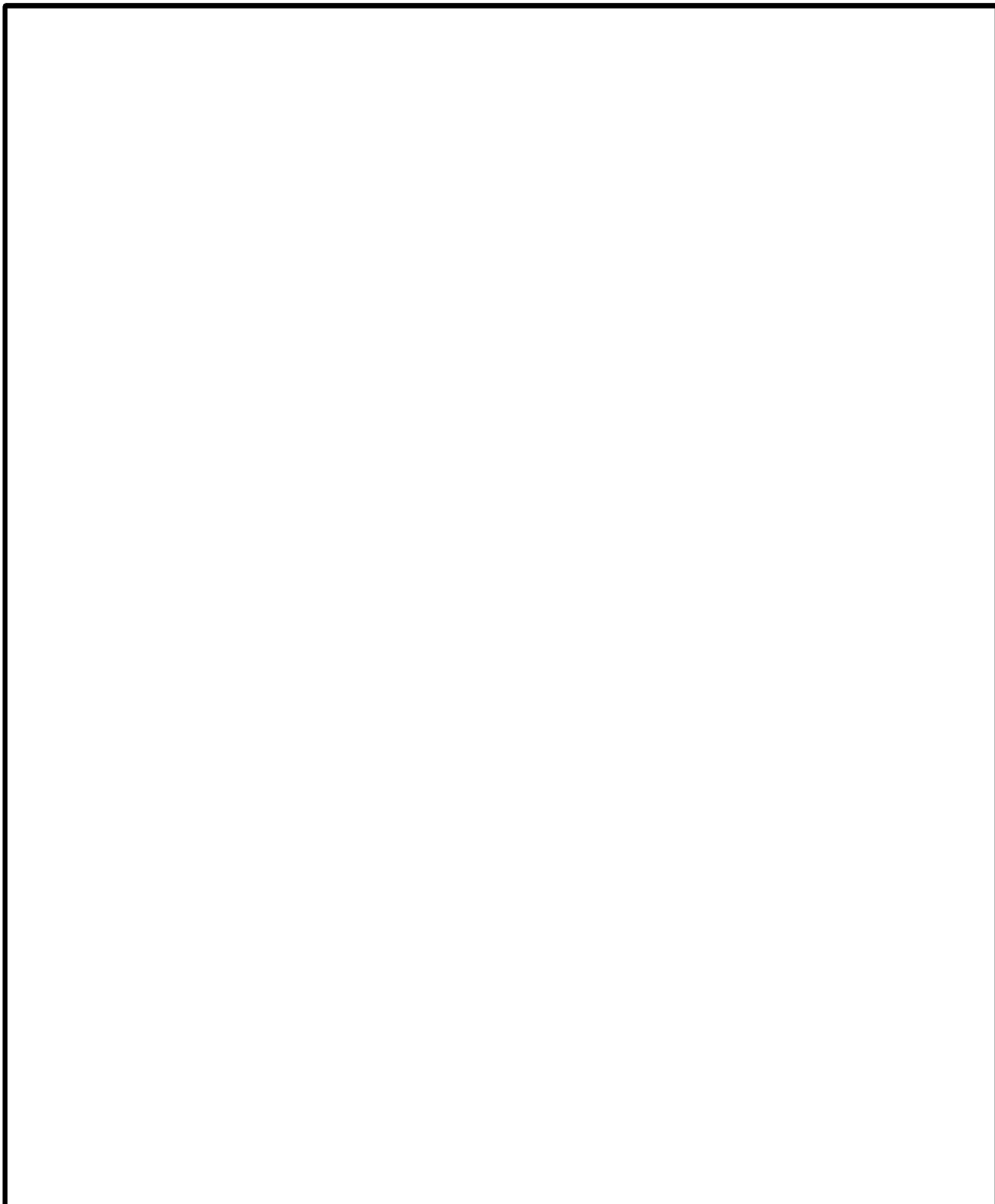
NOTE: Officers are reminded that they are not permitted to perform external vetting for KST hits (this prohibition does not apply when the field must perform de-confliction with KST record owners prior to taking any adjudicative action).



(b)(7)(e)

(b)(7)(e)

E. Contacting Third Agencies



The above guidance applies to both KST cases (for de-confliction purposes only) and non-KST cases (for both de-confliction and external vetting purposes).

F. Requesting Assistance from HQFDNS

1. When can the field offices seek assistance from HQFDNS?

- **KST NS Concerns:**
 - When grounds of ineligibility have not been identified (upon completion of internal vetting and adjudicative assessment).
 - When a basis for denial has been identified, but after seeking both supervisory and legal review at the local level, the officer has concerns about the strength of the proposed denial, or
 - When concerns exist regarding whether it is appropriate to issue a denial under the circumstances of the case and senior-level officials concurs with the officer's request for external vetting assistance.

- **Non-KST NS Concerns:**
 - When local management determines that insufficient evidence exists to support approval or denial of the pending application or petition, and would like assistance from HQFDNS for external vetting and adjudicative assistance; or
 - When the LEA/Record Owner is non-responsive and/or not willing to discuss any information about an ongoing investigation.

- **For both KST and Non-KST NS concerns:**
 - When the LEA/Record owner is not identified;
 - When LHMs refer the field to the records of a "Third Agency"; or
 - When LHMs or another source of derogatory information instructs the field to contact/consult a given member of the Intelligence Community (IC). In short, when coordination with the IC is required.

2. What actions should the field offices complete before seeking assistance from HQFDNS?

- **KST NS Concerns:**

Prior to requesting external vetting assistance for a KST NS concern from HQFDNS, the FOD or the district director (DD) must review the case to confirm that no grounds of ineligibility have been identified. The field must provide more than just a sentence declaring that there are no ineligibility grounds. The field must provide a **summary** of all the ineligibility factors (including possibility of fraud, see note below) considered for a specific form type. Additionally, prior to forwarding the case to HQFDNS, the sending office must confirm that the subject remains on the Terrorist Watch List. Local management (either the FOD or the DD) concurrence must be indicated in FDNS-DS.

- **Non-KST NS Concerns:**

If the FOD confirms that the application/petition with the non-KST NS concern is approvable, the case may be adjudicated with supervisory approval and concurrence from the FOD. Otherwise, the FOD may request external vetting assistance from HQFDNS. Prior to

forwarding the case to HQFDNS, the sending office must document all adjudicative actions taken in FDNS-DS (see note below).

- **Both KST and Non-KST NS concerns:**

A supervisor must verify and concur that the internal vetting and de-confliction was completed. Supervisory concurrence must be indicated in FDNS-DS (“activities tab”). FDNS-DS must be properly updated with all relevant information and actions/activities taken, and the physical file properly documented with BCAA (generated by FDNS-DS or created manually using the Word template when generated form FDNS-DS is not possible).

NOTE: Over the past two years, HQFDNS has rejected a large number of Requests for Assistance (RFAs) on KST cases for adjudicative assistance because the field either had not conducted an eligibility assessment or did not properly document it in FDNS-DS. Therefore, effective immediately, FDNS is providing the attached CARRP Eligibility Assessment Worksheet for use when the field:

- Is requesting adjudicative assistance from HQFDNS for KST or Non-KST CARRP cases, or
- Is requesting assistance in presenting a KST case to the HQ Senior CARRP Review Panel.

The field **may** utilize the attached Form to complete Block 1 (“Subject Information”), Block 2 (“Case Summary: For Field Use Only”), and Block 3 (“Eligibility Assessment: For Field Use Only”). The attached “Notes” section explains what a Case Summary and Eligibility Assessment should entail (see the sample worksheet). Upon completion, the Form may be attached to the DS record.

In the event that the attached Form is not utilized, the field **must** comply with the “Eligibility Assessment” criteria (“Case Summary” and “Eligibility Assessment,” as defined in the “Notes” section of the attached document), before requesting **adjudicative assistance** or requesting assistance from HQFDNS in presenting a KST case before HQ Senior CARRP Review Panel. The field must document its findings in DS per CARRP policy.

3. How does an officer request assistance from HQFDNS?

Prior to submitting the request for assistance, all activities must be documented in FDNS-DS, including supervisory and senior-level official concurrence.

(b)(7)(c) When requesting vetting or adjudicative assistance from HQFDNS, the designated officer should send a request for assistance to The request should be marked “For Official Use Only (FOUO)” and include the following information:

- Subject: Request for Assistance (Vetting) (add “Third Agency Referral” when relevant) or Request for Assistance (Adjudication)
- Full name (applicant, petitioner, beneficiary, derivative or company)
- A-Number

G.FBI Name Check/Letterhead Memoranda

1. When should an officer contact HQFDNS for assistance with a Third Agency Referral resulting from the FBI Name Check?

2.

3. Are all positive responses to the FBI Name Check [FBI Letterhead Memoranda (LHMs) including Third Agency Referrals] processed under CARRP procedures?

The FDNS-IO determines whether an NS concern exists by reference to Attachment A of the respective Operational Guidance. Specifically, an NS concern exists when an articulable link is found to connect the applicant or petitioner to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A),(B), or (F), or 237(a)(4)(A) or (B) of the INA.

If an NS concern is not found to exist, the application does not require processing under CARRP procedures, including entry into FDNS-DS.

For Third Agency Referrals, the field must contact the Third Agency to obtain the information relating to the individual. This information may be national security, criminal, or public safety in nature but USCIS generally does not know until the information is obtained. If the Third

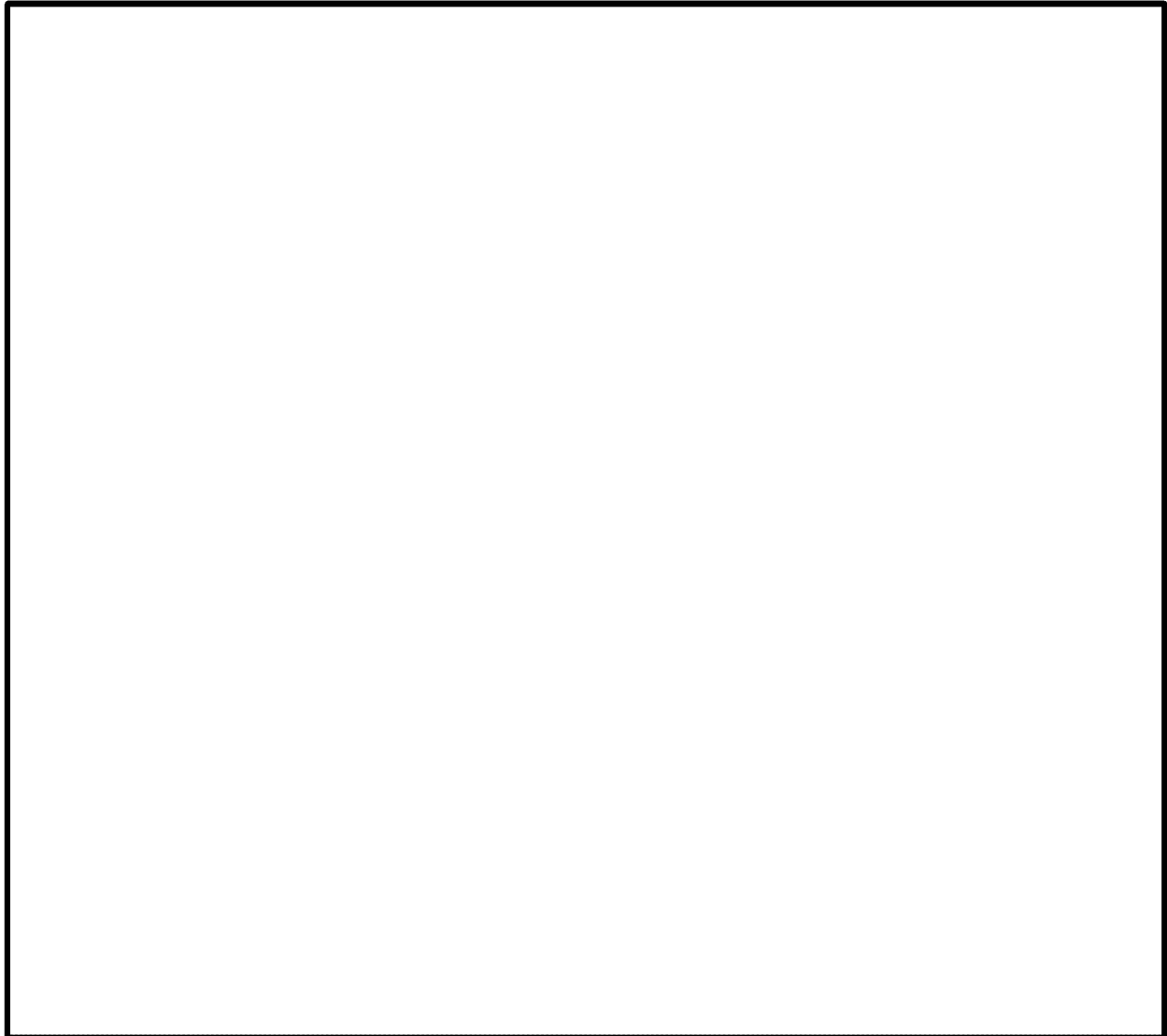
Agency Referral advises contact with a member of the IC, the field must instead request assistance from HQFDNS, in accordance with CARRP.

4. What does an “Unknown Response” mean in the FBI Query screen for the FBI Name Check?

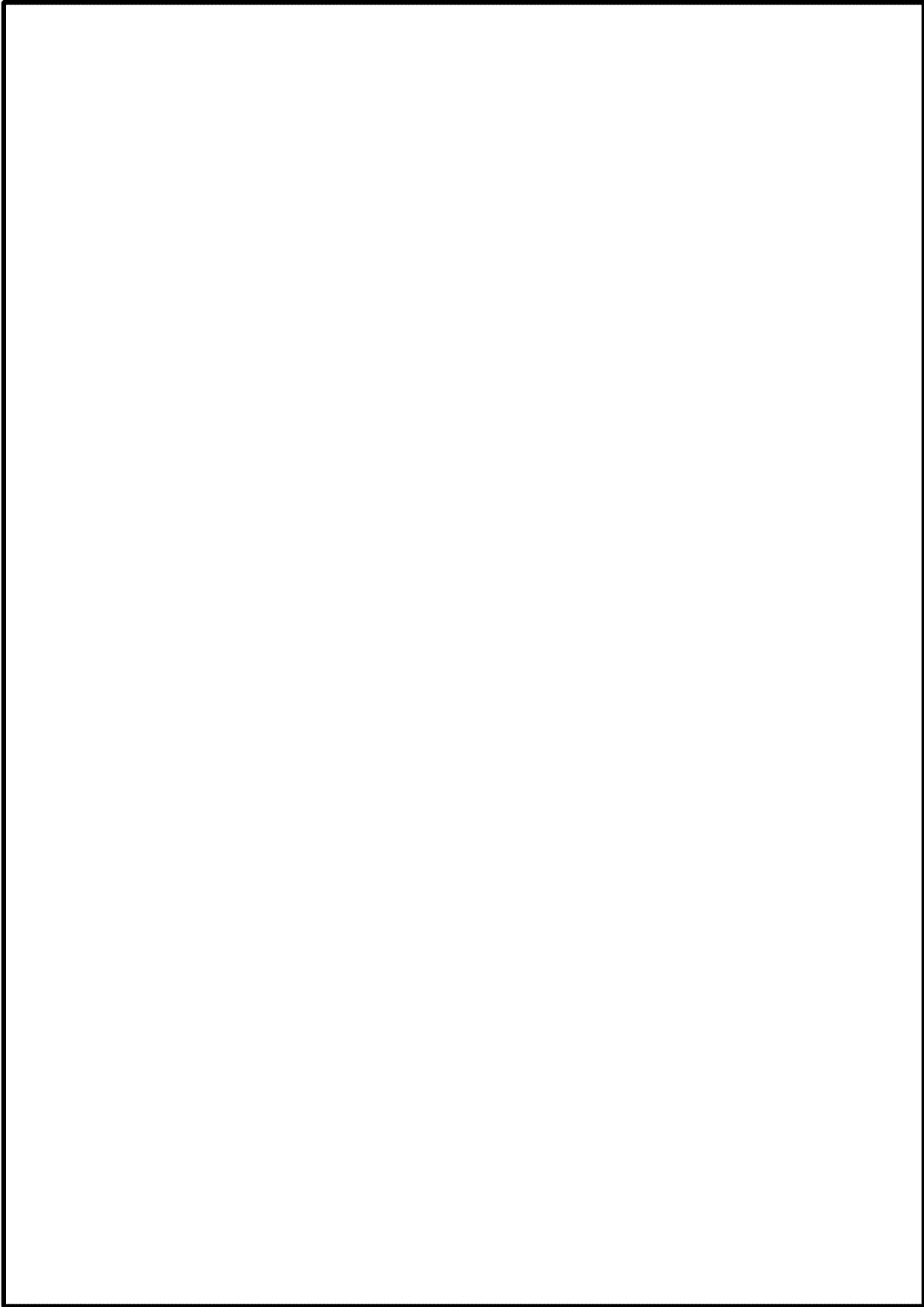
A large rectangular black box redacting the answer to question 4.

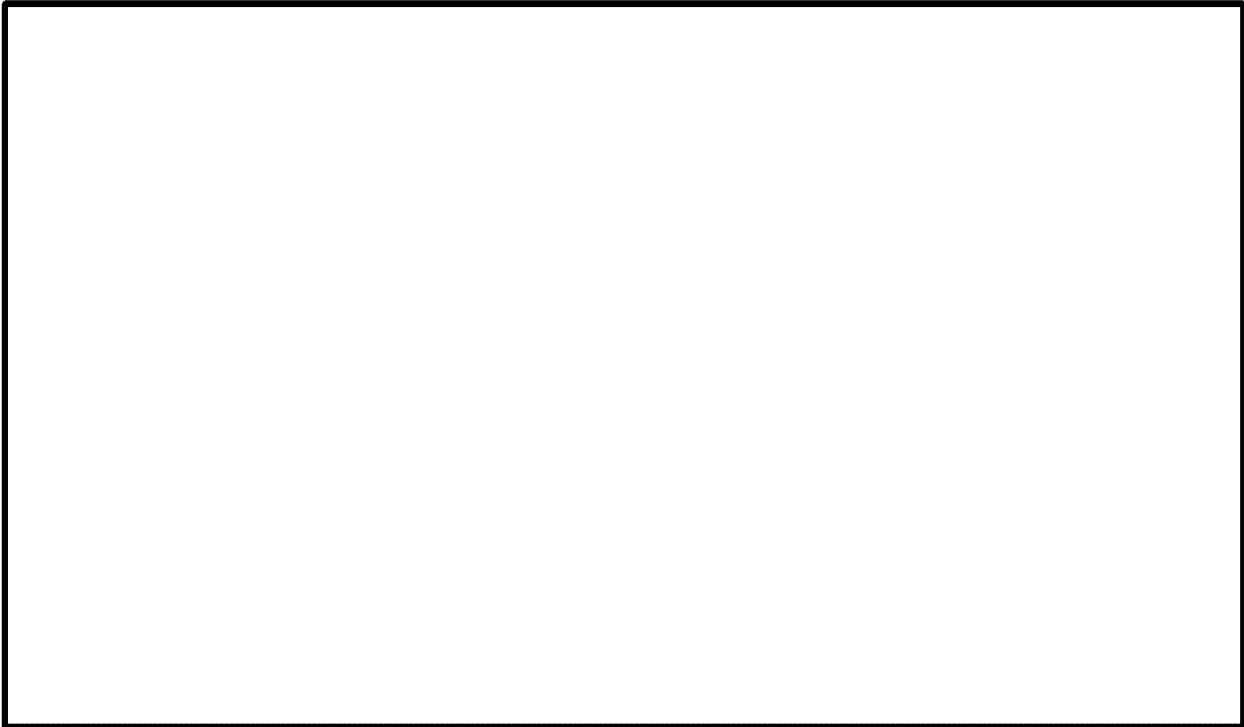
(b)(7)(e)

5. When the FBI Name Check query indicates a positive response has been processed by the FBI, how does an officer obtain a copy of the positive response?

A large rectangular black box redacting the answer to question 5.

(b)(7)(e)





(b)(7)(e)

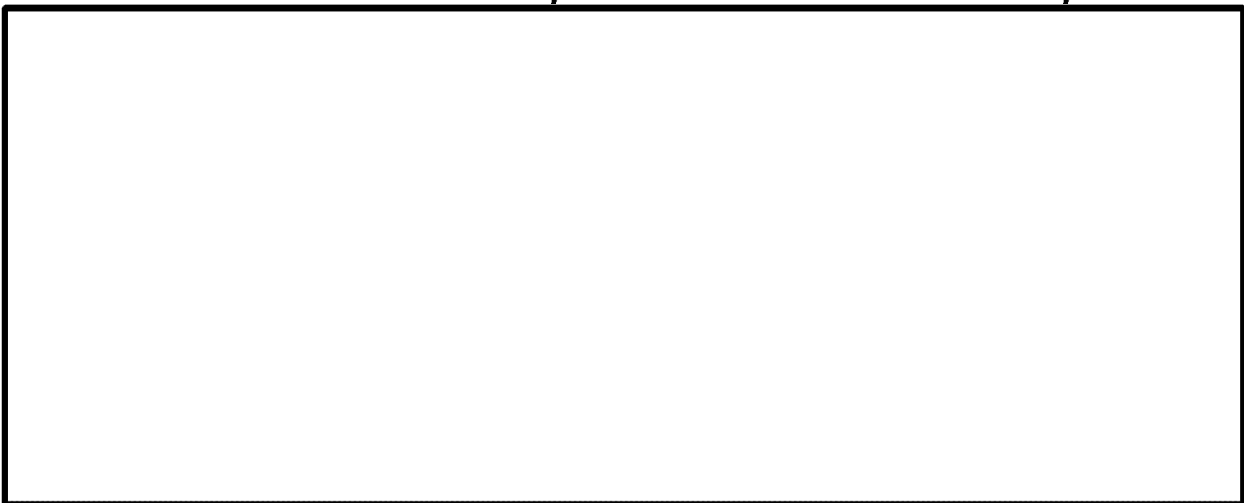
Further information about CJIS can be found at <http://www.fbi.gov/hq/cjisd/ncic.htm>.

8. When the positive FBI Name Check says an officer may want to consult the files of the Drug Enforcement Administration (DEA), how should the officer contact DEA?

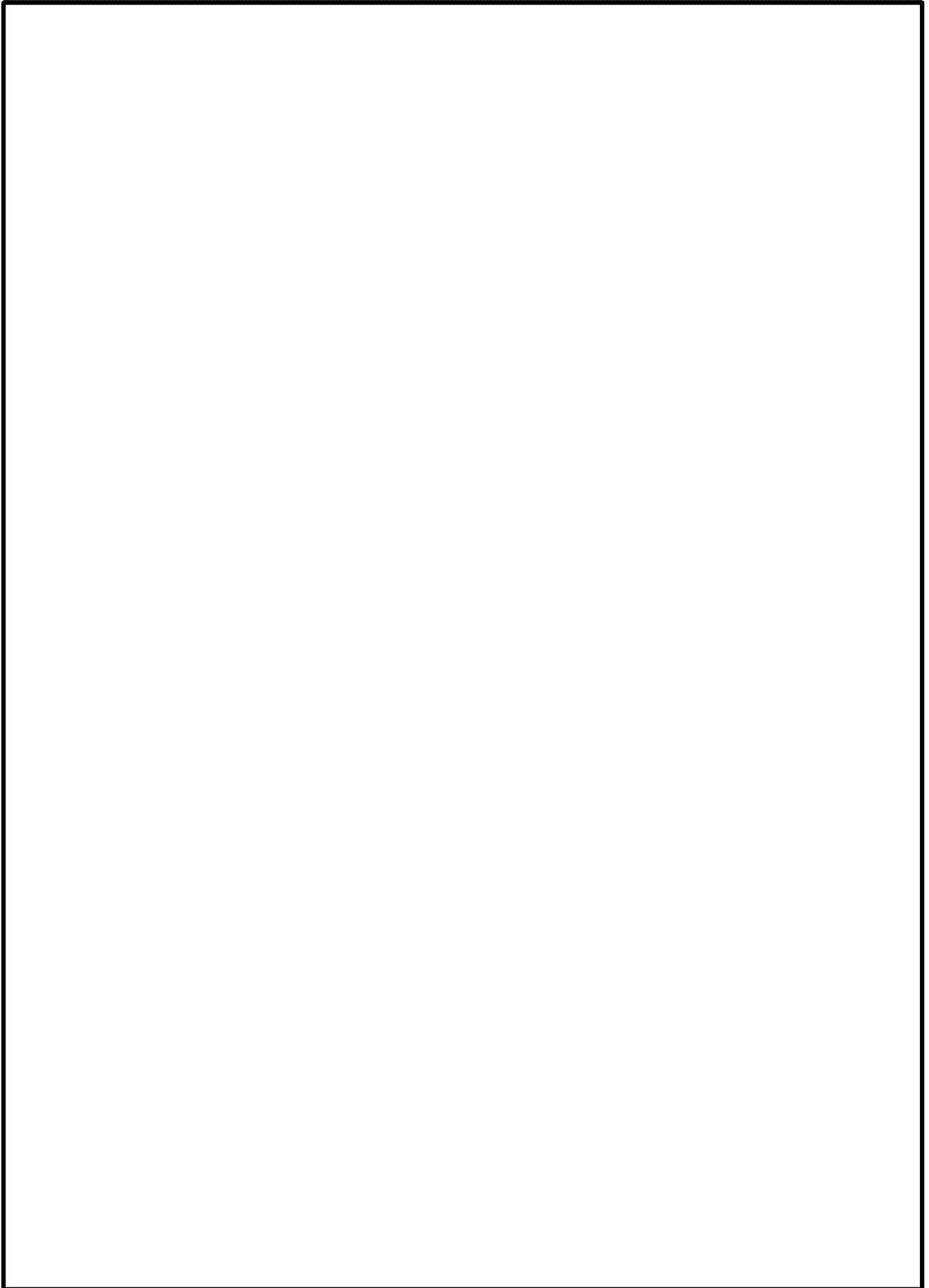


(b)(7)(e)

9. How does an officer expedite an FBI Name Check request?



(b)(7)(e)



Fax the requests to Field Operations Directorate Headquarters at 202-272-1008, attn: FBI Name Check POC. If there are any difficulties using this number, call 202-272-1011.

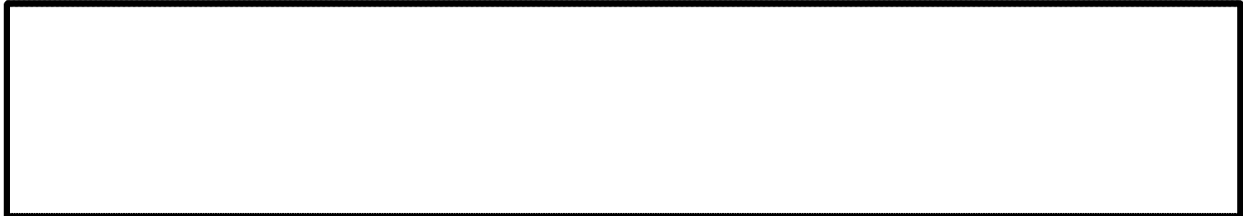
Fax Cover Sheet

The request must include a fax cover sheet indicating:

- The requesting office,
- The first and last name of the requestor,
- A phone number (direct line/extension),
- A fax number,
- The date sent, and
- The reason for expedite, e.g., age-out, military.

H. TECS/IBIS Records

1. The Operational Guidance indicates that officers should create a TECS/IBIS record when there is a non-IBIS national security concern. Is there standard language or guidance that should be used in creating TECS/IBIS record?



(b)(7)(e)

The “Operational Guidance for Domestic Operations” provides instructions on TECS/IBIS record creation for approved petitions with NS concerns that do not convey status, and cases involving exemptions for the INA section 212(a)(3)(B) terrorism-related provisions. For TECS/IBIS record creation in all other cases, please consult local office procedures.

- **When USCIS grants a petition with an identified NS concern**, officers must create a TECS/IBIS record to report that possible inadmissibility issues have been identified. Use the following language:

FOR CONSULAR OFFICERS AND USCIS ADJUDICATORS: PLEASE BE ADVISED THAT USCIS HAS GRANTED PETITION [RECEIPT NO] FOR [BENEFICIARY]. APPROVAL OF PETITION REPRESENTS VALID RELATIONSHIP ONLY. GROUNDS OF INADMISSIBILITY UNDER SECTION 212 OF THE IMMIGRATION AND NATIONALITY ACT MAY EXIST. USCIS HAS NOT MADE A FINAL DETERMINATION OF INADMISSIBILITY.

- **When the beneficiary has a dependent**, a TECS/IBIS record must be created alerting to the principal beneficiary’s NS concerns. Use the following language:

FOR CONSULAR OFFICERS AND ADJUDICATORS: PLEASE BE ADVISED THAT USCIS HAS GRANTED PETITION [RECEIPT NO.] FILED BY [PETITIONER] FOR [BENEFICIARY]. SUBJECT IS DERIVATIVE OF [BENEFICIARY]. SEE TECS RECORD [NO. XXX]. GROUNDS OF INADMISSIBILITY UNDER SECTION 212 OF IMMIGRATION AND NATIONALITY ACT MAY EXIST. USCIS HAS NOT MADE FINAL DETERMINATION OF INADMISSIBILITY.

- **For Material Support cases**, when a determination is made that an **exemption is available but will not be granted** under INA § 212(d)(3)(B)(i), and the individual is inadmissible or otherwise barred from receiving an immigration benefit, the application must be denied. The NS concern must be documented in FDNS-DS per established

procedures. If the denial is based on an NS concern, a TECS/IBIS record must be created using the following language:

The subject is inadmissible or otherwise barred from receiving an immigration benefit pursuant to INA XXXX for having XXXX. In addition, USCIS has made a determination that the subject does not meet the requirements for the exercise of discretionary exemption for XXXX under INA XXXX. The Subject's application for **[STATE THE FORM/BENEFIT]** was denied on **[STATE THE DATE]**.



July 26, 2011

PM-602-0042

Policy Memorandum

SUBJECT: Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorists

Purpose

This memorandum provides revisions to the Controlled Application Review and Resolution Program (CARRP), the U.S. Citizenship and Immigration Services (USCIS) policy on processing cases containing national security (NS) concerns. This memorandum amends previous guidance established in the policy memoranda listed below and authorizes designated officers¹ in the field² to perform external vetting in cases involving Known or Suspected Terrorists (KSTs). Further, this memorandum rescinds guidance requiring the field to seek adjudicative assistance from Headquarters FDNS (HQFDNS) for both KST and Non-KST cases.

Scope

Unless specifically exempted herein, this policy memorandum applies to and is binding on all USCIS employees.

Authority

This memorandum revises:

The April 11, 2008, policy memorandum issued by Deputy Director Jonathan R. Scharfen titled "Policy for Vetting and Adjudicating Cases with National Security Concerns" (CARRP Memo).

Background

The April 11, 2008 memorandum established CARRP, a disciplined, agency-wide approach for identifying, processing and adjudicating applications and petitions involving NS concerns.

Under CARRP, responsibility for vetting and documenting Non-KST NS concerns and adjudicating all NS-related applications and petitions was delegated to the field. HQFDNS retained responsibility for the external vetting of KST cases.

¹ The term "designated" refers to those officers that are currently assigned and are responsible for various steps in the CARRP process (i.e., identifying, vetting/eligibility assessment, external vetting, CARRP Adjudication). This policy memorandum and the attached supplemental guidance do not intend to change the delineated roles and responsibilities (instituted by various USCIS Directorates) of USCIS officers currently processing CARRP cases.

² The field refers to Field Offices, Service Centers, the National Benefits Center, and equivalent offices within the Refugee, Asylum, and International Operations Directorate (RAIO), and the officers designated to perform different tasks related to the CARRP process.

Over the past three years, the field has acquired valuable experience and expertise in vetting and adjudicating NS cases. In addition, the field has worked diligently to establish collaborative working relationships with their counterparts in the law enforcement community, including local Joint Terrorism Task Forces (JTTFs). This has resulted in an access to information and resources not previously available to the field. As such, authorizing the field to externally vet KSTs directly with the law enforcement and intelligence community (LEIC) will increase efficiency and effectiveness by reducing the often redundant movement of information between the field, HQFDNS, and the LEIC without compromising the integrity of the process.

Policy

The field is now authorized to contact the record owner or nominating agency to vet and deconflict NS concerns involving KSTs. The field, however, is not authorized to approve applications or petitions with confirmed KST NS concerns; that authority continues to rest with the senior leadership of this Agency.

In addition, if, after completing the vetting and deconfliction process in KST cases, there continue to be national security concerns, and there is insufficient evidence or other grounds to deny the application, offices are to seek further guidance from their respective HQ Directorate, in consultation with local and HQ counsel when appropriate. HQFDNS will no longer provide adjudicative assistance. HQFDNS will, however, remain available to provide vetting assistance, including the identification of the record owner and the resolution of issues involving record owners.

Implementation

As a result of this delegation of authority, the nature of assistance requested from HQFDNS is limited to those outlined below. Following the initial eligibility assessment and internal vetting, if no ineligibility grounds are identified, the field will conduct external vetting³. Upon obtaining local management approval, the field may e-mail a Request for Assistance (RFA) to HQFDNS (FDNS-NSB@dhs.gov) under the following circumstances:

- To identify the NS record owner of the KST nominating entity;
 - HQFDNS will identify a POC. The field must then contact the POC for external vetting and deconfliction.
 - If HQFDNS is unable to identify a POC⁴, HQFDNS will conduct external vetting and deconfliction.
- To seek assistance in contacting or resolving issues with the record holder; and
- To conduct queries of classified systems⁵.

Except as noted in this memo, all current CARRP guidance provided by various Directorates remains in effect.

³ External vetting must be conducted if no ineligibility grounds have been identified or if Field Management determines further processing is necessary to strengthen or support a decision. KST external vetting is to be conducted by officers who are currently conducting external vetting of Non-KST cases.

⁴ These KSTs are generally nominated by certain members of Intelligence Community for which a POC is not available.

⁵ Classified High Side checks must not be requested routinely. Rather, the field must articulate a need for such checks. For example, where the nominating agency is either a foreign entity or a member of Intelligence Community (other than the FBI) and additional information cannot be obtained through the local JTTF.

Use

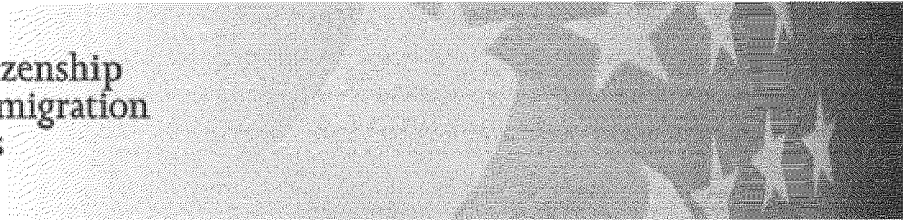
This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to HQFDNS.



U.S. Citizenship
and Immigration
Services



Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns

~~FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE~~

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

TABLE OF CONTENTS

- I. Introduction
- II. Scope and Implementation
 - A. Controlled Application Review and Resolution Program (CARRP) Processing
 - 1. Identifying a NS Concern
 - 2. Assessing Eligibility in Cases with a NS Concern
 - 3. External Vetting
 - 4. CARRP Adjudication
 - B. Field Management Requirements
 - C. Confidentiality
 - D. Information Sharing Considerations – Third Agency Rule
- III. Identifying a NS Concern – Step 1
 - A. KST NS Concern
 - 1. Determine Identity
 - 2. Identity Determined
 - B. Non-KST Concern
 - 1. Determine Identity
 - 2. Identity Determined
 - C. Family Members and Close Associates
 - 1. NS Concern on Family Member
 - 2. Relates to Individual
 - 3. NS Concern on Individual
 - D. Documenting Determination of a NS Concern
 - 1. FDNS-DS and BCAA Worksheet
 - 2. TECS record
- IV. Assessing Eligibility in Cases with a NS Concern – Step 2
 - A. Eligibility Assessment
 - B. Internal Vetting
 - 1. Required Systems Checks
 - 2. Supplemental Systems Checks
 - C. Deconfliction
 - D. Documenting Eligibility Assessment and Internal Vetting
 - E. Individual Deemed Eligible for the Benefit
- V. External Vetting – Step 3
 - A. KST NS Concerns
 - B. Non-KST NS Concerns
 - C. Law Enforcement Coordination
 - D. Contacting the Record Owner
 - E. Obtaining Relevant Information
 - F. Closed Case
 - G. Ongoing Investigation
 - H. Vetting Decision Criteria
 - I. NNS Determination

- J. NS Determination
- K. Documenting External Vetting Activities
- L. Entering Data into FDNS-DS for Non-KST NS concerns
- M. Multiple Filings at Multiple Locations
- VI. Requesting Assistance from HQFDNS
 - A. KST NS Concerns
 - B. Non-KST NS Concerns
 - C. Contact Information for HQFDNS Assistance
- VII. CARRP Adjudication – Step 4
 - A. KST
 - B. Non-KST
- VIII. Case Specific Exceptions and Miscellaneous Guidance for CARRP Adjudication
 - A. Work and Travel Authorization
 - B. Form I-90
 - C. Santillan Cases
 - D. General EPS Guidance
 - E. Motions to Reopen/Reconsider
 - F. Appeals to AAO
 - G. Appeals to BIA
 - H. Exemptions for the INA Section 212(a)(3)(B) Terrorism-Related Provisions and NS Concerns
 - I. Use of Classified Info
 - J. Use of FOUO or LES Info
 - K. Abeyance
 - L. Litigation
 - M. LHM
- IX. Petitions and Other Forms with NS Concerns
 - A. Operations Guidance
 - B. Approving Petitions with NS Concerns
 - 1. Beneficiary is Overseas
 - 2. Beneficiary is in the US
 - C. Special Considerations
 - 1. Form I-129
 - 2. Form I-824
 - 3. Form I-800A Supplements 1 & 3
 - 4. Form N-400
- X. Glossary

2. **Assessing Eligibility in Cases with a NS Concern:** If it is determined that a NS concern exists, the case is forwarded to a designated officer⁵ for a thorough review of the record associated with the application/petition to determine if the individual is eligible for the benefit sought, hereafter referred to as the *Eligibility Assessment/Internal Vetting* stage.
3. **External Vetting:** If after completion of the eligibility assessment and internal vetting, the individual appears eligible for the benefit sought, or if Field management determines further processing is necessary to strengthen or support a decision, the application/petition proceeds to the *External Vetting* stage (Non-KST cases only⁶) to obtain any information relevant to CARRP adjudication. If the application/petition is otherwise approvable for KST⁷ cases, Field management **must** request vetting assistance from HQFDNS.
4. **CARRP Adjudication:** The focus of this stage is to evaluate any additional information obtained during the vetting process to determine if the NS concern has been resolved or confirmed, whether the application/petition should be approved or denied, and when appropriate, to proceed with removal, rescission, termination, or revocation.

B. Field Management Requirements

1. Ensure that all officers responsible for vetting NS concerns have access to the required electronic systems (USCIS, DHS).
- (b)(7)(e) 2. Establish a coordination mechanism (formal or informal) with the local [REDACTED] and designate officers to act as the point of contact for outreach to the Law Enforcement Agency (LEA)/record owner.
3. Establish local procedures for supervisory review at the conclusion of the vetting process. The supervisory review is intended to confirm the facts discovered during the vetting process to ensure that the NS recommendation is consistent, that proper and conclusive coordination with law enforcement is fulfilled, and that the Background Check and Adjudicative Assessment (BCAA) worksheet is complete.
4. Establish local procedures for supervisory review of applications/petitions in which the individual appears eligible for the benefit and where a NS concern has been identified prior to approving the transfer of the file to HQFDNS.
5. Maintain the national security infrastructure by ensuring that each office in the Field is properly equipped to receive, transmit, and store classified information per the following guidelines:

⁵ For purposes of this memorandum, a **designated officer** is an Immigration Analyst, Immigration Officer, Adjudications Officer, Asylum Officer or Refugee Officer who has been designated by local management to be trained, competent and knowledgeable in CARRP procedures.

⁶ See Glossary for definition of Non-KST.

⁷ See Glossary for definition of KST.

- (b)(7)(e)
- a. Obtain a minimum of a SECRET security clearance for each officer involved in vetting NS concerns or adjudicating applications/petitions where a NS concern has been identified;
 - b. Procure and maintain secure telephones (STU III, STE) and secure (classified) fax machines for receiving and discussing classified information;
 - c. Maintain sufficient classified storage space in approved containers for classified materials.
 - d. Procure courier cards for all personnel involved in transporting classified information; and
 - e. Arrange for security training for all personnel involved in handling classified information.
6. Ensure all processing steps and actions taken with respect to any case with a NS concern are recorded and updated in the appropriate tabs within the [redacted] and ensure the appropriate sections of the BCAA worksheet, which replaces the National Security Record, are complete.
7. For denied NS Cases, if the record suggests the applicant is located in the United States and appears amenable to removal proceedings, field offices will coordinate with the appropriate ICE Office of Chief Counsel (ICE OCC) to determine the best strategy prior to issuance of the NTA. Local USCIS legal counsel should be copied on any coordination efforts with ICE OCC, and will assist in those cases in which the ICE OCC expresses concerns regarding the legal strategy or legal sufficiency of planned NTA.

Note: The Field may contact HQFDNS for guidance at any time during the processing of an application/petition with a NS concern. Such requests should be sent via email to:

FDNS-NSB@dhs.gov

The request for guidance must include the following information:

- (b)(7)(e)
- *Subject: Request for Assistance (Vetting) or Request for Assistance (Adjudication)*
 - *Full Name (Applicant, Petitioner, Beneficiary, Derivative or Company)*
 - A-Number
 - Date of Birth



- Pending Application(s) and/or Petition(s) Form Type(s)
- Nature of assistance requested
- Requesting Officer and Contact Information
- (b)(7)(c) - FDNS-DS NS concern number
- Litigation Case information if relevant*



C. Confidentiality

Federal law and agency policy protect against unauthorized disclosure of information collected and maintained in USCIS systems of records both in the electronic and paper form. The Privacy Act, 5 U.S.C. 552(a), restricts disclosure of information relating to U.S. citizens and LPRs in the absence of a written waiver from the individual to whom the information pertains or a routine use contained in a DHS SORN. By policy, DHS has extended the protections afforded by the Privacy Act, 5 U.S.C. 552(a), to personally identifiable information contained in mixed records systems (i.e., systems containing information on visitors and aliens as well as on LPRs and U.S. citizens). Specific categories of data collected and maintained by USCIS may also have their own confidentiality provisions. For example, sections 210 and 245A of the Immigration and Nationality Act limit the use and disclosure of information provided by “amnesty” applicants under the 1986 Immigration Reform and Control Act. Section 384 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, as amended, 8 U.S.C. 1367, limits the use and disclosure of information relating to aliens seeking protection under the Violence Against Women Act (VAWA), as amended, or as T or U non-immigrants. Under 8 C.F.R. § 208.6, information regarding an individual’s status as an asylum seeker or asylee, information contained in or pertaining to his or her application, and records pertaining to any credible fear or reasonable fear determination generally must not be disclosed without the written consent of the applicant or a waiver from the Secretary of DHS. By policy, the confidentiality provisions of 8 C.F.R. § 208.6 have been extended to information contained in or pertaining to refugee applications. Finally, even if no specific confidentiality provision applies, much of the information contained in USCIS systems and files is confidential and the disclosure and use of the information is governed by laws and regulations relating to sensitive but unclassified (i.e., For Official Use Only and/or Law Enforcement Sensitive (FOUO/LES)) information.

D. Information Sharing Considerations – Third Agency Rule

All DHS components are considered part of one “agency” for information sharing purposes. As such, there is no restriction on internal (within DHS) information exchange and sharing provided the person has an authorized purpose for accessing the information in the performance of his or her duties (i.e., a valid need-to-know), possesses the requisite security clearance (there is no requirement for a security clearance to access sensitive but unclassified (FOUO) information), and assures adequate safeguarding and protection of the information.

Sensitive but unclassified (FOUO) information may be shared with other agencies or organizations outside of DHS, provided: a need-to-know has been established; the information is shared in the furtherance of a coordinated and official governmental activity, to include homeland defense; and if the information requested or to be discussed does not belong to USCIS, comply with the originating agency's policy concerning third party discussion and dissemination.

Classified information originated by another DHS component, or classified information originated by another government agency shall not be further disseminated outside of DHS without prior approval of the originator.

3. LexisNexis Accurint and/or Choicepoint to search information regarding residences, automobile registration, tax liens/liabilities, mortgage information, business information, etc.;
4. Travel histories (travel to nations of interest, travel documents used, funds available for travel, reasons for travel, work performed overseas, etc.).
5. Open Source Queries: Google, Ask, Yahoo, Dogpile, Facebook, LinkedIn, Myspace, and others.

When ineligibility grounds are identified, the Field may proceed with final adjudication following supervisory concurrence and deconfliction (see below) with the record owner.

C. Deconfliction

The designated officer is required to advise the record owner of contemplated adjudicative actions. See Section VIII Part K of this guidance and Title 8, Code of Federal Regulations Section 103.2(b)(18) for instructions on holding a case in abeyance when proposed actions would interfere with an ongoing investigation.

Note: During deconfliction, designated officers may ask the record owner whether that agency has information (other than NS related information) that would affect the eligibility for the benefit sought. Officers may also seek to resolve any other relevant concerns (e.g., criminal, public safety, fraud) identified through the security check process or review of the files.

If the individual is otherwise eligible for the benefit or if local management determines further processing is necessary to strengthen or support a final adjudication, cases will proceed to the *External Vetting* stage.

Note: In instances where the individual is deemed ineligible for the benefit and the denial grounds can be overcome with a subsequent filing, the most prudent course of action is to continue with external vetting rather than denying on the initial ground of ineligibility.

D. Documenting Eligibility Assessment and Internal Vetting

The results of the eligibility assessment, internal vetting, and deconfliction must be documented in FDNS-DS and on the BCAA worksheet.

The BCAA worksheet must be attached to the FDNS-DS record at the end of the *Eligibility Assessment/Internal Vetting* stage.

Where the decision is made to transfer a case to another USCIS field office, the transferring office will fully document the results of adjudicative activities to date in FDNS-DS and on the BCAA worksheet, and ensure that the A-file, T-file or receipt file is properly documented.

E. Individual Deemed Eligible for the Benefit

When the NS concern remains and the individual is deemed eligible for the benefit at the *Eligibility Assessment/Internal Vetting* stage, no benefit may be granted until external vetting is complete, unless an exception applies. See Section VIII, Case Specific Exceptions and Miscellaneous Guidance.

V. EXTERNAL VETTING – STEP 3 OF CARRP PROCESS

A. KST NS Concerns

HQFDNS has sole responsibility for external vetting of KST NS concerns, which is conducted only as a last resort when no statutory or regulatory grounds of ineligibility have been identified. *See* Section VI, Requesting Assistance from HQFDNS.

B. Non-KST NS Concerns

For Non-KST NS concerns, the designated officer must initiate the external vetting process before the case may proceed to final adjudication if:

1. Internal vetting is complete and the application/petition appears to be otherwise approvable; and
2. there is an identified record owner in possession of NS information; and
3. a NS concern remains.

During the process of external vetting, the designated officer must seek to obtain additional information that may be relevant to a determination of eligibility. Officers should note that actions that do not meet the threshold for criminal prosecution (e.g., indicators of fraud, foreign travel, and information concerning employment or family relationships) may be relevant to a benefit determination. Officers must make every effort to clearly articulate these facts or fact patterns for final adjudication. **Note:** If a NS concern remains but a record owner cannot be identified, contact HQFDNS for assistance.

C. Law Enforcement Coordination

External vetting requires close coordination with law enforcement agencies, the Intelligence Community¹³ or other record owners to determine the nature and extent of the NS concern and to identify information that is relevant to an eligibility determination.

Coordination with law enforcement is essential to understanding the nature of associations that make the individual a concern, the individual's level of involvement in activities of concern, and the progress made to date by law enforcement to investigate those concerns. It also affords the opportunity to understand the impact of adjudicative activities on ongoing and sensitive investigations.

The Field must contact and establish liaison relationships with the LEA/record owner and other relevant agencies in order to coordinate background check vetting and obtain any and all information relevant to understanding the NS concern and adjudicating the application/petition. A limited number of USCIS officers must be the primary points of contact for outreach to the

¹³ Officers in the field are not authorized to contact Intelligence Community members; such outreach is conducted by HQFDNS. See Glossary for definition of Intelligence Community.

LEA/record owner. This will assist USCIS efforts to develop effective information-sharing relationships and to limit the number of contacts with the record owner

1. Designated officers will contact all appropriate LEAs/record owners telephonically and/or through e-mail. Each telephonic and e-mail contact activity will be recorded in the activities tab of FDNS-DS. In the event there is no response to the initial contact within ten (10) business days, the appropriate local JTTF office must be contacted for assistance while keeping in mind Third Agency Rules regarding disclosure of information.

Note: If the local JTTF office is not responsive, the Field may request vetting assistance from HQFDNS (BCAU) in accordance with the guidance provided in Section VI.

2. The local JTTF office should also be contacted if:

(b)(7)(e)



Designated officers must ensure that any potential conflicts between vetting or adjudicative activities by USCIS and investigative activities by law enforcement or other federal agencies are identified during the coordination process. The designated officer should specifically ask the LEA whether any adjudicative action would impact the investigation.

In the event the individual is the target of or referenced in multiple investigations, all appropriate entities/record owners and JTTF offices must be contacted.

When an office outside the jurisdiction in which the individual lives is conducting an investigation, all appropriate LEAs must be contacted by the USCIS office vetting the NS concern.

D. Contacting the Record Owner

Prior to initiating contact with the LEA/record owner, all required and supplemental systems checks (see above) must have been conducted and recorded on the BCAA worksheet.

Contact with a case agent or record owner affords an opportunity to share information that may assist each party to complete their mission.

1. Designated officers may obtain information that will assist in:¹⁴

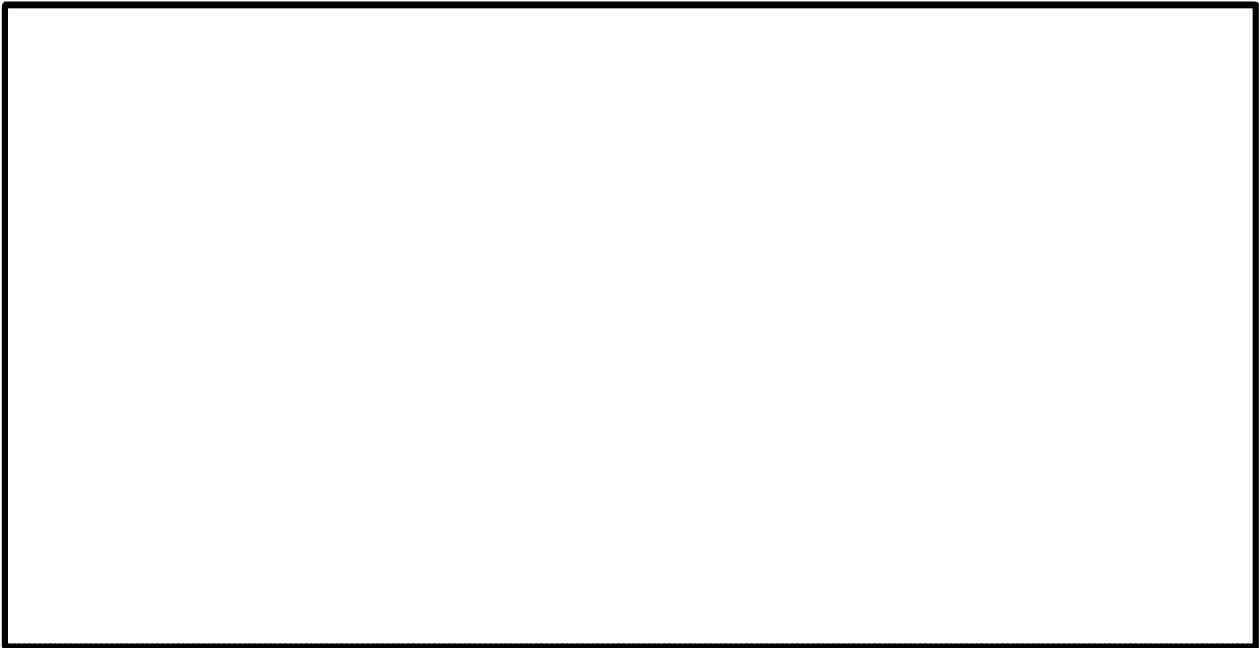
¹⁴ When USCIS obtains information from another governmental agency in the vetting process, the information sharing restriction, often referred to as the “Third Agency Rule,” requires USCIS to obtain authorization from the record owner prior to any disclosure of the information. Therefore, in order to use the information during adjudication, prior written authorization must be obtained from the record owner. If the information indicates the individual is ineligible for the benefit sought, and if permission from the record owner has been secured for the use of unclassified information, the application/petition may be denied based on the information. Additionally, under provisions of DHS Policy MD 11042.1, USCIS may not disclose information provided by the record owner to a third agency without the record owner’s prior authorization.

(b)(7)(e)



E. Obtaining Relevant Information

(b)(7)(e)



(b)(7)(e)

F. Closed Case

A large rectangular box with a black border, completely empty, representing redacted information for the 'Closed Case' section.

G. Ongoing Investigation

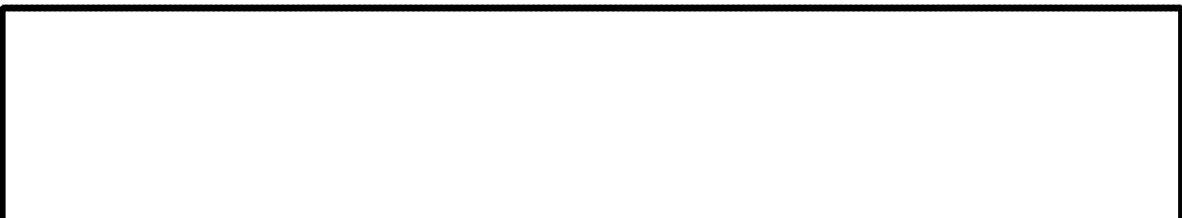
A large rectangular box with a black border, completely empty, representing redacted information for the 'Ongoing Investigation' section.

H. Vetting Decision Criteria

At the conclusion of the external vetting process for Non-KST NS concerns, the designated officer must consider the facts or fact patterns developed and make one of the following recommendations for supervisory consideration:

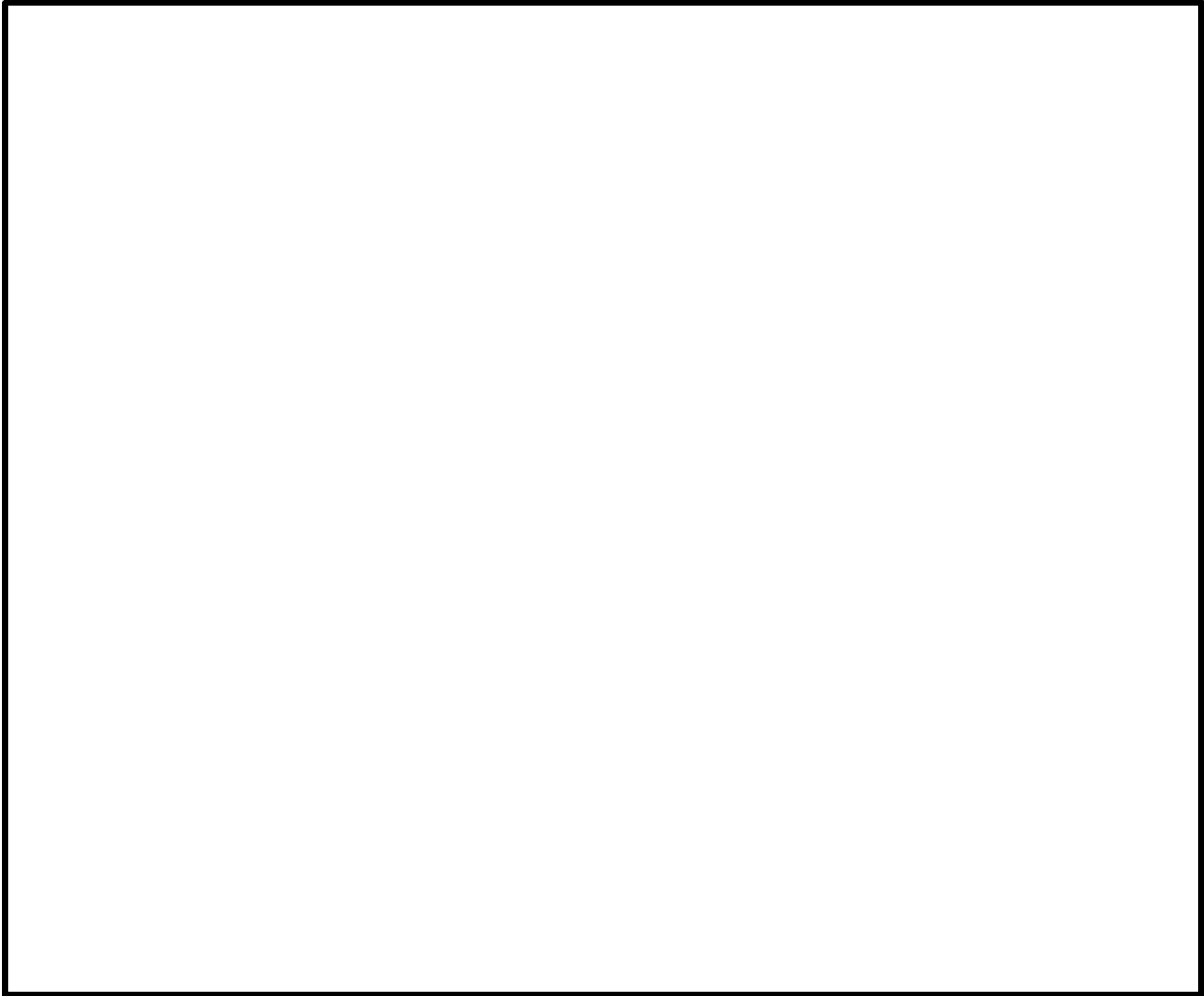
1. Make a **Non-National Security (NNS) determination** and release the application/petition for routine adjudication.
2. Make a **NS determination** and proceed to the *CARRP Adjudication* stage.

I. A NNS determination should be made if results of the external vetting fall into one or more of the following categories:

A large rectangular box with a black border, completely empty, representing redacted information for the 'Vetting Decision Criteria' section.

(b)(7)(e)

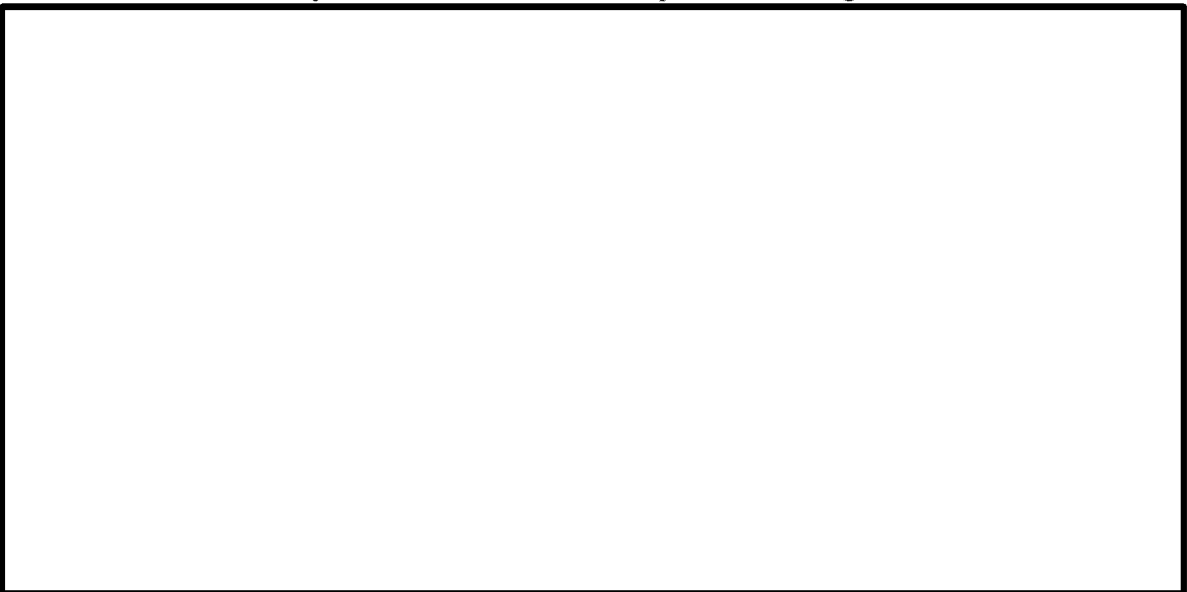
(b)(7)(e)



J. A NS determination should be made if results of the external vetting fall into one or more of the following categories:

1. Individual is the subject of or referenced in an open NS investigation and the level of

(b)(7)(e)



(b)(7)(e)



K. Documenting External Vetting Activities

Officers conducting external vetting must record the results of their vetting activities and recommendations, as well as a summary of their conversations with an LEA, in the “activities/notes” tab of the FDNS-DS as appropriate. They must update the BCAA worksheet, contemporaneously (as actions are being taken) and not wait to update at a later date.

At the end of the external vetting process, the BCAA worksheet should be attached to the FDNS-DS record and the application/petition will proceed to the *CARRP Adjudication* stage.

When the decision is made to transfer a case to another USCIS office, the transferring office will fully document the results of vetting and adjudicative actions to date in FDNS-DS and the BCAA worksheet, and ensure that all relevant information properly documented in the file.

L. Entering Data into FDNS-DS for Non-KST NS concerns

Prior to creating a record in FDNS-DS, the designated officers must determine whether a record related to the same subject has already been entered into the system. If there is such record, designated officers must request the “lead” officer to add them as “team members” so that they can add new filings to the existing record. Do not create a new record on the same subject of interest.

M. Multiple Filings at Multiple Locations

At the vetting stage, only one office in the Field should be the lead in coordinating with the appropriate LEA(s). The designated officer will identify and perform electronic consolidation of all filings related to an individual with a NS concern in FDNS-DS. When the individual is the applicant on or beneficiary of multiple filings at multiple offices, the designated officer should refer to the following guidelines for vetting purposes and electronic consolidation:

1. If there is a pending N-400 or I-485, the office having primary responsibility for adjudicating the N-400 or I-485 is responsible for the electronic consolidation.¹⁵

¹⁵ If an N-400 is pending concurrently with a pending I-485 pursuant to INA Section 328 or 329 regarding members of the U.S. Armed Forces or those who have already been discharged from service, the office having jurisdiction over the N-400 is responsible for electronic consolidation.

2. If there is no N-400 or I-485 pending but there is another type of application/petition pending with the potential to grant status, (e.g. a Form I-129 Extension of Stay or Change of Status request), the office with jurisdiction over the pending application/petition is responsible for the electronic consolidation;
3. If there is no pending N-400, I-485 or other type of application/petition with the potential to grant status, the office with jurisdiction over the pending immigrant visa petition(s) is responsible for the electronic consolidation (with priority over non-immigrant visa petitions);
4. In the event that separate offices hold both pending employment-based immigrant visa petitions and family-based petitions, the office with jurisdiction over the employment-based immigrant petition is responsible for the electronic consolidation.
5. In the event that “multiple locations” involves Service Centers, bi-specialization will be the determining factor as to which Service Center will have the lead in consolidating and conducting vetting activities. Supervisors between bi-specialized Service Centers (i.e. TSC/NSC and ESC/WSC) must coordinate between one another to determine the best office to take the lead.

Note: For situations involving multiple receipt files or a combination of receipt files and A-files, one documentary record (BCAA worksheet) per individual will be sufficient.

VI. REQUESTING ASSISTANCE FROM HQFDNS

A. Requesting External Vetting Assistance on KST NS Concerns

For applications/petitions with KST NS concerns, the Field is not authorized to conduct external vetting with record owners in possession of NS information. The Field is ONLY authorized to conduct internal vetting of KST NS concerns. HQFDNS has sole responsibility for external vetting of KST NS concerns, which is conducted only as a last resort when ineligibility grounds have not been identified.

Vetting assistance may be requested from HQFDNS in the following circumstances:

1. When ineligibility grounds have not been identified in applications/petitions with KST NS concerns;
2. When the LEA is non-responsive, is not willing to discuss any information or a POC is not identified in the referral;
3. When LHMs provide Third Agency Referrals, and the Field is unable to obtain the information from the Third Agency; or
4. When coordination with the Intelligence Community¹⁶ is required.

Prior to requesting vetting assistance from HQFDNS/BCAU the local office director (DD, SCD, FOD) must review the case to confirm that no grounds of ineligibility have been identified.

When the decision has been made that the KST NS concern will be referred to HQFDNS/BCAU for external vetting the entire A-file and any related files must be forwarded to HQFDNS/BCAU.

Prior to forwarding the case to HQFDNS the sending office must:

- (b)(7)(e)
1. 
 2. 
 3. 

HQFDNS/BCAU will request the tearline information¹⁷ from the record owner, perform high-side checks¹⁸ and draft an assessment of the results.

HQFDNS/NSAU will conduct a comprehensive review of the file and the assessment for ineligibility grounds. If no ineligibility grounds are identified, HQFDNS/NSAU will consider whether the use of classified information is necessary and request authorization from the record owner as required. If ineligibility grounds are identified, the file will be returned to the originating office with instructions for further action.

¹⁶ See Glossary for definition of Intelligence Community

¹⁷ See Glossary for definition of tearline information.

¹⁸ See Glossary for definition of high-side checks.

While HQ FDNS is conducting external vetting in KST matters, the designated officer must notify HQ FDNS whenever new factors arise that may affect the application/petition. Such factors include, but are not limited to congressional inquiries, management inquiries, and litigation.

B. Requesting External Vetting Assistance on Non-KST NS concerns

Officers are not authorized to approve applications with remaining Non-KST NS concerns without supervisory approval and concurrence from the Field director (DD, SCD, FOD, ACD).

When the individual appears otherwise eligible for the benefit, officers must seek supervisory guidance in evaluating the merits of the case to ensure that all appropriate adjudicative actions have been considered or taken.

If the Field director confirms that the application/petition is approvable, the case may be adjudicated or the Field director may request vetting assistance from HQFDNS.

Upon requesting external vetting assistance from HQFDNS as appropriate, the A-file and any related files must be sent to the HQFDNS/BCAU. A completed BCAA worksheet must be attached to the file.

The HQFDNS/BCAU will perform high-side checks and draft an assessment of the results. If no ineligibility grounds are identified, HQFDNS/NSAU will conduct a comprehensive review of the file and the assessment for ineligibility grounds and consider whether the use of classified information is necessary and request authorization from the record owner as required. If ineligibility grounds are identified, the file will be returned to the originating office with instructions for further action.

C. Contact Information for HQFDNS Assistance

The Field may contact HQFDNS for guidance at any time during the processing of an application/petition with a NS concern. Such requests should be sent via email to:

FDNS-NSB@dhs.gov

The request for guidance must include the following information:

- Subject: Request for Assistance (Vetting) or Request for Assistance (Adjudication)
- Full Name (Applicant, Petitioner, Beneficiary, Derivative or Company)
- A-Number
- Date of Birth
- Pending Application(s) and/or Petition(s) Form Type(s)

- Nature of assistance requested
- Requesting Officer and Contact Information
- FDNS-DS NS concern number
- Litigation Case information if relevant*

*If a case requires immediate action due to pending litigation etc, offices must ensure that the e-mail to the FDNS-NSB Mailbox is marked urgent and contact the HQ National Security Advisory Unit (NSAU) main number (202) 272-8460 or HQ NSAU Team Chief (202) 272-0917. The body of the email should include the District Court Case # and suspense date.

VII. CARRP ADJUDICATION – STEP 4 OF CARRP PROCESS

Upon completion of internal and external vetting, if the NS concern remains, the designated officer must evaluate the results of the vetting as it pertains to the adjudication, obtain any additional relevant information and determine eligibility for the benefit sought.

As previously noted, officers must deconflict with the record owner prior to any contemplated adjudicative action.

A. Adjudicating Applications with KST NS Concerns

Officers in the Field are not authorized to approve applications with remaining KST NS concerns.

If local management concurs that the individual appears otherwise eligible for the benefit, the director must request assistance from HQFDNS. (See Section VI, Requesting Vetting Assistance from HQFDNS). As necessary, the Field may also request assistance from BCAU. If there are remaining KST NS concerns after receipt of the results from HQFDNS/BCAU, and the individual remains eligible for the benefit, the application/petition must be returned to the respective Field HQ¹⁹ component for further evaluation and coordination with HQFDNS.

B. Adjudicating Applications/Petitions with Non-KST NS Concerns

Officers in the Field are not authorized to approve applications/petitions with the potential to grant status that have remaining Non-KST NS concerns without supervisory approval and concurrence from the local management.

If the local management confirms that the individual is otherwise eligible for the benefit, he/she has discretion to grant the benefit or may request further assistance from HQFDNS/BCAU. (See Section VI, Requesting Assistance from HQFDNS). If, in consultation with the respective HQ component the local management decides to grant the benefit, the designated officer must document all adjudicative actions in FDNS-DS and complete the BCAA worksheet.

¹⁹ HQ Office of Field Operations (OFO) or HQ Service Center Operations (SCOPS).

inadmissibility provisions of INA section 212(a)(3)(B) with respect to either an undesignated terrorist organization or to an individual alien. Therefore,

1. When a determination is made that an exemption is available and will be granted under INA § 212(d)(3)(B), and no other NS concern is identified, the application/petition with a NS concern will be released for routine adjudication as a NNS concern. No FDNS-DS or BCAA documentation is required.
2. When a determination is made that an exemption is available but will not be granted under INA § 212(d)(3)(B)(i), the individual is inadmissible or otherwise barred from receiving an immigration benefit and the application must be denied. The NS concern must be documented in FDNS-DS per established procedures. If the denial is based on a NS concern, an IBIS record must be created using the following language:

The subject is inadmissible or otherwise barred from receiving an immigration benefit pursuant to INA XXXX for having XXXX. In addition, USCIS has made a determination that the subject does not meet the requirements for the exercise of discretionary exemption for XXXX under INA XXXX. The Subject's application for [STATE THE FORM/BENEFIT] was denied on [STATE THE DATE].

Officers should follow existing guidance for NTA issuance.

Note: Material support and other terrorist-related exemption determinations should be made in accordance with existing policies and procedures, including the memorandum dated March 26, 2008, from Deputy Director Jonathan Scharfen, entitled “Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups,” which is beyond the scope of this Operational Guidance. The guidance provided here applies to material support and other terrorist-related inadmissibility cases only after a determination regarding the availability of and eligibility for existing exemptions has been made in accordance with operational guidance.

I. Use of Classified Information in Adjudicating Applications/Petitions with a NS Concern

Officers are not authorized to deny a benefit on the basis of classified information.

Classified information may be considered²² but may not be disclosed to the individual or the individual's representative during the adjudicative process (e.g., during an interview or in a decision).²³ Classified information may be relied upon during the adjudicative process as

²² “Considered” means used for lead purposes to identify open source information that can be used to form the basis for a Request for Evidence (RFE) or a line of questioning during an interview intended to discover material facts relevant to a USCIS decision.

²³ Additionally, under the Third Agency Rule, USCIS may not disclose information provided by the record owner to a third agency without the record owner's prior written authorization.

authorized by law and only as a last resort²⁴ after receiving consent from the record owner and the Secretary of the Department of Homeland Security (DHS).²⁵

When grounds of ineligibility in an application/petition with a NS concern cannot be supported except by reliance upon classified information, the Field must seek assistance from HQFDNS in accordance with Section VI of this Operational Guidance. HQFDNS is responsible for making requests to the record owner for declassification of pertinent sections if such information is necessary to support a legally sufficient denial. On a case-by-case basis, HQFDNS may seek permission from the DHS Secretary and the record owner to rely upon classified information in a written decision.

J. Use of For Official Use Only (FOUO) or Law Enforcement Sensitive Information in Adjudicating Applications/Petitions with a NS concern

Information categorized as For Official Use Only (FOUO) or Law Enforcement Sensitive may be considered but may not be disclosed to the individual or the individual’s representative during the adjudicative process without prior permission of the record owner.

K. Abeyance



L. Litigation (b)(7)(e)

Individuals may file Federal Court actions to compel USCIS to act on an application/petition. Naturalization applicants may file Federal Court actions asking the court to naturalize them when USCIS has not adjudicated an N-400, Application for Naturalization, within 120 days of an

²⁴ “Last resort” means that classified information will be used in an adjudicative process only where other options have been examined and weighed, no alternative option exists that will ensure success on the merits, and the case presents a compelling need for use of such information.

²⁵ Refer to Department of Homeland Security Memorandum, *Guidelines for the Use of Classified Information Immigration Proceedings*, dated October 4, 2004 (also referred to as the “Ridge Memo”).

²⁶ For purposes of this guidance, “Director Level” refers to District Directors and Service Center Directors. In addition, a Director may delegate his or her decision-making authority to a local manager no lower than a Section Chief or Assistant Center Director.

IX. PETITIONS AND OTHER FORMS WITH NS CONCERNS

The guidance provided in this section relates to Forms I-129 (not requesting a Change of Status (COS) or Extension of Stay (EOS)), I-129F, I-130, I-140, I-360 (Religious Worker cases only), I-526, I-600 and I-800 that do not convey an immigrant or non-immigrant status and I-824 (collectively, hereinafter as “petitions”).²⁷

The procedures outlined here do not alter outstanding guidance with respect to the consideration of relative (I-130), orphans (I-600 or I-800), and fiancé (I-129F) petitions where the petitioner’s eligibility comes into question pursuant to the Adam Walsh Act.²⁸

In a visa petition proceeding, the legal issue is whether the requisite relationship exists (Forms I-129F, I-130, I-600 and I-800) or whether the proposed employment meets the requirements of the relevant employment-based category (Forms I-129, I-140, I-360, and I-526). In short, the issue is whether the alien fits into a particular immigrant/non-immigrant visa category, not whether the alien is admissible. Accordingly, the following considerations should be kept in mind when reviewing the petitions:

The approval of an immigrant/non-immigrant petition does not establish that the alien is admissible. Therefore, by approving petitions where there are NS concerns or other inadmissibility issues USCIS merely provides the alien the opportunity to file for lawful permanent residence if residing within the United States, seek admission as a lawful permanent resident or seek a non-immigrant visa if residing abroad. While petitions should be adjudicated on their merits, designated officers should keep in mind that those petitions that have a NS concern often involve elements of fraud. Therefore, when fraud concerns are identified, the case should be referred to the local FDNS unit in accordance with established local protocols.

A. Operational Guidance for Petitions

Petitions with NS concerns (both KST and Non-KST) will undergo a thorough review of the record to determine eligibility per current Standard Operating Procedures (SOP) for that specific petition. Designated officers are required to notify the LEA/record owner of any contemplated adjudicative action. During this deconfliction process, designated officers may ask the record owner questions (other than those related to NS information) that could help identify possible grounds of ineligibility.

B. Approving Petitions with NS Concerns

Petitions that do not convey an immigrant or non-immigrant status with remaining NS concerns may only be approved with supervisory concurrence and in accordance with the guidance below.

²⁷ Applications and Petitions with NS concerns that convey an immigrant or non-immigrant status, i.e., Form I-129 petitions requesting change of status (COS) or extension of Stay (EOS) and Form I-730 are covered in sections I through VIII of this operational guidance.

²⁸ For a discussion of the Adam Walsh Act see July 26, 2006 policy memorandum entitled *Adam Walsh Child Protection and Safety Act of 2006*.

9. Can the field contact the record owner who is a member of the Intelligence Committee?

Contact with the Intelligence Committee is not reserved for HQFDNS if the Intelligence Community member has released his/her name for the field to contact. If the name is not released or is not available, HQFDNS will conduct external vetting before returning the case back to the field.



U.S. Citizenship
and Immigration
Services

October 28, 2013

Operational Guidance

SUBJECT: The Withholding of Adjudication (Abeyance) Regulation Contained at 8 CFR § 103.2(b)(18)

Purpose

The Withholding of Adjudication (Abeyance) regulation, 8 CFR § 103.2(b)(18), has long been a tool available to U.S. Citizenship and Immigration Services (USCIS) to facilitate the adjudication of immigration benefits based on all available information, including information stemming from an ongoing investigation. This regulation allows USCIS to suspend the adjudication of an application, petition, or other request¹ during the pendency of an ongoing investigation.

This operational guidance is intended to assist USCIS officers with the use of 8 CFR § 103.2(b)(18), "Withholding Adjudication," and replaces and supersedes all previous guidance on the subject except the provisions for withholding adjudication in the policy memorandum (PM), Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns, dated February 6, 2009. The intent of this guidance is to provide the procedures that USCIS employees are to follow to implement the regulation correctly and consistently. This operational guidance updates the Adjudicator's Field Manual (AFM) by adding a new Chapter 10.24 and a new Appendix 10-12 (AFM Update AD12-07).

Scope

This operational guidance applies to and is binding on all USCIS employees unless specifically exempt.

Authority

8 CFR § 103.2(b)(18)

Background

On July 11, 1988, the legacy Immigration and Naturalization Service revised 8 CFR § 103.2(b) to promulgate authority to withhold adjudication of a visa petition or other application in the event of an ongoing investigation and withhold disclosure to the applicant or petitioner if disclosure would

¹ "Request" refers to a request for prosecutorial discretion.

Operational Guidance: The Withholding of Adjudication (Abeyance) Regulation Contained at 8 CFR § 103.2(b)(18)

Page 2

prejudice the investigation. *See Powers and Duties of Service Officers; Availability of Service Records; Immigration: Adjudication of Application or Petition, 53 FR 26034-01 (July 11, 1988); 8 CFR § 103.2(b)(18).*²

The Withholding of Adjudication regulation authorizes USCIS to maintain oversight of applications, petitions, or other requests which have ongoing investigations. Applications, petitions, or other requests involving ongoing investigations require the utmost care in their adjudication, to include not notifying the applicant, petitioner, beneficiary, or requestor that he or she is under investigation, or of any information stemming from the investigation.

There are situations when USCIS may be unable to complete the adjudication because it may prejudice an ongoing investigation. In those cases 8 CFR § 103.2(b)(18) allows USCIS to put the adjudication on hold while not taking other actions that may put the applicant, petitioner, beneficiary, or requestor on notice of the ongoing investigation.

Withholding adjudication should not be confused with standard delays in the adjudicative process, including those for which the applicant, petitioner, beneficiary, or requestor is responsible. For example, if the office adjudicating a benefit is awaiting evidence requested that relates directly to the adjudication of the application or petition, the withholding regulation does not apply.

Withholding of adjudication is not mandatory, automatic, or required because there is an ongoing investigation. USCIS can in many instances continue to adjudicate a benefit even if there is an ongoing investigation. In addition, nothing in the rule permits USCIS to waive statutory or regulatory requirements.

USCIS will follow the guidance stated in the AFM, as amended by this operational guidance, in withholding adjudication of any immigration benefit because of an ongoing investigation.³

² The proposed and final rules contain a history and background for the provision. See 50 FR 27289, 51 FR 19559 and 53 FR 26034. See Attachment A for the text of the regulation.

³ Each USCIS component will update any related guidance documents accordingly. The Asylum Division will update the Affirmative Asylum Procedures Manual (AAPM) and the Identity and Security Check Procedures Manual (ISCPM) accordingly.

Operational Guidance: The Withholding of Adjudication (Abeyance) Regulation Contained at 8 CFR § 103.2(b)(18)
Page 3

Implementation

The AFM is amended as follows:

- ☞ 1. A new Chapter 10.24 is added to read as follows:

Chapter 10 An Overview of the Adjudication Process

* * * * *

10.24 Withholding Adjudication of Visa Petitions, Applications, or Other Requests in the Event of an Ongoing Investigation, and if the Disclosure to the Applicant, Petitioner, Beneficiary, or Requestor Would Prejudice That Investigation.

- (a) Initial Requirements: 8 CFR § 103.2(b)(18) provides that withholding of adjudication may be ordered in any case where an investigation has been undertaken, and:

(b)(7)(e)



- (b) Additional Requirements and Authority.

- i. Once the above initial requirements have been met, the District Director (DD)¹ may withhold adjudication of a case, subject to the following:

- 1. The DD must:

(b)(7)(e)



(b)(7)(e)

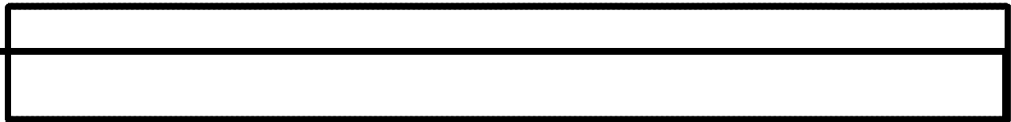


- ii. This authority may be delegated by the DD as provided in the definition of District Director in 8 CFR § 1.2. (See section 10.24(g)(iii) below regarding requests for extensions.)

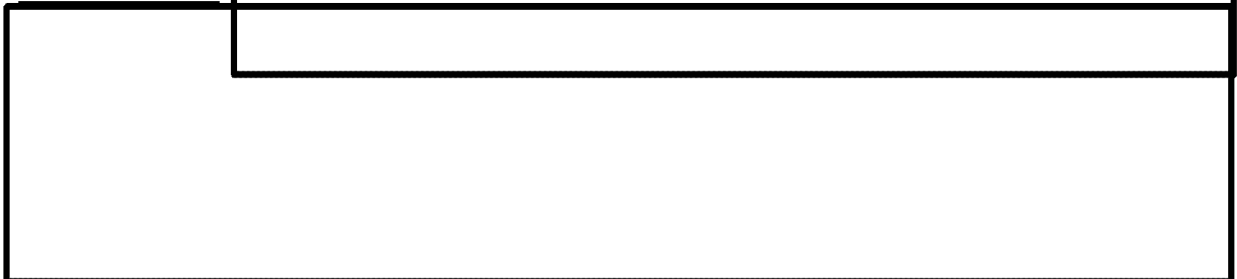
(c) Initiation of Withholding Adjudication Under 8 CFR § 103.2(b)(18):

- i. Outside request. Any law enforcement, regulatory, or administrative agency may notify USCIS of an ongoing investigation and request withholding of adjudication pursuant to 8 CFR § 103.2(b)(18). For ongoing investigations that originate outside of USCIS, USCIS will request the investigating agency to submit a request in writing via formal letter, memo, or e-mail asking that adjudication of the case be withheld in accordance with section 10.24(h)(i)(1) of the AFM. For CARRP cases where an LEA refuses to submit a written request for withholding adjudication, refer to the February 6, 2009 CARRP guidance.

- ii. USCIS volition.



(b)(7)(e)



(d) Qualifying Investigations Under 8 CFR § 103.2(b)(18):

The Withholding of Adjudication regulation does not define the term “investigation.” For the purposes of this guidance, the definition of an “investigation” includes the following categories:

(b)(7)(e)

i.

ii.

iii.



(e) Impact of the Investigation on Eligibility For a Visa Petition or Other Immigration Benefit or the Exercise of Discretion.

The existence of an investigation, by itself, is not sufficient to permit withholding of adjudication under the regulation. The DD must decide whether to withhold adjudication after all the relevant information has been received and reviewed. When an adjudication will not be completed prior to a statutorily imposed deadline, the DD must consult with local counsel in advance of the deadline.

(f) Disclosure of Information Would Prejudice the Ongoing Investigation.

“Prejudicing” an investigation is any action which would interfere with the investigation. The DD may withhold adjudication only under 8 CFR § 103.2(b)(18) if he or she believes disclosure of information to the applicant, petitioner, beneficiary, or requestor in connection with the adjudication of the application, petition, or other request would prejudice the ongoing investigation. This information may include both the existence of the investigation and/or the specific facts developed during the course of the investigation.

(g) Initial Length and Extensions of Withholding of Adjudication.

i. Initial Approval. Withholding of adjudication may be approved at any time after the investigation begins. If an investigation has been undertaken and has not been completed within one year of its inception, the DD will review the matter and determine whether adjudication of the application, petition, or other request should be withheld for six months or until the investigation is completed, whichever comes sooner. Once the DD determines that adjudication of a benefit request will be withheld, USCIS will take no further actions on the application, petition, or other request.

- ii. Monitoring of Cases Placed in Withholding of Adjudication. Withholding of Adjudication is discretionary, but compliance with the regulation is not. To comply with the regulation the DD must:
 1. Keep a record of all cases for which withholding of adjudication has been approved.
 2. Check the record, as necessary, to determine if an extension is required under 8 CFR § 103.2(b)(18) and this AFM chapter.
 3. Request status updates from the investigating LEA, Federal agency, DHS component or USCIS office as appropriate.

- iii. Extensions of Withholding of Adjudication. When the investigation has not been completed within six (6) months after the initial approval, the DD will determine if more time is needed to complete the investigation. If so, adjudication may be withheld for up to another six (6) months. The DD may consult other USCIS offices on the decision.

If the investigation is not completed after the adjudication has been withheld for twelve (12) months, the DD will request that the next supervisor in his or her chain of command, as appropriate, approve withholding of adjudication for an additional six (6) months.

If the withholding of adjudication has been ongoing for more than eighteen (18) months, the DD will send a request for extension through his or her supervisor to both the HQ Directorate (in his or her respective supervisory chain) and HQFDNS Directorate for joint concurrence on an extension approval.

- iv. Withholding of Adjudication on Cases Previously Withheld under 8 CFR § 103.2(b)(18). USCIS may withhold adjudication on a case for which adjudication had been withheld previously and then released for adjudication. The DD must decide if withholding is proper under section 10.24 of the AFM. Whether it is a new investigation or the continuation of an earlier investigation reopened due to new information which comes to light while the case has not yet been adjudicated, the withholding request is considered new and the withholding time frame begins anew.

(h) Documentation of Withholding of Adjudication.

- i. Requirements for Documenting the A-File, T-File, or Receipt File for Withholding of Adjudication:

Any A-, T-, or receipt file that contains a benefit request for which adjudication is being withheld must also contain:

1. Any formal letter, memo, or e-mail received from an outside agency requesting withholding of adjudication in accordance with section 10.24(c)(i) of the AFM. Subject to the exception for CARRP cases in section 10.24(b)(i)(4) of the AFM, a request for withholding of adjudication from an outside entity, must include the basis for an entity's request for withholding. Therefore, a request must include:
 - Name of the requesting entity;
 - Date of such request;
 - Date the investigation commenced, as known to USCIS, by the requesting entity;
 - Reason for the investigation (e.g., public safety concerns, criminal, national security, fraud.) A specific reason must be provided and is preferred; however, the requesting entity may choose to not reveal the exact reason for the investigation. For example, the applicant, petitioner, beneficiary, or requestor having knowledge of the investigation may be enough to impede the investigation; therefore, withholding of adjudication is justified;
 - How the disclosure of information would prejudice the ongoing investigation; the prejudice may be in general terms and could be in an e-mail or in a verbal communication; and
 - Signature, including electronic signature, of the requesting entity representative, to include his or her title and contact information.

2. Interoffice Memorandum from a USCIS Officer to a DD Relaying Requests for Withholding of Adjudication under 8 CFR § 103.2(b)(18): Upon receipt of a formal request or upon learning of an investigation of which information should not be known by the applicant, beneficiary, petitioner, or requestor, the USCIS officer or FDNS IO will complete an interoffice memorandum to the DD.
(See Appendix 10-12 of this field manual for an example of the interoffice memorandum, *Template for Interoffice Memorandum from a USCIS Officer to a District Director Relaying Requests for Withholding of Adjudication under 8 CFR § 103.2(b)(18).*)

3. Formal Response from District Director: A written response (letter or printed copy of an e-mail) from the District Director must clearly state the DD's decision (approval/denial) and the rationale behind the decision. The DD's decision must include the following:
 - Date of Response;
 - Decision – denial/approval of withholding request;
 - If approved, the date the withholding of adjudication will expire;
 - Reason for decision; and
 - Signature, including electronic signature, of DD.(See Appendix 10-12 of this field manual for an example, *Template for Formal Response from DD.*)

4. Record of Withholding of Adjudication Activities: The record of request must include:
- Type of application, petition, or other request affected by the withholding of adjudication request;
 - Date such application or petition was filed;
 - Date investigation was initiated;
 - Requesting entity (including name and title of person requesting on behalf of the entity and contact information);
 - Date of initial approval/denial of the request for withholding of adjudication and the date of expiration of the withholding;
 - Name of reviewing authority (DD/Regional Director/HQ) and whether he or she approves/denies the extension;
 - Dates of ALL subsequent reviews for extension of withholding (completed every six (6) months after initial approval, indicating whether investigation is still ongoing, and whether requirements for withholding under this regulation are still being met); and
 - Signature of appropriate USCIS manager (DD/Regional Director/HQ) of approval/denial of subsequent extension of withholding.

(See Appendix 10-12 of this field manual for an example, *Withholding of Adjudication Record of Activities*.)

ii. The documentation for withholding of adjudication is placed on the non-Records side of the alien file. This documentation is not part of the Record of Proceeding (ROP) material and is exempt from FOIA requests. It must be marked appropriately at the top and bottom of each page. (See the templates in Appendix 10-12 of this field manual.)

(i) Adjudication Time Limits and Withholding.³

The Immigration and Nationality Act (INA) does not mandate a specific time limit for the adjudication of most benefits; however, USCIS strives to adjudicate benefit requests in a timely fashion. The DD will advise and consult with local counsel on all cases described in this section.

- i. Statutory time limits. The INA imposes time limits on the adjudication of certain benefits, including Forms I-90, I-131, I-765, and post-examination Form N-400. Statutorily-imposed time limits are not extended by 8 CFR § 103.2(b)(18); however, the DD may withhold adjudication for these benefit types to assure that all indicators and or information involving national security, fraud, and/or public safety have been investigated.
- ii. Litigation risk. A delay in an adjudication of an adjustment or naturalization application may expose the agency to legal actions to compel the agency to

complete the adjudication. Therefore withholding of adjudication must be used judiciously. In the event of litigation, immediately consult agency counsel.

- iii. Form N-400, Application for Naturalization, After the Applicant Interview. In the case of a pending Form N-400, Application for Naturalization, once a naturalization examination has been conducted, USCIS must deny or approve the application within 120 days. If this deadline is not met, the applicant may petition a Federal district court to naturalize him or her, deny his or her application, or remand the application back to USCIS to decide. (See 8 U.S.C. § 1447(b); INA § 336(b).)⁴ In the right circumstance and in consultation with HQ Counsel, the DD may withhold adjudication until all derogatory information is fully resolved before an applicant is naturalized. Close monitoring and timely action in naturalization cases is essential to ensure proper handling and minimize litigation risk.

(j) Controlled Application Review and Resolution Program (CARRP) Cases.

This Chapter 10.24 in no way replaces the current CARRP guidance. Cases dealing with national security concerns must follow current CARRP guidelines.⁵

(k) Cases on hold based on Terrorist-Related Inadmissibility Grounds (TRIG) Material Support.

(b)(7)(e)



(l) Applications, Petitions, or Other Requests Involving an Internal Administrative Investigation.

The DD may authorize withholding of adjudication under 8 CFR § 103.2(b)(18) for a case which is subject to an administrative investigation conducted by USCIS on a case-by-case basis if the requirements of this AFM chapter have been met.

NOTES:

¹ 8 CFR §103.2(b)(18) as corrected refers to USCIS. For purposes of this guidance USCIS means, District Directors, and also Regional Directors, National Benefits Center Director, Service Center Directors, Asylum Office Directors or the officials as may be designated by USCIS Headquarters management.

² Both herein referred to as "USCIS Officers" for purposes of relaying a request for Withholding of Adjudication to a DD under 8 CFR § 103.2(b)(18).

³ The DD, in consultation with local counsel, may withhold adjudication as a matter of discretion even in cases where 8 CFR § 103.2(b)(18) is not applicable.