



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

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Department of Homeland Security
U.S. Citizenship and Immigration Services Office of the Director
20 Massachusetts Avenue, NW Washington, DC 20529-2140

Submitted via e-mail: USCISPolicyManual@uscis.dhs.gov

Re: AILA Feedback on Family Immigration Adjudication, USCIS Policy Manual, Volume 6, Part B, Chapters 1-5

To Whom it May Concern:

The American Immigration Lawyers Association (AILA) submits the following comment in response to updated USCIS new guidance on family-based immigration petitions, effective August 1, 2025, that also consolidated prior instructions from the Adjudicator's Field Manual (AFM) Chapters 21.1(a) and 21.2 and related memoranda into the [Policy Manual, Volume 6 Part B, Chapters 1-5](#).

AILA is a voluntary bar association of more than 18,000 immigration law professionals practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

AILA is troubled by the agency's decision to introduce policy changes that will lead to applicants not applying for immigration benefits to which they are entitled or will submit bona fide applications at risk of deportation hearings. Some of the changes made do not further the policy update's stated goal of preventing fraudulent or frivolous applications.

Below are the changes USCIS has introduced and our comments on the changes.

1. AILA Appreciates the Consolidation and Clarification of Guidance into one place in the USCIS Policy Manual, but We Request Further Transparency.

Previously, guidance was dispersed across the Adjudicators Field Manual (AFM), legacy memoranda, and operational manuals, leading to inconsistent adjudication. USCIS now consolidates these rules into the [Policy Manual](#) creating a single source for adjudicators and practitioners. This will be helpful to our members and clients. We support consolidation for transparency and uniformity.

However, we urge USCIS to ensure that the Policy Manual continues to be updated in consultation with stakeholders, so consolidation does not inadvertently codify restrictive interpretations or eliminate officer discretion needed to address humanitarian concerns. In addition, going forward, for all policy updates, we would appreciate a redline version so that our members can more easily compare the old policy with the new policy updates. Alternatively, please keep the old policy online and do not delete it from the USCIS website so that it can be compared to the update.

2. While the Update Clarifies Documentation and Eligibility Standards, Documentation Requirements Should be More Flexible.

USCIS states that documentation requirements varied depending on field office practices and officer interpretation requiring this policy update to provide clearer descriptions of category requirements and required evidence for each. While AILA welcomes the greater clarity, USCIS should incorporate more flexibility for alternative evidence to protect equitable access, especially for applicants from marginalized communities who may lack traditional forms of documentation (e.g., refugees, low-income families, or those separated by conflict).

3. Although USCIS Clarifies Who Can Now File Petitions Directly at US Consulates Abroad, We Encourage Further Expansion for Other Situations.

This USCIS policy manual update aims to clarify who can file I-130s directly at US Consulates abroad. However, the list of potential cases should be expanded. As written, the new policy specifies that consulates can accept petitions in their discretion and if “clearly approvable.” Examples given for exceptional circumstances include military emergencies (e.g., abrupt deployment), medical emergencies, threats to personal safety, short notice job relocations, adoptions with full, final decrees and two-year custody. Examples of blanket authorization include certain groups such as US military service members, and families affected by widespread emergencies like natural disasters and civil strife.

AILA commends USCIS for codifying this important pathway. Formalizing DOS authority for direct adjudication in select cases increases efficiency and reduces unnecessary delays in non-fraudulent, family-based filings. However, we encourage the list of potential cases to accept at consulates abroad to include humanitarian emergencies, or urgent family unification needs, beyond the narrow categories listed to better serve vulnerable families. In addition, we encourage expanding the list to permit U.S. citizens returning to the U.S. to file with the consulate. With the long waits for approved I-130, it is difficult for U.S. citizens to plan a return to the U.S.

4. AILA Objects to Some of the New Guidance explaining when USCIS routes an approved petition to the DOS National Visa Center.

AILA is concerned about USCIS’s discussion to transfer an approved I-130, particularly when USCIS determines that the beneficiary is ineligible to file an adjustment of status application or if it is unclear in the I-130 whether the beneficiary will be seeking adjustment of status or an immigrant visa. [PM, Volume 6, Part B, Chapter 5\(C\)\(1\)](#). Under prior practice, when USCIS approved an I-130 (or comparable family-based immigrant petition), USCIS would often retain

the case for adjustment of status (if the beneficiary was in the U.S.) rather than forwarding the case to the NVC. The new guidance emphasizes that in certain circumstances — especially if USCIS determines the beneficiary is ineligible for adjustment of status — USCIS will forward the approved petition to the NVC rather than retaining it.

Although the changes are largely internal processes regarding petition routing, they may have significant practical consequences for certain applicants. For example, if USCIS routes approved petitions to the NVC for consular processing whenever they determine a beneficiary is ineligible (or possibly ineligible) to adjust status, that may force individuals who believed they were eligible to adjust to have to leave the U.S. and undergo consular processing abroad, with all the attendant risks (possible need for waivers, incur travel expenses, be exposed to potential visa denial, experience family separation, and/or face difficult country conditions. This undermines family unity and places burdens on people who had reasonably filed for adjustment, especially in ambiguous cases or where eligibility is contestable.

Re-routing petitions between USCIS and the NVC can create more bureaucratic delays in transfer, loss of records, coordination between agencies, or miscommunication that can lead to inefficiencies and even lost files. The USCIS Ombudsman, for example, has previously [raised concerns](#) about misrouting (i.e., approved petitions going to the wrong place) and the need for interagency coordination, better form design, and mechanisms for petitioners or beneficiaries to request transfers. This change will exacerbate these issues, imposing more administrative burdens on applicants (e.g. needing to file additional forms like an I-824, or having to follow up to correct misroutings).

- a. If USCIS has discretion to reroute petitions (especially in ambiguous cases) based on internal criteria and their discretion, applicants may have less predictability about whether their case will stay with USCIS or be forwarded to the NVC. This uncertainty makes planning (travel, timing, legal strategies) more difficult. Beneficiaries deserve clear notice of when their case is being rerouted, opportunities to contest that decision, and clarity in criteria — not just internal discretion.
- b. Those with fewer resources might be more vulnerable to surprises or mismatches in expectations. This raises the risk that cases from underrepresented or marginalized populations might disproportionately be routed to the NVC raising equity concerns where burdens and risks are higher.
- c. If USCIS unilaterally routes an approved I-130 to the NVC, it might raise questions about whether beneficiaries (or petitioners) have adequate notice or opportunity to respond to the findings that trigger rerouting. If USCIS “becomes aware” of new disqualifying information, there needs to be a procedural mechanism or safeguard to contest or rebut it before the routing occurs. In some cases, USCIS might use the threat of rerouting to push applicants into less favorable paths that could undermine an applicant’s ability to insist on adjustment when legitimate.

- d. Some immigrants are in particularly tricky situations (e.g. humanitarian, asylum, U-visa/T-visa based, special immigrant categories). For these, the interplay of inadmissibility, exceptions, discretionary factors, and adjustment eligibility is complex. If routing decisions are based on superficial or incomplete assessments of eligibility, those with nuanced or borderline cases may suffer.
 - a. For example, a beneficiary might be technically ineligible under one ground but may have waiver possibilities or discretionary equities that would support adjustment; premature routing to the NVC might undercut those possibilities or complicate waivers.
- e. Some countries have consulates that are more backlogged or have communication issues, or they have higher visa denial rates (due to security/lack of documentation, country conditions, etc.). Forcing more cases into consular processing increases the risks for beneficiaries who might otherwise have been able to adjust status safely inside the U.S.
- i. If people believe that filing an I-130 for adjustment is riskier (because of possible rerouting to the NVC), some might be discouraged from filing in the first place or might delay filing, particularly in borderline cases—leading to less use of lawful pathways.

In sum, the key issue is whether USCIS policy to unilaterally decide to route a case to the NVC is implemented fairly, with adequate notice, transparency, and procedural checks, and whether its disproportionately burdens vulnerable immigrants.

5. Clarification of How Officers Consider Multiple and Related Petitions Should Not Disadvantage Families Who are Required by Statute to File Multiple Petitions or by Statute May File Multiple Petitions.

This policy manual guidance updates how USCIS officers are to consider multiple I-130s for the same beneficiary and same preference categories where both are approved, there is a subsequent reinstatement approval, and/or a prior petition is reaffirmed. While clarification may improve predictability, we caution against interpretations that could disadvantage families who must file multiple petitions due to the statutory framework (e.g., parents petitioning separately for multiple children). USCIS should ensure that efficiency and family unity guide adjudication of related petitions.

6. The Policy Update on Interview Requirements Should not be Rigid and Should Preserve Officer Discretion to Waive Interviews.

The policy update purports to update and clarify the criteria for when family-based cases should be interviewed since these differed by officer and office. The new criteria for requiring an interview include:

- An application lacks critical evidence or raises questions about the authenticity of a marriage.
- There are material inconsistencies or derogatory information.
- One or both spouses were under age 16 at the time of marriage.

- One spouse was 16 or 17, and the other was at least 10 years older at marriage.
- Documentary evidence is insufficient even after a Request for Evidence (RFE) or Notice of Intent to Deny (NOID).
- Officer needs testimony to resolve credibility issues post-RFE or NOID.
- The petitioner previously filed a spousal petition for another beneficiary.
- The petitioner or beneficiary was involved in a prior denied, revoked, terminated, or withdrawn spousal petition.
- The petitioner obtained permanent residence via marriage less than 5 years prior to filing for the current beneficiary.
- When the marriage occurred while the beneficiary was in removal proceedings.
- If, following an initial interview, it is determined that the bona fides of the marriage are in question.

We are encouraged to see USCIS setting a goal to standardize interview requirements. Our members can benefit from predictable criteria so that they can adequately advise their clients what to expect. However, we are equally concerned that setting such rigid criteria risks unnecessary delays and backlogs. We recommend USCIS preserve officer discretion to waive interviews in low-risk cases (e.g., clear, bona fide marriages or other family relationships with extensive documentary evidence) to promote efficiency and reduce burdens on both applicants and the agency.

7. AILA Strongly Opposes the Shift Toward USCIS Being a Law Enforcement Agency Rather than a Benefits Granting Agency with the Expansion of NTA Authority.

As USCIS notes in the policy update, Notices to Appear (NTAs) rarely issued post-petition approval with ICE primarily handling enforcement. The new policy states USCIS explicitly retains authority to issue NTAs against beneficiaries, even after petition approval.

Reports from our members indicate that NTAs are being issued to beneficiaries of approved I130s (and I140s) for people who, while being in unlawful status, are still eligible to adjust status pursuant to INA §245(i), §256(k), and §245(a). In addition, those eligible to file I-601(a) unlawful presence waivers are also receiving NTAs which, if removed, negates the ability to utilize the I-601(a) waiver. In addition, if they are not approved, it adds to the immigration court's docket when they seek voluntary departure. Furthermore, filing NTAs to pretermitt USCIS jurisdiction wastes the resources of EOIR that has millions of cases in its backlog.

We are deeply concerned about this shift. Delegating broader enforcement to USCIS undermines trust in the adjudication process, creates a chilling effect on applicants who are entitled to apply for statutorily authorized benefits, and disrupts the principle that USCIS should serve as a benefits-granting agency distinct from enforcement. Families who come forward in good faith risk separation at their interviews, including spouses of U.S. citizens and long-time residents with pending adjustment applications. This policy disproportionately harms vulnerable groups, including those who fell out of status due to USCIS delays or backlogs. We strongly urge USCIS to limit NTA issuance to cases involving clear fraud or public safety threats.

Conclusion

While we support the consolidation of policy guidance and clearer articulation of filing procedures, we urge USCIS to address the unintended negative consequences of heightened enforcement authority, inflexible evidentiary standards, and rigid interview requirements. Policies governing family-based immigration should reflect the central Congressional statutory goal of family unity and avoid transforming benefits adjudication into a vehicle for enforcement.

We respectfully request USCIS to amend the policy to:

- Limit NTA issuance to fraud or national security cases,
- Provide flexible evidentiary standards that account for diverse family circumstances,
- Expand direct consular filing to humanitarian cases and returning U.S. citizens, and
- Preserve discretion for interview waivers to reduce backlogs.
- Include stakeholders in making policy updates
- Preserve old policies online (or issue red-line versions) to make it easier to compare with new policy changes.

AILA stands ready to work with USCIS to ensure fair, efficient, and humane implementation of family-based immigration policies.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION