

Integrity Measures in the Asylum Process

Integrity Measures in the Affirmative Asylum Process¹

Some of the key measures that the USCIS Asylum Division uses to prevent abuse of the asylum system include:

Mandatory Biographical Checks (Checks Using the Applicant's Name, Date of Birth, and Aliases): These include checks in USCIS Central Index System; CBP TECS; ICE ENFORCE Alien Removal Module; FBI Name Checks; and DOS Consular Consolidated Database. Mandatory biographical checks are conducted in multiple databases, using the applicant's name, date of birth, and aliases.

- **USCIS Central Index System:** In conducting background screenings, asylum applicants are first checked against the USCIS Central Index System to determine if they have previously been issued an alien number.
- **TECS:** They are also screened against TECS, CBP's primary law enforcement and national security database, which contains enforcement, inspection, and intelligence records. TECS contains various types of information from a variety of Federal, state, local, and foreign sources, and the database contains records pertaining to known or suspected terrorists, wanted persons, and persons of interest for law enforcement and counterterrorism purposes.
- **EARM – ENFORCE Alien Removal Module:** This ICE database contains records of aliens in detention, exclusion, and removal processes.
- **FBI name check:** The FBI searches for the applicant's name(s) and date(s) of birth in their records.
- **CCD – Consular Consolidated Database:** Asylum office personnel access the Department of State's web-based CCD to obtain information about the identity, previous travel history, method of entry into the U.S. and/or background of an asylum applicant.

Mandatory Biometric Checks (Checks Using the Applicant's Fingerprints and Photograph): These checks include FBI fingerprint check, US-VISIT/IDENT, and DOD/ABIS vetting for certain applicants.

- **FBI Fingerprint Checks:** With respect to affirmative asylum applications, as described in DHS's testimony from December 2013: "A USCIS Application Support Center takes a complete set of fingerprints and biometrics (signature, photograph and index print) of asylum applicants between the ages of 12 years 9 months and 79 years. The FBI electronically searches the fingerprints within the Integrated Automated Fingerprint

¹ See Department of Homeland Security (DHS), Combined Testimony of DHS before the House Judiciary Homeland Security Committee for a hearing on "Asylum Abuse: Is it Overwhelming Our Borders" (December 12, 2013) *available at* http://judiciary.house.gov/_cache/files/e9043d83-e429-4d21-9621-c681c6499251/combined-dhs-testimony.pdf; fact sheet from U.S. Citizenship and Immigration Services (USCIS) on file with Human Rights First; USCIS, Affirmative Asylum Procedures Manual (November 2013) *available at* http://www.uscis.gov/sites/default/files/files/nativedocuments/Asylum_Procedures_Manual_2013.pdf.

Identification System.” Asylum officers and immigration judges are not authorized to grant asylum until the applicant’s fingerprints have been run through the FBI database and the results are received and reviewed.

- **US-VISIT/IDENT:** US-VISIT/IDENT is a DHS system managed by the National Protection and Programs Directorate’s (NPPD) Office of Biometric Identity Management (OBIM), and includes biometric information related to the travel history of foreign nationals and Watchlist information. It also contains visa application information owned by the Department of State. This system is used to confirm identity, determine previous interactions with government officials and detect imposters. The 10 fingerprints – referenced above in connection with the FBI fingerprint check - are also electronically submitted to the US-VISIT/IDENT database, where they are stored and matched to existing fingerprint records. This system is used to confirm identity and determine previous interactions with government officials. Through the US-VISIT SIT tool, asylum officers have the ability to verify that the person who went to the Application Support Center (ASC) for fingerprinting is the same person appearing at the asylum office for interview.
- **DOD Automated Biometric Identification System:** A biometric check against the Department of Defense (DOD) Automated Biometric Identification System (ABIS) is conducted for certain cases.
- **National Counterterrorism Center:** The Asylum Division also screens the biographic information of new asylum applicants against the National Counterterrorism Center’s terrorism holdings.

For protection requests that enter the system through the credible fear process, the DHS testimony explains that USCIS Asylum Officers conduct a mandatory check of both TECS (described above) and US-VISIT/IDENT (referenced above) during the credible fear process. These checks help to confirm identity and inform lines of questioning. In addition, with respect to cases that enter the system through the credible fear process, asylum officers – at the credible fear stage - also ensure that the Federal Bureau of Investigation (FBI) name check and fingerprint checks have been initiated. DHS, in its December testimony, stated that “The USCIS asylum officer’s determination as well as information on the individual’s identity, including how he or she established it, results of the security checks, and any adverse information is recorded and placed in the alien’s file upon completion of the credible fear process. This information is then provided to ICE.” As a result, ICE will have this information with respect to individuals who pass the credible fear screening process and are put into immigration court removal proceedings and to consider in detention determinations.

Fraud Detection and National Security Teams

USCIS’s Office of Fraud Detection and National Security aids in identifying fraudulent asylum claims by training asylum officers and providing technical support. Through this office, asylum officers may refer suspected fraudulent applications to ICE for criminal investigation and prosecution. These specially trained officers review asylum files to monitor the asylum caseload for fraud and they liaise with various law enforcement entities. These officers also help train asylum officers on detecting and addressing fraud. The FDNS officers also conduct in-depth vetting on cases with national security concerns. This includes liaising with local Joint Terrorism Task Forces regarding these cases. Asylum Offices also have on their staff trained document experts, Forensic Document Laboratory Certified Document Instructors (FDLCDIs), who have been trained by the Department of Homeland Security’s Forensic Document Laboratory. FDLCDIs examine for fraud documents submitted to the Asylum Office by asylum applicants and train Asylum Office staff on how to recognize certain documents for irregularities and fraud indicators.

Asylum Officer Training and Mandatory Supervisory Review of all Asylum Decisions

Affirmative asylum interviews and credible fear interviews are conducted by specially trained USCIS asylum officers who are trained and dedicated full-time to the adjudication or screening of protection claims. They are, as DHS has explained in recent testimony, extensively trained in national security issues, the security and law enforcement background check process, eligibility criteria, country conditions, interview techniques, making proper credibility determinations, and fraud detection. During an asylum interview, “The asylum officer fully explores the applicant’s persecution claim, considers country of origin information and other relevant evidence, assesses the applicant’s

credibility and completes required security and background checks. The asylum officer then determines whether the individual is eligible for asylum and drafts a decision.” Supervisors review 100 percent of asylum officers’ determinations prior to issuance of a final decision, and they also review 100 percent of credible fear determinations.

Government-Funded Interpreter Monitors

Current regulations require that asylum applicants provide interpreters at their own expense when they cannot proceed effectively in English at the asylum interview. The Asylum Division uses neutral, government-funded interpreters to monitor the interpretation of asylum interviews at all Asylum Offices, in order to ensure that interpreters brought by applicants are correctly interpreting interview questions and answers. Procedures for securing an interpreter monitor apply in all affirmative asylum cases where the applicant does not speak English. When cases are referred from the USCIS Asylum office into the immigration courts, the information used by the asylum office to make a determination on the individual’s claim, including the interview notes, biographic information, completed security checks and decisional documents, is placed into the individual’s file and is available for use by ICE attorneys during immigration court removal proceedings.

Applicants Who Knowingly Make a Frivolous Application Permanently Barred

INA 208(d)(6) provides that “If the Attorney General determines that an alien has knowingly made a frivolous application for asylum, the alien shall be permanently ineligible for any benefits under the Act.”

Asylum Applications Signed Under Penalty of Perjury

When the legacy Immigration and Naturalization Service (INS) overhauled the asylum system in 1995, it revised the asylum application form to require both the asylum applicant and the individual preparing the application to sign the application “under penalty of perjury” that the application and the evidence submitted with it are true and correct. In addition, the asylum applicant is put under oath at the Asylum Office interview, and must execute a record of that oath. The interpreter must also be placed under oath and execute a record of oath as well.

Fraudulent Filers, Preparers, and Attorneys Can Be Prosecuted

Individuals who seek to defraud the immigration and asylum system can be and have been prosecuted. Unscrupulous “notarios” and attorneys take advantage of immigrants by untruthfully telling them they are eligible for certain benefits and then preparing fraudulent applications – including asylum applications – for large fees. To facilitate prosecution of fraudulent filers, USCIS is a member of the Immigration and Customs Enforcement’s (ICE) Document and Benefit Fraud Task Force, which coordinates with U.S. Attorney’s Offices to identify and prosecute fraudulent immigration benefit claims. Charges have been brought against such preparers in many states, including California, New York, Texas, Florida, and Arizona. On June 9, 2011 the Federal Trade Commission with the Departments of Justice and Homeland Security announced a multi-agency, nationwide initiative to combat immigration services scams.

Identification and Response to Fraud and Abuse in the Immigration Court System

As noted in this backgrounder, asylum applicants can only be granted asylum if the identity of the applicant has been checked against all appropriate records or databases. EOIR also has a Fraud Program designed to assist court judges and staff with identifying fraudulent cases and systemic evidence of schemes to defraud the system. In addition, ICE trial attorneys are charged with identifying potential fraud. In cases before the immigration court, where ICE trial attorneys may present evidence if the government suspects fraud, Immigration Judges have the authority to find a case fraudulent or frivolous, a finding that comes with severe consequences for the applicant.

In addition, as described by EOIR Director Juan Osuna in November 2013 testimony before the House Committee on Oversight & Government Reform Subcommittee on National Security: “EOIR has a robust and active program for identifying and referring claims of fraud encountered by immigration judges and the BIA...The complaints and requests for assistance the Fraud and Abuse Program receives each year are almost evenly divided between

unauthorized practice of immigration law (UPIIL) complaints and fraudulent claims perpetrated against the government.” That testimony also stated that: “Because EOIR has no authority to conduct investigations or prosecute, UPIIL complaints are referred to federal, state and local law enforcement, and bar associations for investigation and prosecution. EOIR also files complaints of UPIIL fraud with the Federal Trade Commission’s Consumer Sentinel Network (Sentinel) and collaborates with USCIS’s Fraud Detection and National Security Directorate and other government agencies in combating fraudulent immigration activity. EOIR consistently is among the top-ranked government agencies in referring UPIIL fraud to Sentinel.” EOIR also regulates the professional conduct of immigration attorneys and representatives, EOIR’s Disciplinary Counsel investigates complaints involving alleged misconduct associated and can initiate formal disciplinary proceedings. Since the program’s inception in 2000, EOIR reports that it has disciplined more than 1,100 attorneys.²

² See Department of Justice, Testimony of Juan Osuna, Director, Executive Office of Immigration Review before the House Government Oversight and Reform Committee Subcommittee on National Security hearing on “Border Security Oversight, Part III, Border Crossing Cards and B1/B2 Visas” (November 14, 2013) *available at* <http://oversight.house.gov/wp-content/uploads/2013/11/DOJ-Juan-Osuna-Testimony.pdf>.