



Seattle
Office of Immigrant and
Refugee Affairs
Hamdi Mohamed, Interim Director

Submitted via www.regulations.gov

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Samantha Deshommies
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
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RE: Interim Final Rule by the Department of Homeland Security (DHS) and the Department of Justice (DOJ) entitled “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers” (DHS Docket No. USCIS-2021-0012, March 29, 2022)

Dear Division Chief Deshommies:

The City of Seattle Office of Immigrant Refugee Affairs (OIRA) submits this comment to the interim final rule that would allow individuals applying for asylum, withholding of removal under INA 241 (b)(3), or protection under the Convention Against Torture (CAT) to have their claims adjudicated by an asylum officer within U.S. Citizenship and Immigration Services (“USCIS”). While this rule would make the adjudication process more efficient and streamlined, OIRA has significant concerns about the due process rights of asylum seekers in proceedings under this new rule. As a Welcoming City that respects and upholds the American value of welcoming immigrants, OIRA lauds the improvements made to the initial proposed version of the rule. However, we urge the Biden administration to revise other provisions that threaten due process, the accuracy of adjudications, and access to fair asylum hearings.

- 1) OIRA welcomes the following provisions of the final interim rule, including improvements made to the initial proposed version of the rule:**

- Giving USCIS asylum officers the authority to adjudicate asylum, withholding of removal, and CAT cases while relieving the current strain and backlog on the Immigration Court system.
- Determining whether an applicant qualifies for a grant of asylum using the non-adversarial USCIS process of an interview, and not through an adversarial courtroom process where the applicants must defend themselves or be cross-examined by a “prosecutor” or DHS attorney.
- Eliminating the requirement of filing a defensive asylum application on Form I-589 for people who pass a credible fear interview.
- Closing a loophole exploited by the previous administration to allow U.S. Customs and Border Protection patrol agents to conduct credible fear interviews, rather than trained USCIS asylum officers. The new rule ensures that migrants’ asylum claims are heard by a trained and knowledgeable USCIS officer who is well-versed in U.S. asylum law.
- Preserving requests for reconsideration of erroneous negative credible fear determinations.
- Preserving guarantee of judicial review by offering access to removal proceedings in immigration court for individuals denied asylum, withholding of removal, and/or protection under CAT by a USCIS asylum officer and their right to present evidence during immigration court hearings.

2) The City of Seattle OIRA urges the Biden administration to revise some of the provisions that threaten due process, the accuracy of adjudications, and access to fair asylum hearings.

- The rule imposes unrealistic timelines that risk rushing cases through adjudication procedures without sufficient time to secure legal representation and to gather and submit necessary evidence given the highly complex and onerous requirements of U.S. immigration law. **These timelines should be revised to allow sufficient time to prepare a case and find legal representation.**
- The rule significantly restricts asylum office reconsideration of credible fear denials by barring asylum-seekers from requesting reconsideration more than seven days after an erroneous decision is affirmed by an immigration judge and limiting asylum-seekers to only one request for reconsideration. **Asylum-seekers should have reasonable opportunity to request reconsideration of credible fear denials.**

- Given that the affirmative asylum backlog at USCIS is nearly 432,000 cases¹ the addition of tens of thousands of new cases from the credible fear interview process will undoubtedly increase delays within the USCIS Asylum Division. Given the urgent need to hire thousands of asylum officers, as well as the historic difficulty of staffing the agency and the immigration courts, **this rule can only be functional if it is accompanied by significant resources allocated to effectively administer the asylum system to vulnerable migrants.**

Because the outcome of asylum cases can often mean the difference between life and death for individuals and families, OIRA is urging the Biden Administration to reexamine this rule and work to ensure that the accurate adjudication of cases of unrepresented, vulnerable asylum seekers is not sacrificed in the interest of speed. Peoples' lives should never be sacrificed for efficiency.

Sincerely,



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¹ See <https://trac.syr.edu/phptools/immigration/asylumb/>