



## **February 26, 2014 ZAR Stakeholder Engagement Meeting Minutes**

### **1. ZAR Leadership and Staffing Updates**

*Could ZAR provide us with information, names, titles, or any kind of update regarding current leadership? We would be very excited to learn about (and meet) any new staff (including Director, Deputy Director, Supervisors, or asylum officers).*

Jedidah M. Hussey (“Jeddy”) became the Director of the Arlington Asylum Office on February 10, 2013. Jeddy joined the Arlington Asylum Office from the USCIS Office of Human Capital and Training where she was the Chief of the Training and Career Development Division (TCDD). As Chief of TCDD, Jeddy led development of USCIS training policies, managed its corporate training programs, and created mechanisms to support employee career development and the growing USCIS cadre of learning and development professionals. Prior to her position with TCDD, Jeddy held a range of positions within the Refugee, Asylum and International Operations Directorate, including service for several years as the Deputy Chief of the Asylum Division.

Jeddy holds a BS in Russian Language, an MA in Russian and East European Studies and a J.D. from Georgetown University. She joined the legacy INS Office of International Affairs in 1997 through the Presidential Management Fellow (PMF) Program. Upon completion of her Fellowship in September 1999, Jeddy became an asylum officer with the Asylum Division where she had various responsibilities including conducting country conditions research, authoring training materials and delivering training courses, developing legal guidance on the adjudication of asylum cases, and conducting quality assurance review of asylum cases. In October 2005 she became a Branch Chief within the Asylum Division and served as the Chief of the Asylum Division's Training, Research, and Quality Branch. After serving as the Acting Deputy Chief for several months beginning in January 2008, she was formally named to the position in March of that year. From March 2007 through April 2009, Jeddy served as the Chair of the Asylum and Refugee Working Group of the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC) based out of Geneva, Switzerland where she facilitated the sharing of best practices and examination of emerging issues related to asylum processing confronting the 17 participating states.

In addition to our new Director, ZAR is currently recruiting for the Deputy Director position and hopes to be able to announce who was selected at the next meeting. There have been no changes to the Supervisory team recently. ZAR is authorized for 32 Asylum Officers and may receive a 33<sup>rd</sup> position. Currently there are 26 officers on board, with more officers assigned to the affirmative schedule than the APSO schedule. This includes a number of newer Asylum Officers in training. Five additional Officers have been selected. The vacancy for the remaining Asylum Officer position will be posted soon.

*Can you please provide the name of a NACARA Supervisor and NACARA officer, including email addresses for electronic inquiries?*

The current NACARA coordinator for ZAR is Supervisory Asylum Officer Dimitris Komis. NACARA inquiries can be submitted through the normal inquiry mechanisms (fax, e-mail, mail, or in-person visit) and will be routed appropriately.

## **2. Backlog Status**

*Can you provide an update on the current state of the backlog? How “far back” chronologically has ZAR been able to work the case load? Are all new receipts now being scheduled for interview, or only a portion of them (as we understand has been the case over the past few months)?*

Currently there are 1,904 cases waiting to be scheduled for interviews. ZAR receives about 75 applications a week and conducts around 55 to 65 interviews a week. ZAR’s goal is to conduct 75 interviews a week by the end of March, though this may not be feasible; at the least, we anticipate having a better sense of when we will be able to become current on new filings and begin to work on the backlog. There are also 501 cases pending interview scheduling in ATZ.

The last in, first out, methodology helped the Asylum Division climb out the last backlog, and the same methodology will be applied in this situation. Accordingly, ZAR is interviewing mostly recently filed cases, as well as occasional reinterviews or refilings. While some cases will be in the backlog for some time, we are seeking to minimize that number.

There was a follow-up question asked at the meeting regarding credible and reasonable fear cases and if we continue to receive a high volume of them. They are still one of the drivers of the backlog and continue to be a priority, particularly detained cases. The number of ZAR’s receipts has become more stable, though if it spikes again the current affirmative schedule will be impacted. However, this stability is not necessarily the case nationwide, so we continue to assist other offices with their workload. ZAR must also work down its non-detained credible and reasonable fear cases before more officers can be put on the affirmative schedule.

*For asylum applicants who have filed their cases, but who are stuck in the backlog, can they withdraw their cases and re-file (assuming no one-year bar or EAD issue)?*

As per page 87 and 88 of the Affirmative Asylum Procedures Manual (available publicly [here](#)), an applicant may withdraw their affirmative asylum application at any time prior to the issuance of a decision. This decision is the applicant's alone. We do not have the authority to permit or deny an applicant the right to withdraw. While withdrawals are an administrative burden that diverts resources away from adjudications, an applicant's intent to withdraw is not questioned.

For applicants who are out-of-status and choose to withdraw, it is standard practice that they will be served a Notice to Appear. For applicants who are in-status and choose to withdraw, their cases will be administratively closed. For applicants who are out of status but have left the country, their case will also be administratively closed if there is proof that they are no longer in the United States.

There was a follow-up question asked at the meeting about how an Asylum Officer would look at the act of withdrawing and then refile, even if they knew it was for the purpose of being scheduled for an interview. While this would be determined on a case-by-case basis, withdrawing from the process when the applicant has employment authorization and knows they can eventually receive protection may raise some questions for the Officer.

### **3. Interview Scheduling**

*Is ZAR still using the Short Notice List for cases that were placed in the backlog but are ready for interview? If the attorney of record made a request 30 days or more ago to be placed on the list and have not heard from ZAR yet, what should be our next step?*

ZAR is still using the Short Notice list, although it is not being used often because there have been fairly few requests to reschedule. If you have a case that has been on the Short Notice List for more than 30 days, please feel free to e-mail [ZARRescheduleRequest@USCIS.DHS.gov](mailto:ZARRescheduleRequest@USCIS.DHS.gov) to confirm that the case is still on the list. When an interview slot becomes open on short notice, individuals on the list will be contacted in the order their case was added to the list, with the cases on the list the longest receiving first contact.

*We received a phone call from ZAR indicating that a computer problem caused interview notices not to be sent out. We did not get to come to the interview as initially scheduled. When will a second interview be scheduled? Thank you!*

We have not rescheduled any cases that were due to be interviewed on the day that interview notices weren't sent out; these cases are currently pending interview rescheduling. Unfortunately we can't provide a timeframe as to when they might be scheduled for an interview, though they will be scheduled as soon as resources permit. We understand this was a disappointment for the applicants who were scheduled to appear on that day. The employment authorization clocks of the affected applicants continue to run.

*The applicant's petition was filed on 11/29/13 and the interview was scheduled for 1/8/14. Counsel was forced to ask for a postponement because of a schedule conflict and*

*expressed a willingness to be put on the “Short Notice” interview list. The interview has yet to be rescheduled. Three questions:*

- 1. When an applicant requests postponement of an interview, is rescheduling of the interview given any sort of priority, or does the applicant “move to the bottom of the list?”*
- 2. Are requests to be placed on the “Short Notice” interview list appropriate when an applicant has been forced to reschedule an interview -- and will they be honored, if practicable?*
- 3. Is ZAR still experiencing a backlog of interviews that might be contributing to difficulties in rescheduling postponed interviews?*

1. No, when an applicant requests that an interview be postponed, they do not receive any sort of priority when it comes to rescheduling the interview.
2. Yes, you may request to have a case placed on the Short Notice List regardless of whether the previous interview was cancelled. Cancellation of the interview does not impact the order in which cases on the Short Notice List are called.
3. Yes. For more information about the backlog, please see page two of these meeting minutes.

*When will ZAR schedule interviews in Atlanta?*

ZAR has recently started conducting interviews in Atlanta for this fiscal year and hopes to establish a regular presence. Two officers traveled to Atlanta in February, though unfortunately the office was closed most of the week due to inclement weather. We plan to send two officers to Atlanta for two weeks at a time every month or every other month as resources permit. The next circuit ride is scheduled for the weeks of April 21 through May 2. There are also plans to conduct additional circuit rides in May, June, July, and August.

Additionally, we had previously scheduled a NACARA circuit ride for February, though it was cancelled due to officer sickness. It was rescheduled to the week of March 17.

#### **4. Inquiry Processes**

*Is it possible to designate someone at ZAR that will be responsive to the liaison committee and assist in resolving certain urgent questions? With the recognition that ZAR is busier than ever, we would like to work with you to set up a workable procedure. Is it possible to agree on some criteria that would elevate a small number of questions to an agreed upon “urgent” group? In other words, for an attorney to get their inquiry placed into this “urgent” group, the inquiry must have been submitted to the public box, the attorney must have waited 21 days for a response, and then waited for an agreed amount of time after the ZAR response for resolution. Would ZAR designate a point of contact and work with us to set up a procedure?*

We hear and understand your concerns and would like to take a look at the current inquiry process. We are interested in setting up a process for any member of the public to bring their urgent or compelling case to our attention. ZAR leadership is currently

considering various parts of the inquiry process, including who should respond to inquiries, sending initial responses to confirm receipt of the inquiry, and how long to wait for a response. We are also considering contacting the Customer Service and Public Engagement Directorate about making these stakeholder meetings more publicly accessible. In the interim, the applicant or attorney can use the standard methods of inquiry.

In regards to HQ review cases, ZAR would like everyone to be aware to the latest changes to case categories requiring Asylum Headquarters Review; these changes went into effect on January 27. You can find the memo detailing these changes on our [public website](#).

We appreciated the feedback provided at the meeting, as well as the offers to assist with the inquiry process by publicizing best practices. We look forward to briefing you on our progress as we look further into ZAR's inquiry-handling processes.

*What can be done when an asylum officer fails to make a decision on a case that has been interviewed and the attorney has submitted numerous inquiries?*

Please continue to submit inquiries about these cases through the normal inquiry processes (fax, e-mail, mail, and in-person) for the time being. It is in ZAR's interest, as well as the applicant's and representative's, to have these cases resolved. Please note we are no longer accepting phone inquiries as we cannot effectively verify the caller's identity.

If there is a case with some exigency around it (e.g., the applicant is homeless, the applicant is about to be deported and has not received a credible fear interview, there is an error in the decision) please bring it to ZAR's attention as soon as possible. If necessary, the inquirer can reach out to Jeddy or a supervisor directly.

*At the last meeting, we were told the goal for service of all mail out decisions was mailing within 16 days. Is this still what we should expect moving forward? If we do not receive a decision within 20 days (allowing for weekend and mail delays), should we sent an inquiry through the inquiry mailbox to check on the status of the decision?*

16 days is still the target for mail-out decisions. If you do not receive a decision on a case in the mail three weeks after the interview, please contact us. We will be able to tell you if the decision has been mailed or if the case will require additional review.

## **5. Security Screening and Front Window Procedures**

*A member reported that their client, who wears the hijab, beeped when she went through the metal detector at the Asylum office. The client was told to raise her pant legs to the knee, which she could not do in front of all the men there. Eventually she was allowed to stand behind the attorney while the guard observed her lower legs, but she was spoken to roughly and was very shaken. Later she was also told to remove her hijab for her photo. The attorney had to explain that she did not need to remove the head covering for the*

*photo. Is it possible to have some orientation that would help ZAR employees or contractors sensitively handle these situations?*

We are glad this case was brought to our attention. We have spoken to our guards and front window staff regarding the issues raised above. We will also reinforce our practices as new employees or contractors come on board.

Our security screening procedures do not require an applicant to reveal their skin. If an applicant sets off the detector, they may be asked to lift up pieces of clothing (for example, lifting a pant leg no further than the sock) if they are comfortable with doing so. If they are not, they may request to be screened privately in the restroom.

Applicants also do not have to remove their head covering for the pictures taken at the window, though the photo must capture their ears and as much of their forehead as possible. We are looking into acquiring a security screen so in these cases, the only person seeing the applicant's ears would be the USCIS employee checking them in.

If an applicant encounters any issues such as the ones raised above, please notify the Duty Supervisor immediately.

## **6. Syrian Application Processing**

*Does ZAR have a policy with regard to processing applications from Syria? Are they NOT prioritizing them in light of the TPS designation? One member's Syrian cases have been pending for more than ten months.*

We do not have any special procedures regarding applications filed by applicants from Syria. They are scheduled through the same mechanisms as cases filed by applicants from other nationalities and are in the same pool with every other applicant, regardless of the TPS designation. The majority of Syrian cases are in the backlog.

Please note that if an applicant from Syria has filed both an asylum application and an application for TPS, our office may not have the applicant's file at the time of the interview and will have to use a Temporary (T-) File. As per pages 64 and 65 of the Affirmative Asylum Procedures Manual (available publicly [here](#)), the Asylum Office may issue a Referral, Notice of Intent to Deny, Final Denial, or Recommended Approval or administratively close a case unless there are reasonable grounds for believing that information in the A-file would materially impact the decision. However, a grant may not be issued on a T-file except if the Asylum Office has made efforts to obtain the file and has been unable to do so for 90 days. Accordingly, adjudication of these cases may be delayed.

## **7. Motions to Reopen**

*An AILA member received a response to a motion to reopen. Under the section explaining the response, all nine boxes were checked. When ZAR issues a faulty response, what can be done?*

ZAR doesn't respond to motions to reopen or reconsider through an inquiry template. If you receive a template response to your motion to reopen or reconsider, please send an inquiry to make sure your motion has been received and is being reviewed appropriately. Please note that responses to motions are always drafted as letters specifically addressing aspects of the case in the motion, so you should not receive a standard inquiry response template.

We would be interested in following up with the attorney who received this response to review the response they received and ensure that their issue was resolved.

*A member received a referral notice and letter stating that if an applicant had been subjected to FGM, that would materially change her circumstances and rebut the regulatory presumption of future harm. That proposition was clearly overturned by precedential cases Matter of A-T, 24 I&N Dec. 617 (A.G. 2008) and Matter of A-T, 24 I&N Dec. 4 (BIA 2009). What can be done when a referral notice and response letter cite outdated and incorrect law?*

If you are concerned with a referral notice you received, the best way to bring it to our attention would be through a filing a motion. However, in these cases it should be a clear error that you are bringing to our attention. Differences in opinion as to an applicant's eligibility should be raised in front of the Immigration Judge.

## **8. Presence of Derivatives at Interviews**

*Must all derivative children go to the asylum office for a parent's interview (regardless of age) or is there some age below which it is OK for parents to just present the children's passports?*

As per the I-589 instructions, members of the applicant's family that are included in their application for asylum must also appear for the interview and bring any identity or travel documents they have in their possession. As per page 12 of the Affirmative Asylum Procedures Manual (available publicly [here](#)), an Asylum Officer must personally meet each dependent included on the application but may dismiss dependents to the waiting room at their discretion.

All applicants must appear and should bring identity documents. The Asylum Officer must meet each dependent and verify their identity. It's the AO's prerogative to interview anyone on the application, so every person included on the application should be prepared to be interviewed.

*Could you clarify ZAR's policy regarding derivatives who are in present in the United States and the interview process? Specifically, should spouses and children be present at the interview (we understand this to be always yes) and be prepared to be questioned (we understand this is sometimes yes and sometimes no)? For children, is there an age under which the children should not expect to be questioned? Should all adults expect to be questioned and have an interpreter present for this purpose? Any guidance you have would be much appreciated.*

As stated above, all dependents included on a principal applicant's application must appear at the Asylum Office for the interview. While older children and spouses may expect to be asked more questions than younger children, everyone on the application should be prepared to be questioned. If there is a language difference between the principal and one or more dependents, the dependents should bring an interpreter for the language they are most comfortable speaking.

## **9. ICE ERO Visits**

*Human Rights First ("HRF") reports that ICE ERO (or perhaps HSI) officers are visiting the homes of asylum seekers with pending I-589s in order to assess whether or not their asylum applications are "frivolous." We posed the following questions to ICE and they suggested we ask ZAR.*

- 1. When questioned about the purpose of this, HRF reports that ICE officers indicated that they are investigating at ZAR's request and that they are only interested in investigating affirmative applications before ZAR, but not court cases. Is this correct?*
- 2. Could you please tell us more about this initiative?*
- 3. What are the criteria for determining whether an application is frivolous?*
- 4. How often are these visits occurring?*
- 5. What is being done to safeguard the confidentiality of the applicants' claims?*

ZAR is not aware of any investigations of significant size that ICE ERO and HSI would undertake. Our officers would not be involved in an investigation as described as above. Furthermore, "frivolous" is a term of art and we do not make determinations on frivolity.

Generally speaking, ICE has the authority to conduct investigations. ZAR is involved when there is an investigation of asylum fraud. Investigation and prosecution are vital to protecting the integrity of the asylum process and ensuring that it is not seen as vulnerable. When ZAR is involved in investigations, we do emphasize confidentiality to our law enforcement partners. However, anyone inside DHS is not considered a third party for confidentiality purposes.

## **10. Jurisdiction for Cases Where the NTA was Never Filed**

*We continue to encounter cases where the applicant presented him/herself at a point of entry and was either a) paroled in without any CFI and no NTA was filed with an immigration court, or b) was given a CFI, passed it, and no NTA was ever filed with an immigration court. Per instruction, we filed these cases affirmatively and they were accepted by TSC/ZAR and then placed into the backlog. We have been patiently waiting for interview or placing ourselves on the short notice list when appropriate. Then, as of last week, we encountered a disturbing number of cases that suddenly had NTAs filed without any direct notice given to us of any kind (we learned by dialing all of our affirmative case A numbers into the EOIR system). In one instance, the client was ordered removed in absentia (when we thought that we were merely waiting for his interview to be scheduled out of the backlog).*

*Could you please clarify what the policy is for assuming jurisdiction in these cases? We are very concerned about this issue, as it is creating confusion, waste of resources, filing deadline and clock issues, as well as a challenge for us in recruitment of pro bono representation (i.e. the attorneys have no idea whether the case will be affirmative or defensive and are reluctant to take the case without that basic understanding).*

As per the minutes from the last meeting, if an applicant received a positive credible fear determination but the NTA was not served on the Court, please have them provide us with a copy of the determination and proof that they live within our jurisdiction. We will issue them a new NTA or make sure the old NTA is filed so they may proceed in the credible fear process.

If an applicant was served an I-860, Notice and Order of Expedited Removal, and then released from custody, they will become a non-detained expedited removal case. To be scheduled for a credible fear interview, they must ask their Deportation Officer to send us a referral. We will not have jurisdiction over their case until we have received a referral.

In both instances described above, it is not appropriate to file affirmatively, as the applicant is still in the expedited removal process and is not eligible to file affirmatively.

Regarding cases where NTAs are suddenly filed without any direct notice to the attorney, in credible fear cases attorneys do not receive a copy of the decision. Instead, the applicant is given two copies of the decision. It is possible that the cases received NTAs because the applicant had received a positive credible fear determination but the attorney was unaware because they did not receive a copy of the decision. However, it would be helpful to receive a list of A-numbers to gain a better sense of what may be happening.

## **11. FMLN/Arena Cases**

*In light of the exemption for Arena and FMLN members and supporters announced in the Federal Register on 4/24/2013, please advise how NACARA adjudications will be affected. Will the officers be able to approve applicants the day of the interview, or is more involved in these cases?*

These cases cannot be approved the day of the interview due to the need for the interviewing officer to make an exemption determination, which will require supervisory and quality assurance review. While the exemptions for the FMLN and ARENA have not been published on our public website yet, implementation memorandum for other groups and for situational exemptions are available [here](#) on USCIS.gov.

## **12. Interpreters for Affirmative, Credible Fear and Reasonable Fear Cases**

*Why do asylum seekers have the burden of providing their own translator when non-detained credible and reasonable fear applicants do not? And if CIS is paying a translator, why should the applicant be burdened to provide an interpreter when typically they do not have work authorization and limited resources to pay an interpreter?*

It is a long-standing regulatory requirement for affirmative applicants to provide their own interpreters. This requirement is an outgrowth of the I-589 being a free application in a fee-funded agency. While we have been able to use our current interpreter services contract to monitor interpreters so individuals may know if they are being poorly served by their interpreter and to deter possible fraud, the scope of this contract doesn't allow for the provision of interpreter services.

For individuals in the credible and reasonable fear process, the stakes are high because there is the chance they will be removed from the country. Therefore it is important to make sure that they receive quality interpretation, which they would have difficulty arranging while detained, hence the requirement for USCIS to provide interpreters for this applicant pool. Since we did not anticipate non-detained applicants would comprise enough of a workload to need separate requirements, they also receive interpreters.

### **13. Other Follow-Up Questions**

There was a follow-up question regarding social media and the standard procedure for being questioned about Facebook and Twitter. There is no standard protocol. Social media is now a standard way of communicating, so questioning about an applicant's social media activity may be relevant to the applicant's claim and credibility. However, the questioning should be related to the claim and not purely personal.

There was also a follow-up question about the effect on derivative asylees who are not from the same country as the principal applicant and travel to the country they have been granted derivative asylum from. We cannot speak for CBP, but a derivative asylee traveling to the country they have asylum from would not affect their asylee status, as it has already been granted and derives from their family member. However, it may raise questions (particularly if the applicant shares the characteristics for which their family member was persecuted) that could affect adjudication of travel documents and adjustment of status.

**The next meeting will take place on Wednesday, April 2, 2014, at 2:30pm.**