



July 20, 2018

CLIENT ADVISORY: USCIS EXPANDS AUTHORITY OF OFFICERS TO DENY FILINGS

Effective September 11, 2018, United States Citizenship and Immigration Services (USCIS) officers will have the power to deny a petition or application without first issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) if the initial submission lacks sufficient evidence to establish eligibility for the immigration benefit requested. The new policy replaces longstanding practice of issuing RFEs where there was at least the possibility that a deficiency could be cured by the submission of additional evidence. The new policy not only permits but encourages USCIS officers to deny petitions or applications even if deficiencies could have been cured with the issuance of an RFE.

What is a Request for Evidence (RFE)? What is a Notice of Intent to Deny (NOID)?

An RFE is written request issued by USCIS asking the petitioner or applicant for additional evidence before deciding the case. RFEs usually contain an explanation for the request and instructions on what evidence to submit. RFEs are time-sensitive and require a response within a finite time period, usually 90 days. Failure to respond will usually result in denial of the case.

A NOID is a written notice issued by USCIS informing the petitioner or applicant that it plans to deny the immigration benefit request. The NOID will state the ground(s) for denial and the date on which the denial will go into effect. The petitioner or applicant will be provided an opportunity to overcome USCIS's doubts and any statements regarding deficiencies in evidence. Failure to respond will result in denial of the case.

Who is most affected by this policy?

Petitioners and applicants who did not hire an attorney to assist with their filings will be most affected by the new RFE policy.

There is a common misperception that immigration attorneys “just fill out forms.” The fact that USCIS makes its forms readily available to the public creates the illusion that the forms are user-friendly products which, upon submission, should generate positive results. Many individuals do not contemplate the fact that each and every question on an immigration form is grounded in federal immigration statutes, regulations, and agency policies. For this reason, the form is not as user-friendly or harmless as initially perceived. An immigration form is actually a complex minefield of calculated queries selected with the singular purpose of assessing whether a petitioner or applicant has met her evidentiary burden of proof.

If you do not know what “burden of proof” is, how it is assessed, or what evidentiary standard specifically applies to your case, then you probably should speak to an immigration attorney.



What can our firm do for you?

Our immigration attorneys start by *assessing your needs* and *strategizing a plan*, both short- and long-term, that considers the particular facts of your case. Which is the best immigration process for you? Does your current status have restrictions or limitations? What types of life decisions can affect your status or process 6 months, 1 year, or 5 years from now?

Next, we *implement the plan*. In executing the plan, we identify which form or set of forms you need to file, ensure they are filled out accurately and completely, and execute the proper procedural requirements so that your filing is not rejected or returned by USCIS intake personnel. Rejected filings waste a significant amount of time, delaying your case before its even been accepted for processing by USCIS.

We work with you to gather documents and information so as to (1) meet your evidentiary burden and (2) present your petition or application in the best possible light. We also ensure that the documents submitted meet certain certification and authentication requirements to strengthen their credibility and weight. Whatever the need of your particular situation, we will work with you to submit a petition or application that not only meets but exceeds the legal requirements of the immigration benefit you seek. Toward this end, we always submit an index of evidence to guide the USCIS officer through your fulfillment of the eligibility requirements.

Once your petition or application is accepted for processing, we *manage your case*. This entails tracking the processing times, communicating with the government agency when the case is outside processing times, informing you of your obligations during the processing period, and notifying you of any action on the case.

Can our firm guarantee that you will not be issued an RFE?

No. There are never any guarantees in a legal matter – nor in life. Immigration law is no exception. Our firm cannot guarantee that you will not receive an RFE or a NOID. We also cannot guarantee that the government will ultimately grant your case. However, we can vastly improve the chances that your case will succeed by helping you cut through red tape and fully understand the process you wish to undertake. Our role is to be *your immigration attorney for your case*. You pay a legal services fee for our attorneys to take the steps listed above, and we proudly shoulder the responsibility of representing you and your interests.

Contact Information

Though it is not yet clear how USCIS will implement its new RFE policy, the new guidelines have been released amidst other new and expanded enforcement priorities which could increase the negative consequences of a denial. Petitioners and applicants should work closely with an immigration attorney to ensure all evidence necessary to establish eligibility is obtained and presented in the best light before a petition or application is submitted. If you would like assistance with your case, please contact our attorneys located in Houston or Detroit at (855) 428-3762 or contact@bzlawusa.com.