

**BILLING CODE: 9111-97**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Citizenship and Immigration Services**

**8 CFR Part 208**

**[CIS No. 2440-08]**

**DHS Docket No. USCIS 2008-0022**

**RIN 1615-AB59**

**Forwarding of Affirmative Asylum Applications to the Department of State**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security (DHS) is amending its regulations to alter the process by which it forwards Form I-589, Application for Asylum and Withholding of Removal, for asylum applications filed affirmatively with U.S. Citizenship and Immigration Services (USCIS) to the Department of State (DOS). The affirmative asylum process allows individuals, who are physically present in the United States, regardless of their manner of arrival and regardless of their current immigration status, to apply for asylum. The current regulation requires USCIS (formerly Immigration and Naturalization Service (INS)) to forward to DOS a copy of each completed asylum application it receives. This rule provides that USCIS will no longer forward all affirmative asylum applications to DOS. Instead, USCIS will send affirmative asylum applications to DOS only when USCIS believes DOS may have country conditions information relevant to the case. This change will increase the efficiency of DOS' review of asylum applications. Additionally, in

accordance with the Homeland Security Act, this rule revises references to legacy INS in 8 CFR 208.11.

**DATES:** Effective date: This final rule is effective [Insert date of publication in the FEDERAL REGISTER].

Comment date: Written comments must be submitted on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER] in order to be assured of consideration.

**ADDRESSES:** The public may submit comments, identified by DHS Docket No. USCIS-2008-0022, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2008-0022 on the correspondence. This mailing address may be used for paper, disk, or CD-ROM submissions.
- Hand Delivery/Courier: U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

**FOR FURTHER INFORMATION CONTACT:** Jedidah M. Hussey, Deputy Chief, Asylum Division, Refugee, Asylum, and International Operations Directorate, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Third Floor, Washington, DC 20529; Telephone (202) 272-1614.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation.**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this final rule. USCIS also invites comments that relate to the economic, environmental, or federalism effects that might result from this final rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

- Instructions: All submissions received should include the agency name and DHS Docket No. USCIS-2008-0022 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.
- Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529.

### **II. Background.**

DHS regulations, at 8 CFR 208.11(a), currently state, “[T]he Service shall forward to the Department of State a copy of each completed application it receives. At its option, the Department of State may provide detailed country conditions information relevant to eligibility for asylum or withholding of removal.” Under the affirmative asylum application

process, USCIS receives asylum applications filed by applicants who are not in removal proceedings at its service centers. Upon receipt of an asylum application, service center personnel review the asylum application to confirm that the application is properly filed and complete, after which the service center forwards the application to one of the Asylum Division's eight field asylum offices for adjudication by an asylum officer. Simultaneously, the service center forwards a copy of the asylum application to DOS's Bureau of Democracy, Human Rights and Labor (DRL). However, when an asylum applicant is permitted to file an asylum application directly with an Asylum Office, the Asylum Office is responsible for forwarding a copy of the application to DRL.

In fiscal year 2007, USCIS received 25,680 affirmative asylum applications and forwarded a copy of each to DOS. DOS and USCIS have determined that the current forwarding process is not an efficient method for the agencies to identify and review cases for which DOS review would yield the most value. To address this problem, this rule permits USCIS, in its discretion, to send affirmative asylum applications to DOS in those cases where USCIS believes DOS would be likely to have information relevant to the applicant's eligibility for asylum and withholding of removal. Generally, this would be information that is not otherwise available or confirmation of publicly available information, where such validation would be helpful to the adjudication.

Additionally, USCIS and DOS have already implemented an arrangement in which USCIS's Asylum Division headquarters (HQASM) forwards certain applications to DRL for review and comment. USCIS requires all Asylum Offices to send specific categories of cases to HQASM for further review after the Asylum Office completes its initial interview and preliminary assessment of eligibility. HQASM reviews these cases for quality assurance

purposes to ensure that eligibility standards are properly applied. In conducting the quality assurance review, an asylum officer at HQASM seeks DRL comments if the asylum officer believes that DRL could provide information specific to the applicant or the applicant's situation. This process has proven to be a productive system by which USCIS obtains country conditions information on specific cases. USCIS and DOS intend to maintain this system, which has been in place for several years.

DRL applies its country conditions expertise to asylum matters in a variety of ways, which as a whole are referred to as DRL's asylum function. Consistent with the regulation currently at 8 CFR 208.11(c), and as will be retained in the amended regulation, DRL responds to requests for comments on cases specifically brought to its attention by USCIS's Asylum Division and by the Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) immigration judges. DRL also produces updated issue papers or "country profiles" for use in asylum adjudications, and it responds to certain DHS, U.S. Immigration and Customs Enforcement's requests for document verification in asylum cases before EOIR. Additionally, DRL is required to provide to Congress annually Country Reports on Human Rights Practices and International Religious Freedom Reports which provide country conditions information that will continue to be useful to the adjudication of asylum applications. This rule will not alter these DRL functions. This rule also does not affect how USCIS reviews and considers these DRL published reports in asylum adjudications. USCIS will continue to review the aforementioned reports, which provide country conditions information useful to the adjudication of asylum applications.

Finally, this rule is limited to 8 CFR 208.11. This rule only addresses submissions of affirmative asylum applications from USCIS to DOS. It does not make any amendments to 8

CFR 1208.11, which governs the defensive application procedure for asylum applications filed by individuals in removal proceedings before EOIR.

## **II. Regulatory Requirements.**

### **A. Administrative Procedures Act.**

This rule addresses requirements that are procedural in nature and does not alter the substantive rights of applicants or petitioners for immigration benefits. Accordingly, this rule is exempt from the notice and comment requirements under the Administrative Procedures Act (APA) at 5 U.S.C. 553(b)(A). This rule does not change the eligibility rules governing any immigration benefit and it will not confer rights or obligations upon any party.

Accordingly, USCIS is implementing these amendments effective immediately upon publication in the **Federal Register**. Nonetheless, DHS believes that public comments may be valuable and is providing the public the opportunity to make comments on this change as a matter of discretion. Comments are welcome about the relationship between the USCIS and DOS, DHS and DOS, and the role of foreign policy considerations in asylum adjudications.

### **B. Regulatory Flexibility Act.**

Because USCIS is not required by the APA to publish a notice of proposed rulemaking to make the changes promulgated in this rule, the Regulatory Flexibility Act (RFA) is not applicable.

### **C. Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed

necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**D. Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

**E. Executive Order 12866**

This rule has been designated as not significant under Executive Order 12866, section 3(f), Regulatory Planning and Review. Thus it has not been reviewed by the Office of Management and Budget.

**F. Executive Order 13132: Federalism**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**G. Executive Order 12988: Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**H. Paperwork Reduction Act.**

The information collection requirement (Form I-589) contained in this rule has been previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers. This rule does not contain a new or revised information collection.

**List of Subjects in 8 CFR Part 208**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL**

1. The authority citation for part 208 continues to read:

**Authority:** 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

2. Section 208.11 is revised to read as follows:

**§ 208.11 Comments from the Department of State.**

(a) U.S. Citizenship and Immigration Services (USCIS) may request, at its discretion, specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as USCIS deems appropriate.

(b) With respect to any asylum application, the Department of State may provide, at its discretion, to USCIS:

(1) Detailed country conditions information relevant to eligibility for asylum or withholding of removal;

(2) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her particular situation;

(3) Information about whether persons who are similarly situated to the applicant are persecuted or tortured in the applicant's country of nationality or habitual residence and the frequency of such persecution or torture; or

(4) Such other information as it deems relevant.

(c) Any comments received pursuant to paragraph (b) of this section shall be made part of the record. Unless the comments are classified under the applicable Executive Order, the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of any decision to deny the application.

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**Janet Napolitano**  
Secretary.

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