



U.S. Citizenship
and Immigration
Services

Interoffice Memorandum

To: SERVICE CENTER DIRECTORS

From: Fujie O. Ohata /S/
Director
Service Center Operations

Date: January 6, 2005

Re: Guidance on the Limitation of Denials Based on Requests for Evidence Standards Not Required by the Statute, Regulations or Form Instructions

Purpose

The memorandum provides guidance to Service Centers limiting the use of requests for evidence not supported by the Immigration Nationality Act (INA), the regulations or form instructions.

Background

Title 8 Code of Federal Regulations, (8CFR) at 103.2(a) indicates that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instruction on the form. The 8CFR 103.2(b)(8) discusses the requirements relating to requesting missing initial or additional evidence.

Recently CIS Headquarters has become aware that denial decisions are being issued as a result of Requests for Evidence (RFEs), which is not required by the statute, regulations or form instructions.

Requesting additional evidence not required by the statute or the regulations

Whenever possible Service Centers should limit the request for required initial evidence and or additional evidence to evidence and documentation required by the statute, regulations or as stipulated on the form instructions. These are the requirements and standards that the public is aware of and should be following.

Re: Guidance on the Limitation of Denials Based on Requests for Evidence Standards Not Required by the Statute, Regulations or Form Instructions

From time to time it is necessary to request additional evidence not specifically required by the statute or regulations. When this occurs Service Centers should carefully explain in the request the specific need or reason(s) for the evidence or documentation requested.

Suspected Fraud

Request for additional evidence should not be used as a device to investigate suspected fraud. Cases in which fraud is suspected should be referred to the Fraud Detection Unit (FDU) at the respective Service Center.

Denials Subsequent To a Request for Evidence

If after a response to a request for required initial evidence or additional evidence is received, it is determined that the case should be denied, the denial decision should be based on statutory or regulatory requirements. The sole basis of such a denial should not be that the petitioner or applicant failed to provide evidence that was requested by the Center but is not required by the statute, regulations or form instructions. Petitions and applications should not be denied only because the petitioner or the applicant refused to submit non-mandatory evidence in response to a RFE.

Contact Information

This guidance is effective immediately and prospectively. For questions related to this guidance, please contact Service Center Operations through appropriate channels.