

USCIS ANNOUNCES NEW NTA POLICY
TO START DEPORTATION PROCEEDINGS AGAINST ILLEGAL ALIENS



by

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The United States Citizenship and Immigration Services (USCIS) recently issued guidance for when it will issue Notices to Appear (NTAs) in cases where an alien appears to be removable or deportable. A Notice to Appear (NTA) is the document which starts removal or deportation proceedings against an alien.

In the past, Notices to Appear (NTAs) typically were issued by another division of the Department of Homeland Security known as ICE (Immigration and Customs Enforcement). Now, it is clear that USCIS (the division of the Department of Homeland Security responsible for adjudicating applications for immigration benefits, such as change of status or extension of status requests as well as green card applications) has the authority and is expected to issue NTAs to start removal proceedings against aliens who appear to be removable.

The USCIS guidance became effective on October 1, 2006 and, therefore, applies to all cases adjudicated by USCIS on or after that date. The guidance lists five categories where USCIS will be involved in the issuance of Notices to Appear:

1. Egregious public safety cases: The USCIS lists several different types of criminal offenses as egregious public safety cases. These are cases involving very serious criminal matters, such as murder, rape, child pornography, etc.).
2. Other criminal cases: Criminal offenses which do not fall under the “egregious public safety” category can still result in USCIS issuing an NTA. The Immigration and Nationality Act has list of criminal offenses or types of crimes which can result in removal proceedings or deportation proceedings. These offenses are listed as part of INA Section 212 (criminal grounds of inadmissibility) and INA Section 237 (criminal grounds of removability/deportability). In these cases, USCIS will make a decision on the case (approval or denial) before it refers the case to ICE. ICE will then investigate the case and decide whether to start removal proceedings by issuing a Notice to Appear.
3. Cases where a Notice to Appear is required by law to be issued: The law requires USCIS to issue a Notice to Appear in cases where the following applications are denied: Form I-751 (Petition to Remove Conditions on Residence), Form I-829

(Petitions by Entrepreneur to Remove Conditions and Form I817 (Applications for Family Unity Benefits). The most common application listed above is the Form I-751 which is filed by conditional permanent residents. Conditional permanent residents include those individuals who receive a 2-year conditional green card based on a marriage that is less than 2 years old at the time the green card is approved. If the conditional permanent resident's Form I-751 (the application requesting the 10-year card) is denied, then the law requires USCIS to issue a Notice to Appear (NTA).

4. Cases denied by USCIS based on fraud: If USCIS suspects fraud in any case it is processing, then it is supposed to refer the case to ICE for investigation. In cases where fraud is determined to exist, then USCIS will issue the NTA once the case is denied. As a side note, a recent report issued by the Department of Homeland Security concluded that approximately 1/3 of all religious worker cases involve fraud. These types of cases would now be denied and removal proceedings instituted against the alien. Cases involving fraud are the USCIS's top priority for issuing Notices to Appear.

5. All other cases: In all other immigration cases that are denied, USCIS may issue a Notice to Appear where the applicant appears to be removable. Such as case would include an out-of-status individual who applies for a green card based on marriage to a U.S. citizen. If the case is denied, the USCIS may issue a Notice to Appear. In cases where the applicant was in a valid, non-immigrant status at the time of filing the application and the application was not denied because of a criminal issue, USCIS typically will issue the denial notice and instruct the person to depart the United States (instead of immediately issuing a Notice to Appear).

What Does This New Policy Really Mean?

This new policy basically provides clear guidance and instruction for USCIS officers to issue Notices to Appear to start removal proceedings against an alien in the situations described above.

Many USCIS offices have been issuing Notices to Appear in these cases for several months. The Charlotte office has been issuing NTAs routinely in cases that are denied by its office and the applicant is determined to have been out-of-status at the time of filing. For those offices which have not been doing this already, this guidance will require them to do so.

Immigrants filing applications must be extremely careful in doing so. If a case is now denied, there is a greater likelihood that a Notice to Appear will also be issued as opposed to in the past.

Finally, individuals filing a Form I-90 to replace an expired or lost green card also now face the risk of having removal proceedings started against them by USCIS if they have committed certain criminal offenses.

The bottom line is that, starting October 1, 2006, USCIS is taking a more aggressive approach in issuing Notices to Appear to start removal (deportation) proceedings. Individuals filing immigration applications on their own or through a non-lawyer should consider the consequences of a denial in light of USCIS' new policy.

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