

INTERIM MEMO FOR COMMENT

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This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



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

December 21, 2011

PM-602-0055

Policy Memorandum

SUBJECT: The Role of Private Attorneys and Other Representatives; Revisions to *Adjudicator's Field Manual (AFM)* Chapters 12 and 15; *AFM* Update AD11-42

Purpose

This policy memorandum (PM) provides guidance regarding the role of private attorneys and other representatives who appear before USCIS.

Scope

This PM applies to and is binding on all USCIS employees. This PM replaces *AFM* Chapter 12, parts 1-5 and Chapter 15, part 1(b)(2), parts 2-4, and adds new Appendix 12-1.

Authority

[Section 292 of the Immigration & Nationality Act](#)
[8 CFR 103; 292](#)

Introduction

U.S. Citizenship and Immigration Services (USCIS) is committed to ensuring the integrity of the immigration system. This goal is furthered when USCIS adjudicators recognize the range of individuals who may represent applicants and petitioners, respect the relationship between client and representative, and conduct interviews professionally. The Department of Homeland Security has rules of professional conduct for employees and practitioners who practice before the Department. This policy memorandum provides guidance to adjudicators and balances the meaningful role of attorneys and representatives in the interview process with the important responsibility of adjudicators to conduct fair, orderly interviews.

Background

An applicant or petitioner for immigration benefits may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.¹ In addition, whenever an examination is required, the person involved has the right to be represented by an attorney or representative.² This does not provide any applicant for admission to the United States with the right to representation, in either primary or secondary

¹ [8 CFR 103.2\(a\)\(3\)](#) (2011)

² [8 CFR 292.5\(b\)](#) (2011)

inspection at a port of entry or in an interview regarding a request for classification as a refugee, unless the applicant is the focus of a criminal investigation and has been taken into custody.

Prior to 1994, the regulations governing the adjudication of applications and petitions (8 CFR 103.2) did not include provisions specifically addressing the representation of applicants and petitioners during such proceedings. In 1991, the Immigration and Naturalization Service (“Service”) proposed amending the regulations at 8 CFR 103.2 to provide that an applicant or petitioner may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.³ The Service proposed limiting the categories of eligible representatives in application and petition proceedings from the “broad range” of representatives listed in 8 CFR 292.1. Moreover, in order to properly document representation, the Service proposed revising 8 CFR 292.4(a)(4) to require that an applicant or petitioner sign the notice of appearance in order to authorize representation before the Service.⁴ In adopting these changes in a final rule in 1994, the Service determined that the reasons cited in the supplemental information in the proposed rule supported requiring the signature of the applicant or petitioner on the [G-28](#) and that this was also a way to help combat the unauthorized practice of law by ineligible individuals.⁵ This final rule included the language in 8 CFR 103.2(a)(3) that exists today⁶ and added to 8 CFR 292.4 the requirement that the notice of appearance form be signed by the applicant or petitioner in order to authorize representation before the Service.⁷

In 2010, the regulations at 8 CFR 292.1 were revised to specifically reference the limited categories of eligible representatives in application and petition proceedings set forth in 8 CFR 103.2(a)(3).⁸ The change reinforced the determination that the other categories of representatives listed in 8 CFR 292.1 (law students, law graduates, reputable individuals and accredited officials) may not submit a notice of appearance form in application and petition proceedings before DHS, and notification regulations do not apply to them.⁹ These other categories of individuals may appear as “other representatives” at interviews or other in-person meetings with USCIS officials. However, the appearance of these “other representatives” is subject to the approval of the USCIS official after the individual submits a statement addressing the requirements specified in 8 CFR 292.1(a)(2) and (3).

³ Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits, 56 Fed. Reg. 6120161202 (proposed Dec. 2, 1991) (to be codified at 8 CFR 103, 214, 223, 223a, 248, 264 and 292)

⁴ Id.

⁵ Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits, 59 Fed. Reg. 1455 (Jan. 11, 1994) (amending 8 CFR 103, 214, 223, 223a, 248, 264 and 292)

⁶ Id. at 1460.

⁷ Id. at 1466.

⁸ Professional Conduct for Practitioners: Rules, Procedures, Representation, and Appearances, 75 Fed. Reg. 5225, 5227 (Interim rule with request for comments Feb. 2, 2010) (amending 8 CFR 1 and 292)

⁹ Law students and law graduates are permitted to provide their name and sign the Form G-28 filed by the supervising attorney or accredited representative. Instructions to Form G-28.

Policy

Effective immediately, USCIS Officers will follow the instructions contained in Chapter 12 of the *AFM* as amended by this PM.

Implementation

The *AFM* is revised as follows.

- ☞ 1. Revise the Table of Contents for Chapter 12 to read:

Chapter 12 Private Attorneys and Other Representatives

- 12.1 Representation in Immigration Proceedings
- 12.2 Notice of Entry of Appearance
- 12.3 Proper Service of Documents & Notices
- 12.4 Interviews
- 12.5 Conduct of Attorneys & Representatives
- 12.6 Role of USCIS District Directors in the Board of Immigration Appeals
Recognition and Accreditation Process.

References

[Section 292 of the INA](#)
[8 CFR 103 and 292](#)

- ☞ 2. Revise Chapter 12 to read:

Chapter 12: Private Attorneys and Representatives

Chapter 12.1 Representation before USCIS

(A) General

An applicant or petitioner may be represented by an attorney in the United States, an attorney outside the United States (in matters occurring outside the geographical confines of the United States), or an accredited representative of a recognized organization.¹⁰ In addition, whenever an examination is required, the person involved has the right to be represented by an attorney or representative.¹¹ This does not provide any applicant for admission the right to representation, in either primary or secondary inspection or in an interview regarding a request for classification as a refugee, unless the applicant is the focus of a criminal investigation and has been taken into custody.

¹⁰ [8 CFR 103.2\(a\)\(3\)](#) (2011)

¹¹ [8 CFR 292.5\(b\)](#) (2011)

Title 8 CFR 292.1 lists the types of individuals who may represent an individual before USCIS. Attorneys in the United States, attorneys outside the United States, and accredited representatives may provide legal representation after filing a Notice of Entry of Appearance on Form [G-28](#) or [G-28I](#). See below for specific details.

Title 8 CFR 292.1 also lists other categories of representatives – reputable individuals, law students, law school graduates, and accredited officials – who may assist an individual before USCIS. These individuals must provide additional information to the DHS official before whom they seek to appear, and that official must permit their appearance. These representatives are not eligible to file a notice of appearance (Form [G-28](#)) in application and petition proceedings, and USCIS does not communicate with them in writing regarding application or petition proceedings.¹² Each of these representatives must file a statement or declaration described in greater detail below. The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

These individuals may not engage in the practice of law, but may apply to appear in-person before a DHS official at an interview or other meeting or appointment at a USCIS office in order to support an applicant or petitioner and provide non-legal assistance. However, these guidelines do not preclude any individual (such as a family member, friend, colleague, etc.) from helping an applicant or petitioner with the completion of forms, so long as the assistance does not constitute practice or preparation, as that term is defined in 8 CFR 1.1(k).

(B) Attorneys in the United States

An “**attorney**” is any person who is eligible to practice law in and is a member in good standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.¹³

- An attorney need not be admitted to practice in the state in which his or her office is located or where the applicant or petitioner resides, and may have an office outside the United States, as long as he or she is an attorney as defined in the regulations.
- USCIS employees must routinely consult the [DHS Disciplinary Counsel website](#) for information on how to verify the eligibility of an attorney.
- An attorney must submit a “Notice of Entry of Appearance as Attorney or Accredited Representative” (Form [G-28](#)) in each case in which he or she seeks to appear. The form must be properly completed and signed by the petitioner or applicant in order for the appearance to be recognized by USCIS.¹⁴

¹² Id.

¹³ [8 CFR 1.1\(f\)](#) (2011)

¹⁴ [8 CFR 292.4\(a\)](#) (2011); Instructions for Form G-28 (Rev. 04/22/09)N

(C) Attorneys outside the United States

An “**attorney outside the United States**” is an attorney (other than one who fulfills the requirements of an “attorney” in the United States) “who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he or she resides and who is engaged in such practice.”¹⁵

- An attorney outside the United States may only represent applicants or petitioners in matters outside the geographical confines of the United States at a USCIS overseas office. He or she must receive permission to appear from the USCIS official before whom he or she wishes to appear.
- In order to establish eligibility, such an attorney must establish that he or she resides outside the United States in the country in which he or she was admitted to the practice of law, and that he or she is engaged in practice in that country.
- An attorney outside the United States must submit a “Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States” (Form [G-28I](#)) in each case in which he or she seeks to appear.
- The form must be properly completed and signed by the petitioner or applicant for the appearance to be recognized by USCIS.¹⁶

(D) Accredited Representatives

An “**accredited representative**” is a person who represents an organization that has been recognized by the Board of Immigration Appeals (BIA) to practice before the Executive Office for Immigration Review (EOIR), including the immigration courts, the BIA and DHS.¹⁷

- EOIR maintains a list of Recognized Organizations and accredited representatives who have authority to represent individuals before EOIR and DHS at www.justice.gov/eoir/legalrepresentation.htm.
- Accredited representatives must submit a “Notice of Entry of Appearance as Attorney or Accredited Representative” (Form [G-28](#)) in each case in which they seek to appear.
- The form must be properly completed and signed by the petitioner or applicant for the appearance to be recognized by USCIS.¹⁸

(E) Reputable Individuals

A **reputable individual** is an individual of good moral character who appears on an individual case basis at the request of the person entitled to representation. The reputable individual must have a pre-existing relationship with the applicant or petitioner (e.g., relative, neighbor, clergyman, business associate or personal friend), and must

¹⁵ [8 CFR 292.1\(a\)\(6\)](#) (2011)

¹⁶ [8 CFR 292.4\(a\)](#) (2011); Instructions for Form G-28I (04/22/09)

¹⁷ [8 CFR 292.1\(a\)\(4\)](#) & [8 CFR 292.2](#)

¹⁸ [8 CFR 292.4\(a\)](#) (2011); Instructions for Form G-28 (Rev. 04/22/09)N

not receive payment directly or indirectly for his representation.¹⁹ A USCIS official may waive the requirement that a pre-existing relationship exist between the applicant or petitioner and the representative in cases where adequate representation would not otherwise be available.²⁰

- The reputable individual must submit a declaration that states that he or she is appearing without direct or indirect remuneration. (See Sample Declaration in Appendix 12-1).
- The reputable individual must receive permission from the DHS official before whom he or she wishes to appear. In order to determine whether or not to grant the request of a person seeking to appear as a reputable individual, the DHS official should review the declaration presented and ask the individual questions regarding his or her eligibility and record this information in the record of proceedings. Permission will not be granted to any individual who regularly engages in immigration and naturalization practice or preparation or holds himself or herself out to the public as qualified to do so.²¹
- USCIS does not accept Forms [G-28](#) filed by reputable individuals, as they are not included in the limited category of representatives in 8 CFR 103.2(a)(3).²²
- The reputable individual who is granted permission to appear with an applicant or petitioner may appear only in person in that case. The reputable individual will not receive copies of notices or other written communication that USCIS sends to the individual being represented.²³

(F) Law Students and Law School Graduates

Law students who are enrolled in an accredited U.S. law school and **law graduates** of an accredited U.S. law school not yet admitted to the bar may provide representation, constituting practice and preparation, with the supervision required in 8 CFR 292.1(a)(2).

- Law students and law graduates must seek permission to appear in proceedings before DHS officials.²⁴ The USCIS officer may require that the supervising faculty member, attorney, or accredited representative appear with the law student or law graduate.²⁵
- A **law student** enrolled in an accredited U.S. law school must file a statement that states that, he or she is participating under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a legal aid program or

¹⁹ 8 CFR 292.1(a)(3) (2011)

²⁰ 8 CFR 292.1(a)(3)(iii) (2011)

²¹ 8 CFR 292.1(a)(3)(iv) (2011)

²² 8 CFR 103.2(a)(3); 292.1(a); 292.4(a) (2011) ; Instructions for Form G-28 (Rev. 04/22/09)N

²³ 8 CFR 103.2(a)(3) and 292.5(a) (2011).

²⁴ 8 CFR 292.1(a)(2)(iv) (2011)

²⁵ [8 CFR 292.1\(a\)\(2\)](#) (2011)

clinic conducted by a law school or non-profit organization, and is appearing without direct or indirect remuneration from the individual he or she represents.²⁶

- A **law school graduate** of an accredited U.S. law school who is not yet admitted to the bar must file a statement that states that he or she is appearing under the supervision of an attorney or accredited representative, and is appearing without direct or indirect remuneration from the applicant or petitioner.²⁷
- The supervising attorney or accredited representative of a law student or law graduate must submit a “Notice of Entry of Appearance as Attorney or Accredited Representative” (Form [G-28](#)) on which the law student or law graduate provides his or her name and signature.²⁸ All notices and communication to the applicant/petitioner’s representative in such cases should be addressed to the supervising attorney or accredited representative listed on the [G-28](#) (not the law student or law graduate).
- If the USCIS officer observes an action by a law student or graduate that provides good cause for the officer to believe that the representation by the law student or graduate will impair the efficient conduct of the proceeding, the USCIS officer may alert a USCIS supervisor who may contact the supervising faculty member, attorney, or accredited representative.

(G) Accredited Officials

Although it is rare, an **accredited official** of the alien's home government (e.g., a consular officer) may represent an alien if the official is in the United States and appears solely in his official capacity and with the applicant or petitioner’s consent.²⁹

- In exercising discretion to allow an accredited official to appear before DHS, DHS officials should ensure that the individual does not regularly engage in immigration practice or preparation or hold himself out to the public as qualified to do so. To properly document this exercise of discretion, DHS officials should request such individuals submit a written statement in support of their appearance, addressing the relevant factors. (See Sample Statement in Appendix 12-1.)
- DHS does not send notices or other written communications to accredited officials.

12.2 Notice of Entry of Appearance

(A) Filing a Notice of Entry

Attorneys, attorneys outside the United States, and accredited representatives must establish their eligibility to appear on the form designated by DHS in each case.³⁰

²⁶ 8 CFR 292.1(a)(2) (2011)

²⁷ 8 CFR 292.1(a)(2) (2011)

²⁸ 8 CFR 292.1(a)(2) (2011); Instructions to Form G-28. (Submitted to OMB on Oct. XX, 2011 for 60 day notice)

²⁹ [8 CFR 292.1\(a\)\(5\)](#) (2011)

³⁰ [8 CFR 292.4\(a\)](#) (2011)

- Attorneys and accredited representatives must submit a Form [G-28](#), Notice of Entry of Appearance as Attorney or Accredited Representative.
- Attorneys outside the United States must submit a Form [G-28I](#), Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of the United States.
- The Form [G-28](#) and Form [G-28I](#) must be properly completed and signed by the applicant or petitioner in order for the appearance to be recognized by USCIS. Once the Form [G-28](#) or Form [G-28I](#) is accepted, the appearance will be recognized until the conclusion of the matter for which it was entered.
- When filing an appeal with the Administrative Appeals Office on Form I-290B, the attorney or accredited representative must file a new Form [G-28](#).
- Other representatives (law students and law graduates, reputable individuals, and accredited officials) may not submit Form [G-28](#) or Form [G-28I](#) and may only appear after filing a statement in which they provide specific information listed in the regulations.³¹ The appearance of these other representatives is subject to the approval of the USCIS official before whom they seek to appear.³²

USCIS officers may verify an attorney's or accredited representative's eligibility and require further proof of authority to act in a representative capacity. Officers should seek more information at the [DHS Disciplinary Counsel website](#) and at www.justice.gov/eoir/legalrepresentation.htm. Officers should also reference the list of disciplined practitioners at <http://www.justice.gov/eoir/discipline.htm>, which includes attorneys and accredited representatives who are currently expelled or suspended from practice before DHS and EOIR. USCIS officers should be aware of individuals who have falsely claimed to be attorneys or accredited representatives when they are not and individuals who have been the subject of federal state or local court action to stop their unauthorized practice of law or theft of fees for legal services they may not lawfully provide. USCIS is not to communicate with such individuals, even if they submit a "Notice of Entry of Appearance as Attorney or Representative" (Form [G-28](#)) in a case.

(B) Substitution or Withdrawal of Representation

It is not uncommon for applicants or petitioners to wish to change representatives or elect to forgo representation during the course of a proceeding. Substitution or withdrawal of an attorney or accredited representative may be made upon the written withdrawal of the attorney or accredited representative of record or upon notification of the new attorney or accredited representative.³³ An applicant or petitioner may elect to proceed without his or her representative, but must submit a written statement to the USCIS official that he or she has voluntarily chosen to proceed without representation.

³¹ 8 CFR 292.1(a)(2), (3) and (5) (2011).

³² See fn. 28.

³³ [8 CFR 292.4](#) (2011)

12.3 Proper Service of Documents & Notices

Once an attorney (whether in or outside the United States) or accredited representative has filed a properly completed Form [G-28](#) or Form [G-28I](#) on behalf of an applicant or petitioner, USCIS is required to serve documents and notices on the attorney or accredited representative.³⁴ Original notices and documents evidencing lawful status in the United States based on the approval of a benefit request will be sent to the attorney or accredited representative whom the applicant or petitioner has authorized to receive such notices and documents on his or her behalf. In such instances, a copy of the benefit notice will also be sent to the applicant or petitioner. **EXCEPTION:** Secure identification documents such as Form I-551, Permanent Resident Card or Form I-766, Employment Authorization Document, can only be sent to the applicant.³⁵

In all other instances (e.g., where the applicant or petitioner is not represented), original benefit notices and documents evidencing lawful status that are issued based on the approval of a benefit request will be sent directly to the applicant or petitioner.

In matters where the Form [G-28](#) or Form [G-28I](#) is not accepted because the individual is not an eligible representative or because the form is not properly signed, the application or petition will be processed as if the applicant or petitioner is unrepresented.³⁶ The receipt notice and any other notices will be sent only to the applicant or petitioner.

12.4 Interviews

When an examination is to be conducted in immigration proceedings, the person involved has the right to be represented, at no expense to the government, by an attorney or representative, as defined in 8 CFR 292.1(a). The role of the representative at an interview is to ensure that the rights of the individuals he or she represents are protected.

Only an attorney, an attorney outside the United States, an accredited representative, or a law student or law graduate appearing with proper supervision and with the permission of a DHS official may provide legal advice to an applicant, petitioner, or witness.³⁷ USCIS may allow other eligible representatives (including reputable individuals, law students, and law school graduates), who have obtained the consent of the applicant, petitioner, beneficiary or other witness, to appear at interviews with the individual. These individuals must seek permission from the presiding DHS official to appear at the interview. Other categories of representatives may provide non-legal assistance and support that does not constitute practice or preparation, as defined in 8 CFR 1.1.

³⁴ [8 CFR 292.5](#) (2011).

³⁵ 8 CFR 103.2(b)(19)

³⁶ [8 CFR 103.2\(a\)\(3\)](#) (2011)

³⁷ 8 CFR 1.1(i), (j) and (k).

When conducting an interview of a petitioner and beneficiary simultaneously, attorneys or eligible representatives of both the petitioner and beneficiary will be permitted to appear at the interview.³⁸ In visa petition proceedings, representatives who have obtained the consent of the petitioner should be recognized in interviews with the petitioner. Representatives who have obtained the consent of the beneficiary should be recognized in interviews with the beneficiary. Any individual appearing in a representative capacity may not respond to questions the interviewing officer has directed to the applicant, petitioner, or witness, except to ask clarifying questions.

An attorney or representative of an applicant or petitioner may not simultaneously serve as his or her client's interpreter during an interview.³⁹ If, after being so advised, the attorney or other representative continues to interpret for the applicant or petitioner or otherwise disrupts the interview, USCIS may terminate the interview and advise the parties that the interview cannot be completed under these circumstances and that USCIS will proceed to make a decision based on the record of proceedings.

12.5 Conduct of Attorneys and Representatives

DHS has rules of professional conduct for practitioners who practice before the Department's immigration agencies.⁴⁰ Under the rules, practitioners (attorneys, accredited representatives and other categories of representatives permitted to appear by DHS) are subject to discipline for criminal, unethical, or unprofessional conduct. Complaints of professional misconduct by practitioners should be reported to the DHS Disciplinary Counsel. USCIS officers should visit the [Disciplinary Counsel website](#) for more information on professional conduct, reporting misconduct, and how to verify the eligibility of an attorney or accredited representative.

Officers should not engage in personal conversations or arguments with attorneys or other representatives during the course of an interview. If a discussion becomes argumentative, the officer should seek assistance from a supervisor. The attorney or representative may raise an objection on an inappropriate line of questioning and, as a last resort, may request supervisory review without terminating the interview. Where necessary, disagreements between USCIS officers and attorneys or other representatives regarding the appropriate role of the attorney or other representative in USCIS interviews, should be elevated to the Field Office Director. USCIS employees may not file complaints directly to state bar disciplinary authorities. Complaints of unethical and unprofessional conduct by attorneys or other representatives should be reported to [DHS Disciplinary Counsel](#) through appropriate supervisory channels.

³⁸ 8 CFR 103.2(a)(3) (2011)

³⁹ Exceptions may be made if the interests of the Government will not be prejudiced.

⁴⁰ [8 CFR 292.3](#) (2011)

- ☞ 3. Add Appendix 12-1 the Table of Contents for Appendices.

Appendix 12-1 Sample Statements and Declarations

- ☞ 4. Appendix 12-1 is added as follows:

Interim Memo

Appendix 12-1 Sample Statements and Declarations

**SAMPLE STATEMENT OF LAW STUDENT REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as a law student enrolled in Anystate Law School, an accredited U.S. law school.

I am appearing at the request of Jane Doe, a person entitled to representation.

I am participating under the direct supervision of Sam Samuels, a faculty member, Susan Williams, a licensed attorney, or Joe Johnson, a BIA accredited representative in a legal aid program or clinic conducted by a law school or non-profit organization.

I am appearing without direct or indirect remuneration from the individual I seek to represent.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request.

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

SAMPLE STATEMENT OF A LAW GRADUATE REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as a graduate of Anystate Law School, an accredited U.S. law school, who is not yet admitted to the bar.

I received my law degree on June 1, 2011 and will take the bar examination on February 21, 2012; or, sat for the bar examination on July 24, 2011 and have not yet received my results.

I am appearing at the request of Jane Doe, a person entitled to representation.

I am appearing under the supervision of Susan Williams, a licensed attorney, or Joe Johnson, an accredited representative. I am appearing without direct or indirect remuneration from the individual I seek to represent.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request.

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

**SAMPLE DECLARATION OF A REPUTABLE INDIVIDUAL REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL**

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as a reputable individual of good moral character, as defined in 8 CFR 292.1(3).

I am appearing on an individual case basis at the request of Jane Doe, a person entitled to representation. I am appearing without direct or indirect remuneration. I have a pre-existing relationship with Jane Doe as a relative, neighbor, clergyman, business associate, and/or personal friend.

I am not regularly engaged in immigration and naturalization practice or preparation, nor do I hold myself out to the public as qualified to do so.

I declare, under penalty of perjury under the laws of the United States of America, that this statement is all true and correct.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

SAMPLE STATEMENT OF AN ACCREDITED OFFICIAL REQUESTING
PERMISSION TO APPEAR BEFORE A USCIS OFFICIAL

I, John Smith, seek permission to appear before Mary Jones, a USCIS official, on behalf of Jane Doe, a person entitled to representation, as an accredited official of the Nowhereland government to which Jane Doe owes allegiance.

I am not regularly engaged in immigration and naturalization practice or preparation, nor do I hold myself out to the public as qualified to do so.

I am appearing with the consent of Jane Doe, a person entitled to representation.

John Smith

January 1, 2012

Signature

Date

I, Mary Jones, the USCIS official before whom John Smith seeks to appear as a representative, in the exercise of discretion GRANT the request.

Mary Jones

January 1, 2012

Signature

Date

The original of this document is to be maintained by the USCIS official in charge of the office in which the request was made, with a copy filed in the record of proceeding.

☞ 5. Revise Chapter 15.1(b)(2) to read:

15.1 Interview Policies

(b) Scheduling Interviews and Evaluating Requests for the Rescheduling of Interviews . [Revised 11-23-2005]

(2) Evaluating Requests for the Rescheduling of Interviews (See [8 CFR 103.2\(b\)\(9\)](#))

Prior to and at the date and time of the interview, an applicant or petitioner may (a) withdraw the application or petition; or (b) request, for good cause, that the interview be rescheduled.

In order to reschedule the interview, the adjudicator, in his or her discretion, must determine that the applicant, petitioner, beneficiary, or other individual is unable to appear at the scheduled date and time because of circumstances beyond the individual's control.

If the adjudicator determines that good cause exists for the applicant or petitioner's request, the adjudicator will reschedule the interview and mail a new interview notice. If the adjudicator determines that no good cause exists, the adjudicator will adjudicate the application or petition as instructed in *AFM* [Chapter 15.1\(d\)\(2\)](#) .

An attorney or representative authorized to act on behalf of the applicant or petitioner may also submit a good cause request for rescheduling the interview.

If an attorney or other representative is unable to attend an interview for good cause, the local office should make best efforts to accommodate a timely request to reschedule an interview. Such requests are considered to be for good cause when the attorney or other representative has notified the local office that he or she is unable to appear at the scheduled date and time because of circumstances beyond his or her control, including but not limited to, scheduling conflicts resulting from a requirement that the attorney or other representative appear in court, previously planned travel, and any situation where two interviews of clients represented by the same attorney or representative are scheduled at the same time.

When an attorney or other representative is unable to attend the interview for any reason, the individual being interviewed may elect to proceed with the interview without his or her representative. The applicant's or petitioner's decision to proceed without his or her attorney or accredited representative must be voluntary. If the individual wishes to proceed without his or her representative the USCIS official should obtain a written statement from the individual. When possible, the attorney or accredited representative should communicate his or her consent to proceed without him or her present. The

officer may still consider statements and submissions by the individual's attorney or other representative in his or her absence.

☞ 6. Revise Chapter 15.2 to read:

15.2 Interview Environment.

(a) Adjudications Environment

It is essential that the person being interviewed appreciate the importance and seriousness of the proceedings. To ensure this, the setting in which the interview takes place must be orderly and official in appearance. Desktops should be uncluttered and files should be housed in cabinets. Flags, USCIS and DHS seals and other official displays can enhance the official appearance. Excessive amounts of personal items should not be displayed in view of applicants as these may be distracting or detract from the serious nature of the proceedings.

Because adjudications units in local USCIS offices are generally very busy with a high volume of applicants appearing for adjustment, naturalization, marriage fraud and conditional resident removal interviews, it is essential that adequate office space be provided for each district adjudications officer.

Sufficient seating for the officer and applicant, attorney or other representative and family members should be provided. The attorney or other representative should be seated directly next to the person being interviewed to facilitate appropriate participation unless the physical layout of the interview space cannot accommodate it. If the officer has a concern that the seating arrangements may be inhibiting or negatively impacting the interview process, he or she should contact a supervisor for guidance.

(b) General Office Environment

Ideally, individual offices or high-walled, acoustically insulated, modular offices with doors should be provided to ensure a reasonable level of privacy. Offices should be equipped with video or audio taping devices. If the district lacks sufficient recording equipment, arrangements should be made to provide such equipment for, at least, the most difficult cases. Each work station should be provided with sufficient storage space for files, supplies, research materials and personal items, so that the office remains uncluttered. Acoustical ceiling tiles or other sound dampening material should be installed to minimize noise from other interviews and protect the privacy of each applicant. Lighting and ventilation should be adequate for a pleasant, comfortable and efficient working environment. USCIS will make every effort to make reasonable accommodations for applicants with disabilities. When possible, the public waiting area

should be reasonably proximate to the interview area to minimize lost time between interviews.

☞ 7. Revise Chapter 15.3 to read:

15.3 Officer Conduct and Appearance

(a) Appearance

It is imperative that the officer conducting the interview dress in a professional manner. Both males and females should wear appropriate business attire, although some offices may permit "business casual" attire on certain days.

(b) Conduct and Attitude

All interviews should be conducted in a courteous and businesslike manner. The following guidelines will ensure that the interview is conducted professionally:

- Maintain control of the interview at all times. "Maintaining control" does not mean being overbearing or abusive; on the contrary, it requires that the officer maintain a professional demeanor at all times. The exact nature of that professional demeanor will sometimes vary, according to the interview techniques being employed (see below). The ability of the officer to maintain control of him/herself is instrumental in maintaining control of the interview.
- Speak clearly, distinctly and not too rapidly, using plain and simple language when questioning an applicant, petitioner or witness. Avoid complex and lengthy questions, and always obtain a responsive answer before proceeding to the next question. Avoid using USCIS or government jargon.
- At all times, maintain due regard for the rights of the person being questioned.
- Avoid arguments with the person being interviewed, as well as remarks of a personal nature that may be taken as a reflection of a judgment of a personal lifestyle.
- Refrain from making any extraneous comments or asking extraneous questions, as they are irrelevant to the purpose of the interview and detract from the professional demeanor that the officer should maintain. Avoid questions about a person's religious beliefs or practices unless they are relevant to determine the individual's eligibility for a benefit. Do not make any comments that might be taken as a negative reflection upon any other person, race, religion, or country.
- Maintain professional conduct even if the interviewee becomes abusive or if derogatory information is developed. If necessary, contact a supervisor.
- Be fair, courteous, and patient without diminishing in any degree full and complete development of the material facts, whether they be favorable or adverse to the person being interviewed or any other person.

- When questioning persons concerning sexual relations, always avoid questions which can be construed solely as prurient or prying.
- Ensure that your demeanor is unprejudiced, impartial, and creates no foundation for complaints that you have been unfair or have used any mistreatment or duress.

☞ 8. Revise Chapter 15.4 to read:

15.4 Interview Procedures

(a) Basic Interview Procedures and Techniques

Conducting successful interviews is a skill which requires knowledge and experience. Successful approaches will vary widely depending on the interviewer, the interviewee, and subject and purpose of the interview. Certain standards (such as those relating to the rights of the individual and the need for professionalism) remain constant; others change according to the circumstances.

Interview proceedings are not to be adversarial in nature. The purpose of the interview is to obtain the correct information in order to make the correct adjudication of the case, not to prove a particular point or to find a reason to deny the benefit sought. The purpose is to cover (and discover) all the pertinent information, both favorable and unfavorable to the applicant.

The following observations apply to all interviews:

(b) Preparing for the Interview

- The successful interview process begins when USCIS issues a call-in notice. In addition to accurately explaining the purpose of the interview, the notice should instruct the attorney (or in an unrepresented case, the interviewee(s)) on what to bring to the interview. In all cases, the notice should at least instruct the attorney / interviewee(s) to bring the originals of all documents previously submitted as photocopies.
- Do not commence an interview, even though time may be limited, until you have reviewed the application or petition and relating material, including submissions made by the applicant or the applicant's attorney or representative. Depending upon the case, this may range from a rapid scanning of the file to an intensive study of all available material. However, it is essential that the review of the material be made before commencing the questioning in order for the adjudicator to have the requisite knowledge and understanding of all the facts and circumstances involved in the case. Otherwise, the questioning may not cover all pertinent points. The review should be sufficiently thorough to enable the adjudicator to cover all issues necessary for an adjudication, thereby avoiding

any need for recalling the applicant, petitioner, or witness for further questioning on an issue which could have been covered during the initial interview. Review of the applicable provisions of the law and precedent decisions also should be made, if necessary, to ensure thorough familiarity with any legal issue that may be developed by questioning. In addition, when possible the adjudicator should review submissions made at the time of an interview that may assist in resolving legal issues. The more complete the preliminary preparation of the case prior to beginning the interview, the better equipped you will be to conduct an efficient interview, without time-wasting repetition or needless questions.

- If complex issues are involved, prepare an outline of the logical sequence of questioning to be followed, the information to be developed, and the evidence to be utilized. Such outlines are most conducive to eliciting all essential facts. Additionally, it may be advisable to select certain material from the file or relating files and arrange such material in the sequence of the plan of questioning. The extent of necessary preliminary preparation depends upon the issues involved in the individual case.

(c) At the Interview

- Greet the interviewee in a polite, dignified manner to put him or her at ease.
- Identify yourself, giving your name and title.
- Begin the interview with an explanation in non-technical terms of the purpose of the interview.
- Obtain identification from all parties to the interview, including interpreters, attorneys, and/or other representatives, unless identity has been previously established.
- Administer the following oath: "Do you solemnly swear (or affirm) that the statements you are about to make will be the truth, the whole truth, and nothing but the truth?"
- The oath or affirmation should always be administered in such a manner as to impress upon the person being interviewed the solemnity of the occasion and the importance of the testimony that he is about to give. The adjudicator and the person(s) to be sworn or affirmed should stand and raise their right hands during the administration of the oath or affirmation. The fact that the interview is being conducted under oath or affirmation should be noted in the transcript or in the file. If a verbatim question and answer statement is taken, the exact wording of the oath or affirmation should be included in the transcript. If such statement is not taken, the memorandum record of the interview should show that the person was under oath or affirmation.
- An applicant or the applicant's attorney or representative should be permitted to present documents or other evidence that may help to clarify an issue of concern to the interviewer. When possible, such evidence should be submitted and reviewed before the interview, and when relevant, should be added to the applicant's file.

- In certain other types of cases where more than one individual is to be questioned, it is generally best to question each party separately, asking each party several of the same questions in order to identify inconsistent answers. It may be necessary to recall either party for further questioning if contradictory answers are provided. In other types of interviews, an entire family group may be interviewed collectively.
- In a case where there is reason to believe that a witness under oath has given or may give false testimony, it may be advisable to inform the subject that willfully giving false testimony on a material matter under oath constitutes the crime of perjury, and that a person convicted of perjury is subject to a penalty of a fine, imprisonment or both. (However, see the comment below about challenging every false statement immediately.)
- Should the interviewing officer be required to leave the office for any reason during the interview, the relating file(s) should be removed to avoid unauthorized review during the officer's absence.

(d) Questioning Techniques

- All questions are either "closed-ended" or "open-ended."
 - Closed-ended questions call for specific, factual and usually brief responses (e.g., "Have you ever been arrested?").
 - Open-ended questions solicit views, opinions, thoughts and feelings and generally call for longer, narrative-type responses (e.g., "Tell me about any arrest you have had."). Open-ended questions are normally more useful in assessing an individual's credibility and for eliciting statements which may later be supported or contradicted.
 - Leading questions, which assume a controversial fact or suggest the answer, should be avoided except to expedite obtaining preliminary identifying material. For example, the leading question "You have never been arrested?" anticipates and assumes the subject's answer.
- Persons being questioned should be permitted to give a full explanation of any issue involved in the case. Fairness requires consideration of all relevant evidence. In some instances, detailed questioning may be desirable in order to make it more difficult for the subject to disavow his statements at a later time or to fabricate a new story. In this connection, however, remember that an adjudicator is duty-bound to develop the facts, favorable as well as unfavorable, with equal fairness to the subject and to the interests of the Government.

(e) Concluding or Terminating an Interview

An adjudicator should not unnecessarily prolong an interview, but should conclude it when all necessary information has been elicited. The subject(s) should be thanked for cooperating and providing information.

On some occasions it may be necessary to terminate an interview even though all essential information has not been elicited; however, termination should be avoided whenever possible. Termination may be necessary in the following situations, which are not intended to be exclusive:

- The interviewee is unable to communicate without an interpreter and one is not available.
- An interpreter clearly has difficulty in translating effectively.
- The officer has reasonable doubts about either the ability or impartiality of an interpreter supplied by the interviewee, and a USCIS or DHS interpreter is not immediately available.
- An attorney or other representative of an applicant or petitioner insists on responding to questions or coaching the person being interviewed.
- An attorney or other representative of an applicant or petitioner insists on interpreting for his or her client during an interview.
- The subject refuses to respond to questions essential to the successful completion of the interview.

The interviewing officer should explain the reason(s) for the termination. When appropriate, the interview should be rescheduled and (if needed) arrangements made for a competent interpreter. If the subject(s) or representative insists on continuing, a supervisor should be informed of the reason for the termination. It is the responsibility of the supervisor to determine if termination is warranted and to deal with the subject(s) and/or representative if they refuse to accept an unfavorable determination.

(f) After the Interview

- An alien, or attorney or accredited representative with a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative (Form [G-28](#)), may request a personal review and/or copy of the record of proceedings, including any written record of an interview conducted before a USCIS officer. The requesting party may file a Freedom of Information/Privacy Act Request (Form [G-639](#)) with USCIS to gain access to other record material.

[See also [Appendix 15-2](#), Techniques for Interviewing and Preparing Sworn Statements.]

☞ 9. The *AFM* Transmittal Memoranda button is revised by adding new entries, in numerical order, to read:

AD11-42 12/21/2011	<ul style="list-style-type: none">• Chapter 12• Appendix 12-1• Chapter 15.1(b)(2)• Chapter 15.2• Chapter 15.3• Chapter 15.4	This PM amends the <i>AFM</i> to include a revised Chapter 12 , Private Attorneys and Other Representatives; new Appendix 12-1 , Sample Affidavits; and revisions to Chapter 15.1(b)(2) , Chapter 15.2 , Chapter 15.3 , and Chapter 15.4 .
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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to your Directorate.

Interim Memorandum