

# Exhibit 42

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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of the Director  
Washington, DC 20529




U.S. Citizenship  
and Immigration  
Services

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## Memorandum

TO: Field Leadership

FROM: Michael Aytes   
Acting Deputy Director

SUBJECT: Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns

### I. Purpose

This memorandum provides further guidance for adjudicating National Security (NS) cases/concerns. It specifically addresses the following:

- Cases that involve pending NS concerns but appear to be otherwise approvable;
- Cases that involve indicators of NS concerns that have been “removed” by the record owner;
- The level of review required for the adjudication of Known or Suspected Terrorist (KST)<sup>1</sup> NS concerns; and
- Deconfliction.

Most notably, under this guidance cases with unresolved KST NS concerns can be granted only after concurrence by the USCIS Deputy Director.

### II. Background

On April 11, 2008, USCIS released a memorandum entitled, “Policy for Vetting and Adjudicating Cases with National Security Concerns” (CARRP memo). This memorandum instituted the Controlled Application Review and Resolution Program (CARRP), a disciplined, agency-wide approach for identifying, processing, and adjudicating applications and petitions

<sup>1</sup> KST is a category of individuals who have been nominated and accepted for placement in the Terrorist Screening Database (TSDB), are on the Terrorist Watch List, and have a specially-coded lookout posted in TECS/IBIS, and/or Consular Lookout and Support System (CLASS), as used by the Department of State (DOS). A KST in IBIS has a record number beginning with a **LE** and ending in a **LE** and should indicate that the individual is a **LE**. A KST in NCIC has a record number beginning **LE**. See Operational Guidance for each USCIS component.

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involving an identified National Security (NS) concern. CARRP involves the following four separate, but often overlapping, procedures:

1. Identifying NS concerns;
2. Internal Vetting and Assessing Eligibility in Cases with NS concerns;
3. External Vetting of NS concerns; and
4. Adjudicating cases with NS concerns (“CARRP Adjudication”).

CARRP decentralized the process of vetting and adjudicating cases with NS concerns. Thus, the field<sup>2</sup> assumed responsibility for vetting cases involving Non-KST concerns and adjudicating all NS-related cases.

After the release of the CARRP memorandum, Domestic Operations and Refugee, Asylum, and International Operations issued coordinated Operational Guidance<sup>3</sup> to implement CARRP within their respective directorates. In June 2008, to enhance the accuracy of NS records maintained by HQFDNS, USCIS conducted a Worksheet Inventory Audit of previously reported NS concerns. This audit, which included significant input from the field, disclosed the need to clarify CARRP policy and procedures. This memorandum aims to address that need for clarification as well as various questions that have arisen since the issuance of the above referenced Operational Guidance.

### **III. External Vetting in Cases involving KST NS Concerns**

Current CARRP guidance prohibits the external vetting of KST cases by the field. HQFDNS has sole responsibility for conducting external vetting when a case appears to be otherwise approvable after internal vetting and the completion of an eligibility assessment.<sup>4</sup>

<sup>2</sup> The term “field” refers to Field Offices, Service Centers, the National Benefits Center, and equivalent offices within the Refugee, Asylum, and International Operations Directorate.

<sup>3</sup> Neufeld, Don, *Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns*, Memorandum for Field Leadership, April 24, 2008.

Ow, Alanna, *Guidance for the International Operations Division on the Vetting, Deconfliction, and Adjudication of Cases with National Security Concerns*, Memorandum for Overseas District Directors, April 28, 2008.

USCIS Asylum Division, *Identity and Security Checks Procedures Manual – Section VIII Cases Involving Terrorism or Threats to National Security*, Procedures Manual, revised August 2008. (The ISCPM revised to incorporate CARRP procedures was issued via the Joseph E. Langlois memo *Issuance of Revised Section of the Identity and Security Checks Procedures Manual Regarding Vetting and Adjudicating Cases with National Security Concerns*, Memorandum for Asylum Division, May 14, 2008.)

USCIS Refugee Affairs Division, *Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns*, Standard Operation Procedure, May 12, 2008.

<sup>4</sup> This policy applies to all applications and petitions that convey immigrant or non-immigrant status. This policy does not apply to petitions that do not convey immigrant or non-immigrant status. See Operational Guidance for instructions.

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Note: External vetting is not to be confused with deconfliction, which officers<sup>5</sup> are required to complete for cases involving KST NS concerns. Deconfliction involves coordination between USCIS and the LEA/record owner to ensure that planned adjudicative activities (*e.g.*, interview, RFE, final decision, NTA issuance, etc., and the timing of such) do not compromise or impede an ongoing investigation or other record owner interest. External vetting consists of making inquiries to record holders in possession of NS information specifically to determine the nature and relevance of the NS concern to a determination of eligibility and/or removability.<sup>6</sup>

If, following internal vetting and an initial eligibility assessment, an officer determines that the applicant or petitioner appears to be otherwise eligible for the benefit sought, the following steps must be followed:

- The officer must complete all deconfliction (if the record owner is known) prior to forwarding the physical file<sup>7</sup> to HQFDNS for external vetting; (Note: HQFDNS will return cases where internal vetting and/or deconfliction were not properly completed and/or documented by the officer);
- As required by Operational Guidance, a supervisor must verify (and concur) that the internal vetting and deconfliction was completed, that the Fraud Detection and National Security Data System (FDNS-DS) was properly updated with all relevant information, and that the physical file was properly documented with a Background Check and Adjudicative Assessment (BCAA) (generated by FDNS-DS or created manually using the Word template when generated from FDNS-DS is not possible).<sup>8</sup> Supervisory concurrence that internal vetting and deconfliction was completed must be indicated in FDNS-DS ('activities' tab) prior to forwarding the file;
- The officer must complete a Request for Assistance to HQFDNS following current guidance<sup>9</sup>; and
- The officer must charge the file to COW FD0004 in NFTS and forward the physical file to HQFDNS, attention Milagros Castillo.

Officers are reminded that they may request both vetting and adjudicative assistance from HQFDNS simultaneously, and should do so in cases involving KSTs or in litigation.<sup>10</sup>

<sup>5</sup> The term "officer" is used here generally to refer to any officer with CARRP responsibilities. Operational Guidance will dictate the specific officer (*e.g.* FDNS-IO or CARRP-trained adjudications officer) responsible for each specific task.

<sup>6</sup> Exact definitions can be found in the Operational Guidance for each component.

<sup>7</sup> The Asylum Division has sent electronic copies of the contents of the files in the past and may continue to do so unless HQFDNS indicates that the physical file is necessary for external vetting. The Refugee Affairs Division interviews applicants overseas often in remote locations and, in most cases, uses a work file rather than an A-File when processing the case. As such, in the overseas Refugee context, copies of the contents of the file may be sent to HQFDNS for external vetting.

<sup>8</sup> Officers must ensure that all data included in a manually created BCAA has been entered into FDNS-DS.

<sup>9</sup> Current guidance can be found in the Operational Guidance for each component.

<sup>10</sup> Officers may also request adjudicative assistance (as opposed to external vetting assistance) from HQFDNS in cases where a basis for denial has been identified, but, after seeking both supervisory and legal review at the local level, the officer has concerns about the strength of the proposed denial or concerns regarding whether it is

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HQFDNS will perform external vetting including certain high-side (classified intelligence databases) checks. In cases where HQFDNS does not uncover grounds of ineligibility or inadmissibility that would support a ground of denial, they will seek declassification of any information that could be used to support a denial, or seek permission to use such information in a denial, as outlined in the "Ridge Memo."<sup>11</sup>

Upon completion of all external vetting, HQFDNS will return cases to the submitting officer when<sup>12</sup>:

- It has determined that the information obtained during external vetting is sufficient to support a denial of the pending application/petition; or
- HQ senior leadership<sup>13</sup> and the USCIS Deputy Director recommend approval of the application; and
- The HQ program office with jurisdiction over the case, in coordination with HQFDNS and Office of Chief Counsel, has issued written direction to the field on how to proceed with the adjudication.<sup>14</sup>

#### **IV. Handling Cases in which KST Hits have been Removed from TECS/IBIS**

There may be cases in which an individual is the subject of a KST NS concern but an indication of the same (or "hit") in TECS/IBIS **LE** has been removed by the record owner. The sequence of events in such cases must be documented in the physical file and in FDNS-DS and will be processed as follows:

If the individual agent who posted the KST hit is known, the officer handling the case must contact that LEA/record owner to:

1. Confirm that the individual is no longer a KST; and
2. Determine whether the record owner is aware of any additional information indicating a NS concern or of any other information relevant to the adjudication.

If the individual agent who posted the hit is not known, contact with the KST LEA/record owner is not required; however, the officer must determine whether there are any other Non-KST NS concerns on the subject before proceeding with the case.<sup>15</sup>

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appropriate to issue a denial under the circumstances of the case and the senior-level official (as defined in Operational Guidance) concurs with the officer's request for HQFDNS assistance.

<sup>11</sup> *Department of Homeland Security Guidelines for the Use of Classified Information in Immigration Proceedings*, October 4, 2004.

<sup>12</sup> There may also be cases where a case has been released by HQFDNS for adjudication on its merits, notwithstanding the existence of a KST lookout. This will not be done until after thorough vetting by HQFDNS and the approval of senior leadership.

<sup>13</sup> HQ Senior leadership may include senior representatives from Domestic Operations or Refugee, Asylum and International Operations, depending on program jurisdiction, along with National Security and Records Verification, and Chief Counsel.

<sup>14</sup> Guidance on how to proceed with the adjudication will be provided to senior-level officials in writing by HQ senior leadership.

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Any such communication with the LEA/record owner must be documented in the file and FDNS-DS.

Where the KST NS concern has been removed and there are other Non-KST NS concerns present, the case will be processed in compliance with the CARRP policy and Operational Guidance applicable to Non-KST cases.

Where the KST NS concern has been removed and there are no other NS concerns, the case will be considered a Non-NS/Non-CARRP case and adjudicated routinely after proper documentation in FDNS-DS and placement of the BCAA in the file.<sup>16</sup> Supervisory concurrence indicating that the NS concern has been resolved and the case is Non-NS/Non-CARRP must be recorded and the case must be updated to a 'Closed, Non-NS' status in FDNS-DS prior to release of the case to routine adjudication.

Any case where a KST NS concern [LE] was recorded and later removed, whether it becomes Non-NS/Non-CARRP or a Non-KST NS concern, must be checked in TECS/IBIS<sup>17</sup> at the time of adjudication and the results printed and documented in the file. This is to verify that the KST NS concern was not reinstated or a new [LE] [LE] hit was not generated subsequent to removal of the initial KST NS concern from TECS.

In the case of N400 naturalization applications, TECS/IBIS must be checked in any case:

- Where a KST NS concern [LE] was recorded and later removed; and
- Regardless of whether it later becomes a Non-NS/Non-CARRP or a Non-KST NS concern.

In those cases where a KST NS concern has been removed, TECS/IBIS also must be checked at the time of the oath ceremony and the results printed and documented in the file in order to verify that the KST NS concern was not reinstated or a new [LE] hit generated subsequent to the approval of the application.

Supervisors must confirm that the file is properly documented with a current (date of final adjudication) print out of the TECS/IBIS and NCIC result screens that do not reflect a KST NS concern [LE] or any other Non-KST NS concern and that all appropriate

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<sup>15</sup> KST hits in TECS/IBIS advise officers to call the Terrorist Screening Center (TSC) for information about the hit. In cases where the KST hit has been removed from TECS/IBIS, the TSC does not keep a record. Therefore, officers are required to contact the individual agent/record owner only if it is listed in the file.

<sup>16</sup> Note that the supervisor's name must be entered into FDNS-DS prior to printing the BCAA worksheet.

<sup>17</sup> In the instance of overseas refugee cases, the Headquarters Refugee Affairs Division will conduct a TECS/IBIS check for any demoted KST prior to releasing the case to the field for routine adjudication. In addition, TECS/IBIS checks are conducted for all arriving refugees by Customs and Border Protection (CBP) prior to admission to the U.S.

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fields are updated in FDNS-DS, thus concurring with the decision that the case is no longer a KST NS concern.

**V. Elevation of Cases Involving Non-KST NS Concerns**

Any denial, referral, or Notice of Intent to Deny (NOID) an application or petition with NS concerns must be based on statutory or regulatory grounds of ineligibility that can be cited in a decision.<sup>18</sup> If upon the completion of all required vetting and deconfliction, an applicant or petitioner with an unresolved Non-KST NS concern appears to be otherwise eligible for the benefit sought, the officer may:

1. Recommend approval of the application or petition and must elevate this recommended approval to the senior-level official<sup>19</sup> for consideration/concurrence; or
2. Recommend further review of the application or petition and must elevate this recommendation to the senior-level official.

If the senior-level official concurs with the recommendation to approve the pending application or petition, and adjudication of the case has not been ordered withheld in accordance with 8 CFR 103.2(b)(18), the senior-level official must sign and date the BCAA (generated by FDNS-DS)<sup>20</sup> and the officer must update FDNS-DS ('activities' tab) to reflect the concurrence. These cases must be updated in FDNS-DS to reflect a case status of 'Closed' and sub-status of 'NS concern Not Resolved.'

Supervisors must verify that the above was completed, documented in the physical file, and properly updated within FDNS-DS prior to final adjudication.

In the case where the officer recommends further review and the senior-level official determines that the application should be approved, the senior-level official will return the application to the officer for adjudication consistent with the official's guidance.

In the case where the senior-level official does not concur with the officer's recommendation to approve the pending application or petition, or would like assistance from HQFDNS, the senior-level official may submit a formal Request for Assistance (to include Vetting Assistance or Adjudicative Assistance, as desired) to HQFDNS. If, upon the completion of additional vetting by HQFDNS the subject remains eligible for the benefit sought, the senior-level official may:

1. Provide final concurrence to the officer for approval; or

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<sup>18</sup> **NOTE:** Where a basis for denial of an NS case has been identified, but the officer has concerns about its strength or concerns regarding whether it is appropriate to issue a denial under the circumstances of the case, officers are strongly encouraged to seek supervisory and/or legal review of the proposed denial before issuing a final decision. Upon review of a case involving a Non-KST NS concern, the senior-level official may determine that the denial should be issued, the case should be approved, or the case should be elevated to the HQ program office with jurisdiction over the case for additional guidance.

<sup>19</sup> The term "senior-level official" refers to local management for domestic Field Offices and Service Centers and HQ components within the Refugee, Asylum, and International Operations Directorate.

<sup>20</sup> The officer may annotate the BCAA to indicate that senior level approval was received and attach a copy of the written directive from the senior-level official.

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2. Request written direction on how to proceed with the adjudication from the HQ program office with jurisdiction over the case.

Occasionally, officers in the field may encounter cases where the Non-KST NS concern is provided by non-TECS/IBIS sources (such as Department of Defense or Federal Bureau of Investigation via Letterhead Memorandum) and the information available indicates that the subject may be somehow linked to terrorism, but the subject is not listed as a known or suspected terrorist in TECS/IBIS. These cases will be considered Non-KST NS concerns and must proceed through the CARRP process as such.

## **VI. Additional Deconfliction Guidance**

### **Federal Bureau of Investigation (FBI) - Law Enforcement Agency (LEA) or Intelligence Community Member (IC)**

The CARRP Operational Guidance for Domestic Operations listed the FBI as both an LEA and a member of the IC, and indicated that officers in the field were not permitted to contact members of the IC for vetting or deconfliction. This created confusion as to whether officers in the field were permitted to contact the FBI in connection with carrying out their responsibilities under CARRP. Officers in the field are permitted to contact the FBI record owner in order to vet and deconflict cases with Non-KST NS concerns, unless otherwise specified in the Operational Guidance. Officers are reminded that they are not permitted to perform external vetting for KST hits. However, they must perform deconfliction with KST record owners (including the FBI) prior to taking any adjudicative action.

### **Withholding of Adjudication**

As part of the deconfliction process, officers are required to contact the LEA/record owner to advise the owner of contemplated adjudicative actions and determine if the LEA/record owner has an open investigation on the subject. The purpose of this deconfliction is to ensure that USCIS's adjudicative action will not interfere with an open investigation. In performing deconfliction, officers should make an effort to explain the scope and nature of the immigration benefit sought by the subject from USCIS. Officers should also present the LEA/record owner with the opportunity to formally request that the application be held in abeyance in accordance with 8 CFR 103.2(b)(18). Any requests for abeyance must be made to the District Director<sup>21</sup> in writing on agency letterhead (can be received via fax or email attachment), reviewed by the local Office of Chief Counsel (OCC), and recorded in FDNS-DS.

If, based upon information contained in the request submitted by the LEA/record owner, the District Director determines that there is an open investigation involving a matter related to eligibility for (or the exercise of discretion in connection with) the benefit sought and the

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<sup>21</sup> For purposes of exercising the authority provided under 8 CFR 103.2(b)(18) to hold a case in abeyance, the term "District Director" means District Director, Service Center Director, and any equivalent Director within the Refugee, Asylum, and International Operations Directorate. See 8 CFR 1.1(o).



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disclosure of information to the applicant or petitioner in connection with the adjudication would prejudice the ongoing investigation, the District Director may place the case in abeyance for 180 days or until the investigation is completed, whichever is sooner. This action must be documented in both the A-file and in FDNS-DS. At the end of this abeyance period, officers will contact the LEA/record owner to determine if the investigation remains open and if the LEA/record owner would like to extend the abeyance. If the investigation has been closed, officers will document the file and FDNS-DS and proceed to external vetting (advising the LEA/record owner that USCIS will continue the process to adjudicate the application). Officers will consider any information provided by the LEA/record owner as it relates to the adjudication of the application to the extent that it can be referenced in a decision or may affect USCIS with respect to the use of discretion during adjudication. If the investigation remains open, officers will request that a current formal written request on agency letterhead from the LEA/record owner to continue to hold the case in abeyance be submitted to the District Director. The withholding of adjudication period may be extended further upon the determination by the appropriate USCIS official (*e.g.*, District Director or above depending upon the length of time the case has been held in abeyance) that the facts of the case continue to meet the criteria set forth in 8 CFR 103.2(b)(18).

If the LEA/record owner does not have an open investigation on the subject and does not contemplate opening one and formally requesting that the application be held in abeyance in accordance with 8 CFR 103.2(b)(18), officers will proceed to external vetting and advise the LEA/record owner that USCIS will continue the process to adjudicate the application. Officers will consider any information provided by the LEA/record owner as it relates to the adjudication of the application to the extent that it can be referenced in a decision and relates to the adjudication of the application. This also extends to the use of such information in exercising discretion in an adjudication.

If the LEA/record owner indicates the possibility of opening an investigation in the near future, officers should continue with deconfliction and vetting activities. Officers must contact the LEA/record owner after 60 days to determine whether an investigation has been opened. If the LEA/record owner indicates the investigation has been opened, they may request withholding of adjudication, as above. If the LEA/record owner has not opened an investigation, officers will proceed to adjudication and advise the LEA/record owner that USCIS will continue the process to adjudicate the application, as above.

**Handling Cases where there is No TECS/IBIS Record or Identified Record Owner**

There may be cases where a Non-KST NS concern is identified during an interview or other interaction with the applicant or petitioner. In the absence of TECS records, IBIS information, or other indication of a record, an evaluation of the NS concern must be made based on information obtained from the applicant, deconfliction with external sources, and public information.<sup>22</sup> Per

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<sup>22</sup> Officers may request assistance from HQFDNS at the completion of internal vetting and eligibility assessment.

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the CARRP Memo, external vetting is not required if there is no identified record owner.<sup>23</sup> Where an applicant or petitioner is denied a benefit based on the Non-KST NS concern identified through interactions with the subject or by other means, the officer must enter a record into TECS/IBIS for future reference by law enforcement.

**VII. Additional Ancillary Benefit Adjudication Guidance**

Field offices may approve ancillary benefit applications<sup>24</sup> with both KST and Non-KST NS concerns after 60 days<sup>25</sup> if vetting is not complete. The purpose of the 60-day evaluation period is to enable the officer to verify the individual's identity and to make an initial determination as to whether rescission and or removal proceedings may be appropriate. Officers are reminded that 8 C.F.R. 274a.13(d) requires that I-765 applications be adjudicated within 90 days of receipt unless an interim Employment Authorization Document (EAD) is issued or an exception applies. This guidance does not apply to I-765 applications for initial EADs under 8 C.F.R. 274a.12(c)(8) and 208.7 based on an underlying asylum application that has been pending for at least 150 days at the time of filing. In such cases USCIS must adjudicate the I-765 within 30 days of receipt.

When an ancillary benefit with an unresolved NS concern is approved and there is no other pending application or petition, FDNS-DS must be updated to reflect 'Closed' and the sub-status to reflect 'NS concern Not Resolved.'

**VIII. Conclusion**

This memorandum is provided as guidance to officers for the handling of cases involving national security concerns. If officers have further questions regarding policy and procedures related to these cases, such questions should be raised through the officers' chain of command. If the chain of command is unable to provide further guidance, supervisory officers may send a Request for Assistance for policy or procedure guidance to the FDNS-NSB mailbox, according to current procedures.

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<sup>23</sup> Scharfen, Jonathan R., *Policy for Vetting and Adjudicating Cases with National Security Concerns*, Memorandum for Field Leadership, April 11, 2008. Section IV, Part C reads: "in a case with a Non-KST NS Concern, the officer must initiate the external vetting process before the case may proceed to final adjudication if... there is an identified record owner in possession of NS information..." Programs may require external vetting in some circumstances as identified in Operational Guidance.

<sup>24</sup> Form I-765, Application for Employment Authorization and Form I-131, Application for Travel Document.

<sup>25</sup> Future agency policy may have an effect on the currently required 60-day evaluation period for Form I-90, Application to Replace Permanent Resident Card.