

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VICTOR MOCANU

CIVIL ACTION  
No. 07-0445

V.

ROBERT S. MUELLER, ET AL.

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GUISEPPE CUSUMANO

CIVIL ACTION  
No. 07-0971

V.

MICHAEL B. MUKASEY, ET AL.

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MOHAMMAD BARIKBIN

CIVIL ACTION  
No. 07-3223

V.

UNITED STATES, ET AL.

---

JEAN ELISSAINT

CIVIL ACTION  
No. 07-4747

V.

UNITED STATES, et al.

---

ANDREW O. NEWTON, M.D.

CIVIL ACTION  
No. 07-2859

V.

DONALD MONICA, et al.

---

TONGZIAO ZHANG

CIVIL ACTION  
No. 07-2718

V.

MICHAEL CHERTOFF, et al.

---

SAID HUSSAIN

CIVIL ACTION  
No. 08-195

V.

MICHAEL B. MUKASEY, et al.

---


PRAECIPE

TO THE CLERK OF THE COURT:

Kindly file the enclosed Certification of Supplement to the Administrative Record (AR CIS) and attached Memorandum regarding **Revised National Security Adjudication and Reporting Requirements** issued by USCIS as of February 4, 2008 in the above-captioned cases. The above-captioned actions were joined by the Honorable Michael Baylson, Judge U.S. District Court, for consolidated hearing with the other cases captioned on the Administrative Records previously supplied by FBI and CIS. The purpose of this supplement to the CIS Administrative Record (AR CIS) is to provide the Court and all counsel of record with a certified copy of the Revised National Security Adjudication and Reporting Requirements issued by USCIS on February 4, 2008 which has been sent to all USCIS offices and the FBI (see e-mail Smith to Cannon at attached AR CIS 0103-0104.

Respectfully submitted,

PATRICK L. MEEHAN  
United States Attorney

  
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Virginia A. Gibson  
Chief, Civil Division

Date: February 6, 2008

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**CERTIFICATION OF SUPPLEMENT TO THE ADMINISTRATIVE RECORD**

**Gregory Smith, pursuant to 28 U.S.C. § 1746, declares the following:**

**1. I am currently employed as the Acting Associate Director of the National Security and Records Verification Directorate of U.S. Citizenship and Immigration Services (USCIS), an agency within the U.S. Department of Homeland Security (DHS). My duty station is presently Washington, D.C.**


**2. I have been employed as the Associate Director since May 28, 2007. I have been employed by USCIS since March 2003, when the agency was created. My current duties include the management of the National Security and Records Verification Directorate, which includes individuals who work to resolve national security background check issues in the context of adjudicating applications and petitions for immigration benefits.**

**3. Due to the nature of my official duties, I am familiar with the procedures for investigation and examination of applicants for naturalization and adjustment of status and the communications between USCIS and the Federal Bureau of Investigation, which conducts name checks on applicants .**

4. I have reviewed information about the name check process, USCIS policy on name checks, and other USCIS system of records, and I designated the Supplement to the Administrative Record in this case. This information was created in the regular course of USCIS business.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this       day of February 2008.

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GREGORY SMITH  
Acting Associate Director  
National Security and Record Verification  
Directorate  
United States Citizenship and Immigration  
Services  
Washington, D.C.

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Domestic Operations of Directorate  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

FEB 4 - 2008

HQ 70/23 & 70/28.1

## Interoffice Memorandum

TO: Field Leadership

FROM: Michael Aytes   
Associate Director, Domestic Operations

SUBJECT: Revised National Security Adjudication and Reporting Requirements

### Background

U.S. Citizenship and Immigration Services (USCIS) conducts background checks on all applicants, petitioners, and beneficiaries seeking immigration benefits. This is done both to enhance national security and to ensure the integrity of the immigration process. USCIS has previously mandated that FBI name checks be completed and resolved before any positive adjudication can proceed on certain form types. This memorandum modifies existing guidance for applications where statutory immigration provisions allow for the detention and removal of an alien who is the subject of actionable information that is received from the FBI or other law enforcement agencies after approval of the application.

USCIS is issuing revised guidance in response to recommendations of the DHS Office of Inspector General (OIG-06-06) regarding the need to align the agency's background and security check policies with those of U.S. Immigration and Customs Enforcement (ICE). The *Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals* regulations prevent immigration judges and the Board of Immigration Appeals (BIA) from granting benefits to aliens before DHS confirms that all background and security checks have been completed. See 8 C.F.R. § 1003.47(g); 8 C.F.R. § 1003.1(d)(6)(i). In the context of removal proceedings, ICE has determined that FBI fingerprint checks and Interagency Border Inspection Services (IBIS) checks are the required security checks for purposes of the applicable regulations. In the unlikely event that FBI name checks reveal actionable information after the immigration judge grants an alien permanent resident status, DHS may detain and initiate removal proceedings against the permanent resident. See 8 U.S.C. § 1227; see also 8 U.S.C. § 1256 (allowing DHS to rescind an alien's adjustment of status).

[www.uscis.gov](http://www.uscis.gov)

AR CIS 0101

**Revised National Security Adjudication and Reporting Requirements**  
**Page 2**

**Revised Guidance**

A definitive FBI fingerprint check and the IBIS check must be obtained and resolved before an Application for Adjustment of Status (I-485), Application for Waiver of Ground of Inadmissibility (I-601), Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (I-687), or Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603) (I-698) is approved. USCIS will continue to initiate FBI name checks when those applications are received. Where the application is otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicator shall approve the I-485, I-601, I-687, or I-698 and proceed with card issuance. The FBI has committed to providing FBI name check results within this timeframe.

There is no change in the requirement that FBI fingerprint check, IBIS check and FBI name check results be obtained and resolved prior to the adjudication of an Application for Naturalization (N-400).

Pending further guidance regarding post-audit reporting and tracking requirements and modifications to associated quality assurance procedures, applications approved pursuant to this memorandum shall be held at the adjudicating office. If derogatory or adverse information is received from the FBI after the application is approved, USCIS will determine if rescission or removal proceedings are appropriate and warranted.

Subject to the reporting requirements set forth in the February 16, 2007, memorandum titled "FBI Name Checks Policy and Process Clarification for Domestic Operations," an application or petition may be denied, dismissed, administratively closed, withdrawn, or referred to the Immigration Court at any time.

Questions regarding this memorandum should be directed through appropriate supervisory and operational channels. Local offices should work through their chain of command.

**Distribution List:**

**Regional Directors**

**Service Center Directors**

**District Directors (except foreign)**

**Field Officer Directors (except foreign)**

**National Benefits Center Director**



**From:** Smith, Gregory B  
**Sent:** Tuesday, February 05, 2008 11:40 AM  
**To:** Cannon, Michael  
**Subject:** Revised USCIS Name Check Guidance

Michael,

Thank you for meeting last week to discuss our mutual efforts to address the FBI name check backlog.

I am attaching revised guidance that USCIS will distribute to the field today. Under the revised guidance, a definitive FBI fingerprint check and the IBIS check must be obtained and resolved before an adjustment of status application is approved. USCIS will continue to initiate FBI name checks when those applications are received. Where the application is otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicator shall approve the adjustment of status application.

The overwhelming majority of FBI name checks are completed within six months, and it is the goal to complete all FBI name checks within that time frame. While USCIS would prefer to have the FBI name check results before approving the application (and *will* have the results as the FBI meets its processing goals), the alien is already in the United States and DHS is able to detain and remove the alien irrespective of whether the adjustment application has been approved or remains pending.

The revised guidance does not make any changes to naturalization applications. USCIS will continue to require that FBI fingerprint check, IBIS check and FBI name check results be obtained and resolved prior to the adjudication of an application for naturalization. It is exceedingly difficult to denaturalize a citizen, and it is imperative that we protect the integrity of the naturalization process.

However, USCIS will prioritize allocation of additional appropriations (i.e. a significant percentage of the \$20 million in the DHS appropriations bill) to addressing FBI name checks that delay adjudication of naturalization applications. Existing resources should not be diverted from pending adjustment of status name checks, but new resources should be directed to resolving those checks that hold up the oldest naturalization applications. All available options should be explored, including the use of additional contractors, shift work, rehired annuitants, and any other tools designed to decrease case processing times and increase productivity without sacrificing quality controls.

USCIS has previously requested that the FBI provide a detailed and reliable plan for linking additional resources to measurable improvements in FBI name check process. USCIS looks forward to working with you to develop that plan. USCIS has committed to addressing the backlog of pending naturalization applications, and dedicating additional resources to tackle the FBI name check issue is critical to the agency's success.

Regards,

Greg

ARCIS 0103

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I served a true and correct copy of the Praeipce to file the Certification of Supplement to the Administrative Record (AR CIS 0097-0102) and attached Memorandum regarding **Revised National Security Adjudication and Reporting Requirements** issued by USCIS as of February 4, 2008 first class mail, postage prepaid, on the following:

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Virginia A. Gibson  
Chief, Civil Division

February 6, 2008