

CHAPTER V: Request for Review Process

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CHAPTER V: Request for Review Process

A. INTRODUCTION

If US Citizenship and Immigration Services (“USCIS”) denies your client’s refugee application, your client may request that USCIS review the decision. This is done by submitting a Request for Review (“RFR”).

This section of the Primer will address the RFR process, including: (A) how to determine why your client’s refugee application was denied; (B) the required elements of an RFR; (C) tips for drafting the RFR; (D) how to submit the RFR; (E) when and how to follow up on submitted RFRs; (F) possible dispositions; and (G) further opportunities if your client’s RFR is denied.

There is no appeal from a USCIS denial of a refugee application before an immigration judge or an Article III judge exercising judicial review as there would be in in-country US asylum proceedings.¹ However, USCIS may exercise discretion to review a denied application upon request from the refugee applicant or a representative.²

USCIS considers any document that a refugee submits requesting review of their denial to be an RFR.³ RFRs are divided into two categories, each with its own standard of review: (1) allegations of error in the denial of eligibility for resettlement; and (2) allegations that new evidence provides a basis for resettlement eligibility. An applicant’s RFR must fall within one or both of these categories. Therefore, to be successful, RFRs *must prove either* (1) the adjudicating officer made a significant error, or (2) identify new information that merits a change in the decision, *or* (3) *prove both 1 and 2*. A submission merely consisting of criticism or pleading for favorable consideration will not necessarily be treated as an RFR. Further, a submission based only on the same information from the original refugee application will likely not succeed.

Generally, USCIS will only accept one RFR.⁴ Consequently, advise your client not to complete and submit the RFR by themselves.

Overview of the RFR Process

¹ See 8 C.F.R. 207.4 (“There is no appeal from a denial of refugee status under this chapter.”).

² See Joseph D. Cuddihy, Director, Office of Refugee, Asylum, and International Operations, Memorandum for Overseas District Directors, US Citizenship and Immigration Services, May 3, 2005, p. 2, note 2 (indicating that formal motions to reopen and reconsider are not used because 8 C.F.R. 103.5 does not apply in overseas refugee proceedings).

³ *Id.*, p. 2.

⁴ See USCIS, RFR Tip Sheet, <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-tip-sheet>.

Section A	Determining the Reason for Denial
Section B	Elements of an RFR
Section C	Drafting the RFR
Section D	Compiling and Submitting an RFR
Section E	Following Up on an RFR Submission
Section F	Possible Case Dispositions
Section G	Alternatives if the RFR is Denied

B. DETERMINING THE REASON FOR DENIAL

When USCIS denies a refugee applicant, the applicant receives a Notice of Ineligibility (“NOI”) for Resettlement. *See* Appendix 35 for an example of a Notice of Ineligibility for Resettlement. NOIs lack specific reasons for denial and are often ambiguous. Thus, the first step in the RFR process is to obtain and analyze the NOI to determine the grounds for denial. In addition, obtain copies of anything the applicant submitted to UNHCR, IOM, or USCIS and review those submissions alongside the NOI.

1. Notice of Ineligibility for Resettlement

The local Resettlement Support Center (“RSC”) office delivers the NOI to the applicant. Some RSCs deliver the NOIs in person (IOM Jordan, IOM Egypt), whereas others use email (IOM Iraq) or mail (ICMC Turkey and Lebanon). Usually the RSC will conduct a short counseling session after delivering the NOI and will sometimes distribute USCIS’s RFR Tip Sheet in English and the applicant’s language. The NOI should be dated and contain the principal applicant’s name, A (which stands for “Alien”) file number, and an RSC case number (formerly known as an OPE number). Sometimes, USCIS will fail to complete these sections. The date will usually reflect the date of preparation of the NOI, not the date of delivery to the applicant. In some instances, there is a second date stamped on the NOI, reflecting the date of delivery to the applicant.

The NOI indicates the general eligibility category relating to the basis for the refugee application denial. It will not contain any specific facts or information concerning the rationale for the denial. The NOI contains information instructing the applicant on how to file an RFR.

USCIS refugee officers or supervising officers will usually sign or initial the NOI, which is issued by the USCIS Refugee Affairs Division. If an applicant has lost or has never received an NOI, the applicant should contact the appropriate RSC.

As of April 2017, the NOIs listed seven possible reasons for denials. Below is a discussion of the general nature of each denial category, but for more information on the substantive law and procedures governing each denial category, please see the appropriate section of the Primer within the US Refugee Law and US Refugee Admissions Program Procedures chapters.

a. [“Special Humanitarian Concern”](#)

A denial on this basis means that USCIS has determined that the applicant has failed to establish that they qualify for access to the US Refugee Admissions Program (“USRAP”). Qualifications would relate to the P-1, P-2, or P-3 access to USRAP.⁵ For Iraqi DAP cases based on US employment, a denial on this ground likely indicates an issue with employment qualifications. For UNHCR P-1 referrals, invalid family relationships are a common issue. In these instances, legal teams should thoroughly debrief the client on past and current marriages, and counsel the client on applicable US marriage law.

b. [“Refugee Claim”](#)

A denial on this basis means that USCIS has determined that the applicant failed to establish that they meet the definition of a refugee under INA Section 101(a)(42).⁶ The applicant may have failed to establish either of the following, as the NOI will note:

- Persecution: The applicant failed to establish that they suffered past persecution or that they have a well-founded fear of future persecution; and/or
- Protected Characteristic: The applicant failed to establish that the past persecution or fear of future persecution was on account of a protected characteristic: race, religion, nationality, membership in a particular social group, or political opinion.

c. [“Persecution of Others”](#)

A denial on this basis means that USCIS has determined that the applicant failed to establish that they have not ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion.⁷ If the evidence indicates that the applicant may be ineligible for refugee resettlement because they are a persecutor (e.g., due to military service in a military that was

⁵ For a more detailed discussion of access to USRAP, *see supra*, Section III, US Refugee Law.

⁶ *See supra*, Section III, US Refugee Law.

⁷ *See supra*, Section III.D, Persecutor Bar.

known to have committed acts of persecution), then the applicant must establish that the persecutor exception does not apply.

d. [“Firm Resettlement”](#)

A denial on this basis means that USCIS has determined that the applicant failed to establish that they are not firmly resettled in a third country. That is, the applicant failed to establish that the conditions in their country of residence are so restrictive as to deny resettlement.⁸ A refugee is considered to be “firmly resettled” if they have been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has traveled to and entered that country as a consequence of their flight from persecution.⁹ See Primer chapter III(E) for additional information on firm resettlement.

e. [“Admissibility”](#)

A denial on this basis means that USCIS has determined the applicant failed to establish that they are admissible to the United States pursuant to INA §212(a) (8 USC §1182(a)). USCIS typically lists the specific provisions under which the applicant was determined to be inadmissible. All refugee applicants must be deemed admissible for entry to the United States. INA 212(a) (8 USC §1182(a)) provides the classes of aliens who are ineligible for visas or admission. The bases for ineligibility are numerous; however, the most common in the refugee context are:

- Criminal and related grounds (INA 212(a)(2)). This can include being previously convicted of or having admitted to committing a crime involving moral turpitude.
- Material misrepresentation (INA 212(a)(6)(C)). This includes willfully misrepresenting a material fact in order to help procure a visa or admission to the United States, including during the USCIS interview; and
- Security-related grounds (INA 212(a)(3)). Certain inadmissibility grounds are automatically waived for refugees by statute.¹⁰ Other grounds can be waived through an individual waiver application to USCIS. If an applicant is denied on a waiver-eligible inadmissibility ground but is otherwise eligible for refugee status, an applicant may apply for a special waiver. For more information on applying for a waiver, please see Section A(b) “Special Inadmissibility Waiver” below.

f. [“Credibility”](#)

A denial on this basis means that USCIS has determined that the applicant’s claims lack credibility. Credibility denials are very common, and detailed information on USCIS’s

⁸ 8 C.F.R. § 207.1(b)

⁹ *Id.*

¹⁰ INA 207(c)(3) “The provisions of paragraphs (4) [Public Charge], (5) [Labor Certification], and (7)(A) [Documentation Requirements] of section 212(a) shall not be applicable to any [refugee].”

credibility analysis can be found in Chapter III of the Primer. On the NOI USCIS will indicate both the *eligibility factor* that the testimony in question related to and the *credibility factor(s)* that led to the testimony being deemed non-credible. The eligibility factors are identical to the other eligibility grounds on the Notice of Ineligibility (Special Humanitarian Concern, Refugee Claim, Persecution of Others, Firm Resettlement, Admissibility, Other). The credibility factors are: (i) “material inconsistency(ies) within your testimony;” (ii) “material inconsistency(ies) between your testimony and other evidence (i.e., documentation, country conditions, other case member’s testimony, etc.);” (iii) “insufficiently detailed answer(s) presented to material questions;” (iv) “material part(s) of your testimony or other evidence was determined to be implausible in light of known country conditions;” and v) “Other.” Note that the NOI statement references two aspects of the credibility determination. First, it identifies credibility factors such as inconsistencies, insufficiently detailed answers, and implausibility. Second, because those credibility factors do not *always* lead to a finding that an applicant’s testimony is not credible, the NOI will note whether the factor related to a *material* issue—that is, an element necessary for a claim to succeed.¹¹ Additionally, the NOI indicates that: (i) during interview the officer informed the applicant of the credibility concerns; (ii) the officer provided the applicant with an opportunity to explain the credibility concern (e.g., why an aspect of the testimony was inconsistent); and (iii) the applicant was unable to provide a reasonable explanation.

NOTE TO PRACTITIONERS

If you believe your client may have encountered credibility issues because they are suffering from PTSD or another mental health issue, please consult this Primer’s chapter VIII, Psychosocial Issues for Clients and Attorneys.

g. [“Other Reasons”](#)

US Citizenship and Immigration Services (“USCIS”) may also deny a refugee application “as a matter of discretion for security-related reasons.” Applicants are denied due to a security checks issue if the “Other Reasons” box is checked on the NOI. It is very rare for “Other” denials to be overturned. RFRs addressing an “Other Reasons” denial should provide support demonstrating that the applicant is not a security threat. Generally, IRAP is not able to assist with the filing of an RFR related to security-check denials. While IRAP has assisted with these RFRs in the past (*see* Appendix 36: Sample Security-Related RFR), security-check denials usually do not directly involve legal issues, and IRAP usually provides legal information rather than representation. *See* Appendix 37. However, teams may assist clients who have ongoing cases that involve security-check denials.

¹¹ This analysis is legally distinct from the separate analysis of whether a misrepresentation is material under case law interpreting INA 212(a) admissibility. For a more detailed discussion, *see supra* Chapter III.

2. Special Inadmissibility Waiver (I-602)

A refugee applicant determined inadmissible by USCIS pursuant to INS § 212(a) (8 USC §1182(a)) may apply to have the inadmissibility finding waived pursuant to INA 207(c)(3) (8 USC 1157(c)(3)).¹²

Section 207(c)(3) provides that most grounds of inadmissibility enumerated in INA section 212(a)¹³ may be waived for one or more of three reasons: humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. However, waivers are not available for applicants deemed inadmissible under paragraph (2)(C) and subparagraph (A), (B), (C), or (E) of paragraph (3), relating to controlled-substance traffickers and terrorism-related inadmissibility grounds (“TRIG”).¹⁴

To apply for the waiver, the refugee applicant must complete the I-602 “Application by Refugee for Waiver of Grounds of Excludability” form, in which it must be shown that they qualify for a waiver on one or more of the three grounds. This requires the applicant to provide compelling factual details that show that they qualify for the waiver.

In reaching a decision on whether to grant or deny the waiver, USCIS weighs the nature of the alleged basis for inadmissibility against the factors in favor of granting a waiver. A 2005 Department of Homeland Security memorandum states, with regard to an analogous 209(c) waiver:

The humanitarian, family unity, or public interest considerations must be balanced against the seriousness of the offense that rendered the alien inadmissible. In making this determination, the adjudicator should recognize that the alien has established a well-founded fear of future persecution, which is an extremely strong positive discretionary factor.

¹² See INA 212(a)(3)

¹³ This is with the exception of paragraph (2)(C) and subparagraph (A), (B), (C), or (E) of paragraph (3), relating to controlled-substance traffickers and security/terrorism-related grounds.

¹⁴ Refugees deemed inadmissible due to TRIG may be eligible for discretionary exemptions, which are distinct from waivers. For more information on TRIG and TRIG exemptions, see IRAP Chapter III. Whereas refugee waiver authority stems from INA 207, the Department of State and Department of Homeland Security exercise discretionary authority under INA 212(d)(3)(B)(i) to create categories of TRIG exemptions (referred to as situational or group-based exemptions) or to apply individual exemptions. Note that refugees do not actually apply for TRIG exemptions. Rather, during the adjudication process, USCIS officers identify if TRIG applies, and if so, whether a TRIG exemption could apply. USCIS officers would complete an Exemption Worksheet for adjudication. If a refugee is issued an NOI for TRIG, then USCIS should have already reviewed whether an exemption was possible and determined that it was not. An applicant could then challenge the failure to properly decide eligibility for an exemption or an abuse of discretion by filing an RFR based on new evidence or significant error.

Therefore, unless there are negative factors that outweigh the positive ones, the adjudicator should generally approve the waiver application.¹⁵

There are three parts to the I-602 form. *See* Appendix 38: Sample Form I-602 Application for Waiver of Grounds of Inadmissibility. Part 1 asks for the applicant's biographical information. In Part 2, the applicant provides information related to the finding of inadmissibility and an explanation of their reasons for seeking the waiver. The refugee should attach a statement to the I-602 that demonstrates that the seriousness of the alleged basis for inadmissibility is greatly outweighed by the humanitarian, family unity, and/or public interest waiver grounds detailed. For an example, *see* Appendix 39: Sample Form I-602 Memorandum. Part 3 is to be completed by applicants with active or suspected tuberculosis or who have or have had a physical or mental disorder and behavior associated with the disorder. The applicant must make a statement about healthcare plans after admission to the United States and must, in addition, provide a statement by their physician or health facility. If a refugee is denied on health-related grounds, the RSC should coordinate with approved panel physicians.

Waivers are available even where there are multiple grounds *of inadmissibility*. For example, a refugee who is inadmissible on multiple grounds based on a conviction for a crime involving moral turpitude (INA 212(a)(2)(A)(i)(I)) and a past prostitution-related offense (INA 212(a)(2)(D)(ii)) can file an I-602. However, a waiver will not be available where there are multiple grounds *for ineligibility*. For example, a refugee who is ineligible to due to inadmissibility because of a conviction for a crime involving moral turpitude INA 212(a)(2)(A)(i)(I) *and* who is also ineligible for refugee status due to credibility concerns related to their refugee claim cannot file an I-602. If an RFR successfully results in USCIS resolving credibility concerns, thereby rendering the applicant otherwise eligible for refugee status, the applicant could file an I-602.

In cases where there is a waivable inadmissibility ground and no other grounds of ineligibility, the applicant has three options:

1. The applicant may file an RFR related to the admissibility determination;
2. The applicant may file only an I-602 waiver; *or*
3. The applicant may file *both* an RFR *and* an I-602 but must then frame the I-602 submission as an alternative argument.

In cases where there is a waivable inadmissibility ground and other grounds of ineligibility, the applicant would only be able to rely on options 1 and 3. If the applicant chooses to file both an RFR and an I-602 (option 3), then the I-602 should clearly state that this is not an

¹⁵ Immigration Briefings, "Waivers of Inadmissibility: Off the Beaten Path," DLC Beach at 4–5 (Jan. 2011), quoting October 31, 2005, memorandum from: Michael Aytes, Associate Director for Operations, Vol. 8 Immigration Law Service 2d, PSD Selected DHS Document 940.

admission and that it should only be considered should the RFR not succeed on the merits. Note, however, that filing both an I-602 and an RFR may significantly delay the review process, because I-602 waivers are generally processed more quickly than RFRs. For more information, see Appendix 38 for a sample I-602 Form and Appendix 39 for a redacted memorandum submitted in support of a refugee applicant's waiver.

3. Clarifying the Reason for Denial: Debriefing the Client

After reviewing the NOI, review the applicant's story in detail with the applicant. Be alert to any issues that correspond with the denial letter's rationale. Generally, the most useful exercise to determine denial grounds is to fully debrief the applicant on each of their interviews. The reason for denial will typically be evident from a summary of the USCIS interview because USCIS policy requires that adjudicators confront applicants with any inconsistencies or problematic aspects of their case during the interview. For this reason, the NOI confirms in writing that the adjudicator explained any credibility concerns to the applicant and gave the applicant the opportunity to explain the issue. If the applicant was not confronted with an inconsistency or questioned in detail about a basis for denial, this may be grounds for an RFR based on significant error as well as new evidence in the form of your client's explanation.

Examples of questions to ask the applicant include:

- Can you describe the interview in as much detail as possible, starting at the very beginning?
- What issues did the interviewer focus on?
- Did the interviewer raise particular concerns?
- Were there any misunderstandings during the interview?
- Did the interview stop at any point? Did the interviewer temporarily leave the room?
- Were you aware of any problems with the interpretation?
- How long was the interview?
- Did you feel that you were given the opportunity to tell your entire story?
- Did the mood of the interviewer change at any point?
- Do you think anything went wrong?
- Why do you think you were denied?

Take careful notes during your conversation with the applicant. If the applicant makes inconsistent statements in the interview with you, be sure to clarify the statements. Be aware that many applicants will be recounting traumatic experiences, so conduct the interview with the utmost sensitivity.

NOTE TO PRACTITIONERS

Access the refugee case file to get more information about the reason for your client's denial. The only way to obtain the case file is through a FOIA request. FOIA requests are discussed in detail *infra*

Chapter 10. Advocates should file FOIA requests for the refugee case file in every RFR representation to USCIS *and* DOS. These FOIA requests should be filed immediately, within three weeks of receiving the case, as per the guidance in Chapter X. Although FOIA regulations and practices often reference an original signature, in practice USCIS and DOS have been accepting scanned signatures from refugees overseas who request their refugee case files.

Time and inconsistency are two major drawbacks to FOIA requests. Receiving a FOIA response can range from several months to several years, with the latter time frame being more common. FOIA responses are drawn out even with the possibility of, or in some cases actual, federal court litigation. Moreover, inconsistent searches and responses mean that files are often missing or over-redacted.

IRAP recommends that RFR drafting and submission occur before the FOIA is received because of the vulnerability of clients, the need for a timely RFR, the difficulty in predicting the utility of the case file, and USCIS's discretion and ability to accept a second RFR in exceptional circumstances. However, all IRAP teams should press every avenue to get the FOIA response as soon as possible, given that it could provide evidence that could be beneficial to your client's RFR.

C. ELEMENTS OF AN RFR

A complete RFR application submitted by an attorney on behalf of a client will include (a) a letter that explains the legal and factual basis for why your client's refugee application denial should be reversed (the RFR letter); (b) new evidence or other materials that support your client's claim; and (c) a G-28 form. See Appendices 40-42 for examples of submitted RFRs.

1. The RFR Letter Brief

While USCIS does not require a particular format, the suggested format of an RFR is a letter directed at the officer. USCIS's Tip Sheet provides guidance on what must be included in the RFR letter.¹⁶ These requirements are summarized in the box below and are more fully described in the following subsections.

1. **Resettlement Support Center ("RSC") Case Number:** The RSC or (Overseas Processing Entity [OPE]) case number should be included on *every* page submitted.
2. **English Language Requirement:** The RFR must be in English, and all supporting documents must also be translated into English.
3. **Return Address:** The RFR must contain a complete return address where the RFR response will be sent. A phone number or email address is not sufficient. This would usually be the address of the supervising attorney. Although you should include a return address on your RFR, most countries do not mail the RFR response to the specified return address. Rather, many countries require clients to pick up the response at the RSC. Contact your RSC to determine whether the

¹⁶ USCIS RFR Tip Sheet, <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-tip-sheet>.

client should pick up the response. Note: If the return address changes while the RFR is under review, the address must be updated with USCIS.

4. **Name of the Attorney/Organization:** If the principal applicant is seeking assistance from another individual, organization, or attorney, their name and relationship to the principal applicant must be included on the RFR.
5. **Principal Applicant Signature:** Principal applicants must sign the RFR.
6. **Reasons for Denial:** The RFR should address the reasons for denial.
7. **Basis for Submitting an RFR (Error(s)/New Information):** The RFR should provide a detailed description of any errors made in the decision process. If new information is provided, it must contain sufficient detail to enable the reviewer to make a decision on the case. If the new information provided contains facts that occurred prior to the USCIS interview, an explanation of why this information was not presented at the initial interview should be included.
8. **Explanation of Procedural Issues:** If an RFR is submitted after the 90-day period, or if there has been a previous RFR(s) submitted, an explanation for why it is being submitted late and/or why it is being submitted after an initial RFR should be included with the submission.

a. [Basis for Submitting the RFR](#)

USCIS requires that the RFR letter either (1) allege error in the denial of eligibility for resettlement and/or (2) allege that new evidence provides a basis for resettlement eligibility. Below are descriptions of how each category should be addressed in the RFR letter.

i. RFR Based on Significant Error

If an RFR is based on an allegation of error, the RFR letter should include a detailed explanation of the alleged error made by the adjudicating officer. An RFR based on an allegation of significant error is seeking review of the correctness of the original refugee decision.

The applicable standard of review for an RFR based on an allegation of error is “significant error.” See Appendix 43: RFR Guidance Memo 2005. According to the RFR Guidance, the reviewing officer must first determine whether any errors were made in adjudicating the case in the first instance. Then, the officer determines whether the error was “significant,” meaning “it is more likely than not to have affected the result.”¹⁷ The reviewing officer’s review of your client’s case should encompass the entire case file and examine the sufficiency of the fact-finding and application of law. Possible errors may include:

- (1) Insufficient fact-finding or analysis. Note that USCIS has not elaborated on what constitutes sufficient fact-finding.

¹⁷ See *id.* at 3.

- (2) Unsupported credibility determination. For example, the applicant was not given the opportunity to rebut perceived inconsistencies; the decision is not supported by adequate assessment; and/or the issue is not material to the refugee determination. *See* Appendix 44: RFR, Refugee Officer Training Course VI, March–April 2009.

If your client’s refugee application was denied based on credibility issues, the reviewing officer must determine whether the original adjudicator’s Refugee Applicant Assessment withstands review. The original adjudicator’s Refugee Applicant Assessment must demonstrate all of the following. Failure to do so indicates a significant error warranting review:

- (1) The matters(s) must be clearly described in the Assessment and support the adjudicator’s assertion that the applicant is not telling the truth;
- (2) The matter(s) must be material to the refugee’s application for resettlement; and
- (3) The applicant must have been made aware of the matter(s) and provided a fair opportunity to provide an explanation. The documentation must include a description of the applicant’s attempt to explain the matter(s).¹⁸

ii. RFR Based on New Evidence

An RFR based on new evidence must include a detailed explanation of the new information that would merit a change in the decision. An RFR based on the submission of new information is not necessarily questioning the correctness of the original decision but instead offers new evidence that may warrant the grant of refugee status. The new information must be sufficient and relevant to prove that the applicant qualifies for resettlement, and it must be factually related to the original case. For example, new information should pertain to the same persecutor, the same protected characteristic, or both.¹⁹ If the new information pertains to a new persecutor *and* a new characteristic, this will be considered an entirely new and unrelated claim, requiring establishment of new access to USRAP.²⁰ If an RFR is based on the submission of new evidence, the standard of review is whether a preponderance of the evidence indicates that the applicant would qualify for resettlement, taking into consideration new information together with prior facts. *See* Appendix 43: RFR Guidance Memo 2005 at 4. RFRs that present new material evidence generally require the applicant re-interview with USCIS.

¹⁸ *See id.* at 4.

¹⁹ *See id.* at 5.

²⁰ *See id.*

New information may include existing evidence that was unavailable at the time of the original application and interview and/or evidence that came into existence after the denial was issued. If the new information concerns events that occurred or evidence that existed at the time of the original application, the RFR must include a reasonable explanation as to why the information was not presented during the interview. The reasonableness of the explanation is determined by the reviewing officer.²¹

Credibility findings made in the original adjudication raise no presumption regarding the credibility of new information submitted in an RFR. Rather, new evidence is to be assessed *de novo*, following a re-interview concerning the new information or “other appropriate consideration as determined by USCIS.”²² However, information that purports to be new but that simply replicates the information submitted at the original interview may be subject to the original negative creditability finding.²³

The RFR Guidance Memo provides that if a request lacks sufficient description of alleged new information, the request should be returned with instructions to provide more specific and detailed information via a standardized form letter.²⁴ Additional information must be submitted within 90 days of the request. In practice, however, officers typically re-interview the applicant rather than require the applicant to make additional submissions.

Finally, all RFRs, even those not alleging error, are to be reviewed for error in the original adjudication. Thus, for RFRs based on new information, the reviewing officer is to also examine whether there were any other possible errors in the adjudication.²⁵ While this is beneficial to applicants insofar as USCIS provides incomplete information and an applicant cannot access the full case file to determine errors, attorneys should also bear this in mind if they are submitting a subsequent RFR because USCIS has informally referenced to the practice of full case-file review as a basis for not considering second RFRs that raise errors in the original adjudication.

[b. Applicable Legal Authority](#)

By submitting an RFR, your client is requesting review of their application for access to USRAP. Consequently, your client must provide credible testimony, meet the US refugee definition, and not be inadmissible. To establish these elements, decisions from the BIA and federal circuit courts are the applicable law because asylum and refugee processes share the same refugee definition. If there is a circuit split or differing standards among circuits, present the law most favorable to your client while acknowledging countervailing precedent. You can argue the more favorable law because your client is not in a particular circuit.

²¹ *See id.*

²² *See id.* at 5–6.

²³ *See id.* at 6.

²⁴ *See id.* at 7.

²⁵ *See id.* at 6.

Additionally, you can use international law to bolster your argument.²⁶ International law has more persuasive force in refugee law, as compared to other areas of US law, because US refugee law primarily stems from international law.²⁷ Further, international precedent creates a paradigm shift that eventually pushes US refugee law in the same direction.²⁸

c. [Humanitarian Concerns](#)

The RFR letter should explain any applicable humanitarian concerns involved in your client’s case. Humanitarian concerns include continued risk of persecution in the country of asylum or urgent medical needs.²⁹ These may be legally relevant to an expedite request. Moreover, they may provide the reviewer with context that will shape their perception of the case in a way that is beneficial to your client. *See* Appendices 40–42 for Sample RFRs.

d. [Procedural Issues](#)

The RFR letter should explain any applicable procedural issues including submission of the RFR after the 90-day deadline and prior RFR submissions.

i. *Ninety-Day Deadline*

Under USCIS rules, an applicant must submit an RFR within 90 days of receiving an NOI. However, USCIS frequently waives the 90-day deadline, and as such being outside the 90 days should not automatically deter a person from submitting an RFR.

The 90-day rule is explained as follows: “An applicant must submit a request for review within 90 days from the date of the Notice of Ineligibility for Resettlement. Failure to file before this period expires may be excused at the discretion of USCIS if the applicant is able to show that the delay was reasonable and was beyond the control of the applicant.”³⁰ The 90-day deadline is marked either by the date of postmark or receipt by USCIS. Importantly, the stated policy is that the lateness may be excused if the applicant provides a good explanation as to why

²⁶ To find international case law and treaties relating to refugees, *see* International Justice Resource Center, *Asylum & the Rights of Refugees*, www.iljrcenter/refugee-law/ [accessed March 2, 2017].

²⁷ *See* Refugee Council USA, *History of US Refugee Resettlement Program*, www.rcusa.org/history/; compare UN General Assembly, *Convention and Protocol relating to the Status of Refugees*, July 28, 1951, UN, Treaty Series, vol. 189, available at www.unhcr.org/en-us/3b66c2aa10 [accessed March 7, 2017] with 8 USCA §1101 (showing that the US refugee definition parallels the UN refugee definition).

²⁸ *See* Meaghan L. McGinnis, *Post Matter of A-R-C-G-: An Expansion of American Compassion for International Domestic Violence Victims*, 121 Penn St. L. Rev. 555 (2016) (finding that some domestic violence victims are eligible for asylum based on membership in a particular social group); *see also* Rape and Other Gender-Based Violence, Law of Asylum in the United States § 7:22 (discussing the “widespread recognition in both international and domestic [law] that rape and other gender-based violence may constitute torture”).

²⁹ Immigration Equality, *Immigration Equality Asylum Manual*, Oct. 10, 2014.

³⁰ Joseph D. Cuddihy, Director, Office of Refugee, Asylum, and International Operations, Memorandum for Overseas District Directors, US Citizenship and Immigration Services, May 3, 2005 (emphasis added).

the RFR application was submitted late.³¹ See Section C(c)(1) below for tips on drafting an explanation of why the application is being submitted after the 90-day deadline.

ii. Prior RFR Submissions

USCIS’s stated policy is that USCIS will only review one RFR.³² Nonetheless, USCIS has broad discretion to accept and review additional RFR applications. As such, if your client has already submitted an unsuccessful RFR application, this should not automatically deter you and your client from submitting a subsequent RFR. See Section C(c)(2) below for tips on drafting an explanation of why a subsequent RFR is being submitted.

2. Supporting Exhibits

In order to build a successful RFR based on either significant error or new evidence, additional evidence may be collected and submitted as exhibits to the RFR letter. You should gather as much evidence as possible that explains and supports your client’s story. If the RFR is based solely on significant error, no new evidence is required to be submitted. All supporting materials should be translated into English.

a. Collecting Evidence

There are many types of useful evidence that can be collected both from the client as well as from additional research. Common types of evidence may be included in the RFR application include (i) declarations; (ii) additional evidence from the client; (iii) background country research; (iv) from reports/affidavits from experts; and (v) forensic psychological analyses. Note: Please remember that this list is not complete. Think creatively but truthfully about your client’s case.

NOTE TO PRACTITIONERS

In order to build a successful RFR, you must collect specific documentation, and you should be persistent with your client. General questions like “Do you have any evidence?” are unlikely to elicit useful information. Ask tailored questions at each interview with your client, and think creatively about any form of documentation that might be helpful.

Keep lists of documents you have thought of, and go through this list each time you talk with your client; your questions may not register the first time you ask them.

³¹ USCIS RFR Tip Sheet, <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-tip-sheet>.

³² USCIS RFR Tip Sheet, “What else should I know?” para. 3. <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-tip-sheet>.

i. Declarations

At the very least, the RFR will include a sworn, first-person declaration from the applicant with as much detail as possible addressing the relevant issue. This is likely the first time in the process that your client has been able to tell his story straight through without interruption, so be respectful and kind, but be persistent in clarifying the whole story. This will likely take multiple client interviews.

Your supervising IRAP attorneys will provide information to you about compiling the declaration. Below are general examples of information to include in the declaration:

- If the applicant is denied because they failed to prove that they would be persecuted on account of race, religion, national origin, social group, or political opinion, a detailed declaration should outline how their past persecution was based on one of these factors.
- If an applicant is denied because of their military service, a detailed declaration should include as much information as possible about their army service in an effort to show that they did not persecute anyone. For example: Where were they stationed? For how long? What did they do there? and so on.
- Additional declarations may also be helpful depending on the circumstances. For example:
 - A declaration from a neighbor who witnessed events of abuse to the applicant.
 - A declaration from a family member who can attest to political activities.
 - A declaration from a medical professional who can attest to medical conditions warranting additional humanitarian concerns.

ii. Additional Evidence from the Client

The additional evidence that might be useful to your client will depend on the reason for the denial, which IRAP will likely have determined before assigning you the case. In general, think creatively about what other documents can prove any element of your client's story. For example, you should ask for death certificates, medical records, photos, birth certificates, threatening letters, text messages, email exchanges, blog or social media posts, military service booklets, etc. If the applicant was employed by an international NGO or company, a letter from the employer is also very helpful.

If there are extenuating humanitarian circumstances, it is also useful to provide evidence of these. For example, if a member of the applicant's family has an urgent medical issue, you should provide medical records or a letter from the doctor. If the applicant is in danger in a country of first asylum and has registered with the UNHCR protection service, you might obtain a letter from the UNHCR protection service. However, humanitarian circumstances alone will

not cause a reversal of the original decision. The reasons for denial must be adequately addressed.

iii. Background Country Research

Background country-conditions research should not be general country-conditions research but must be as specific as possible to the client you are working with.³³ For example, if you have an LGBTI client from Iraq in Syria, find documentation such as news stories, human rights organizations' reports, etc., of Iraqi LGBTI people in Syria. If your client faced persecution in a particular neighborhood, look for news articles about persecution in that neighborhood. The additional evidence should build a case showing that "similarly situated" individuals are experiencing persecution and are in serious danger. Your client will sometimes be the best source of evidence, particularly local resources in their native language. For example, clients have identified relevant blogs and media sources covering events from the place where they have fled. Below are common resources to find country-conditions information.

Nongovernmental Organization ("NGO") Sources

- [Amnesty International Country Reports](#)
- [Human Rights Watch Country Reports](#)
- [Refugees International Field Reports](#)
- [Immigration Equality](#)
- [Center for Gender and Refugee Studies](#)
- [International Gay and Lesbian Human Rights Commission](#)

International Organization ("IO") Sources

- [UNHCR's Refworld](#)
- [IACHR Country Reports](#)
- [OHCHR Country Reports](#)
- [OECD iLibrary](#)

Government Sources

- [US Department of State](#)
- [Immigration and Refugee Board of Canada \("IRBC"\)](#)
- [UK Home Office Country Reports](#)

News Sources

³³ See RFR Tip Sheet, "What Else Should I Know?" at note 5.

- [IPS: Inter Press Service News Agency](#)
- [Keesing's World News Archive](#)
- [Lexis Advance](#)
- [Reuters](#)
- [Westlaw Next](#)

iv. Reports from Experts in the Field

Country of origin experts are individuals who have years of academic and practical experience about a particular country. Their experience qualifies information they provide as supporting objective evidence for an individual claim for refugee status. Some country of origin experts work pro bono for those nongovernmental organizations (“NGOs”), which do not charge refugees for legal services, while others work for a fee. Experts can be found through universities, professional licensing boards, or word of mouth. A list of country of origin experts is maintained online:

<http://refugeelaidinformation.org/country-origin-information-experts#countrylist>

v. Forensic Psychological Analyses

Consider requesting a psychiatric evaluation if your client has demonstrated symptoms of psychiatric distress that could interfere with their ability to present a credible case to the adjudicator. Coordinating these type of evaluations can be difficult if your client is overseas. Moreover, the evaluation may take several sessions, each several hours in length, if your client has special needs, complex psychiatric conditions, or is particularly vulnerable. As such, if you believe a psychiatric evaluation would be appropriate for your client, it is highly recommended that you start the process as early as possible. Please see the Primer section “Psychiatric and Psychological Consultations,” below, for details on requesting a formal psychiatric or psychological report.

vi. DNA Testing

In cases where a family relationship is the subject of a denial by USCIS, an IRAP advocate drafting an RFR may consider DNA testing for a client. There is no public information on the appropriate procedure in this context, but according to RSCs, the recommended procedure would be to submit an RFR indicating the willingness to go through DNA testing, if required. If DNA is indeed required by USCIS, it needs to be coordinated through an AABB-accredited lab in the United States (www.AABB.org), and the cost would be covered by the applicant. IOM coordinates DNA testing around the world for Priority 3 family-based referrals where there would be a DNA relationship (biological parents/children). Note that USCIS policy is, in other contexts, to give sibling-based DNA testing *no probative weight*, (“USCIS may not afford any evidentiary weight to such [sibling DNA] results, as they are not considered sufficiently reliable

to warrant consideration”), and therefore it is not recommended to consider or request DNA testing if the disputed relationship is not a parent-child relationship.³⁴

b. When Important Evidence is Not Available

If no other evidence is available, the declaration from the applicant should explain why. For example, it is extremely common for people to discard written threats.

3. G-28 Form

An attorney submitting the RFR on the client’s behalf must submit a G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) with the RFR application.³⁵ A G-28 is available on USCIS’s website.³⁶ If a non-attorney is submitting the RFR on the client’s behalf, a letter stating that the principal applicant waives their right to confidentiality must be submitted with the RFR.³⁷

D. DRAFTING AND SUBMITTING THE RFR

1. RFR Drafting Tips

This section provides suggested tips for drafting the RFR letter. These tips are *not* guidance from USCIS, IOM, UNHCR, or any other organization. Therefore, you may use your discretion to determine whether and how to apply these tips based on the specific circumstances of your client’s case.

2. RFR Letter Style

IRAP recommends compiling the RFR as a standard, short letter-brief with supporting exhibits. Typically, the letter will be 5–10 pages, not including supporting exhibits. The RFR makes an argument on behalf of your client, so the style and tone should resemble a legal brief as opposed to a legal memo. Consider using persuasive headings and subheadings for organizational clarity.

3. RFR Letter Structure

IRAP suggests incorporating a summary of the applicant’s background story that includes the refugee claim and explains why, in light of the new evidence or significant error, the denied applicant meets the requirements to be admitted as a refugee. *See* Appendices 40–42 for RFR Samples 1–3. Additionally, the RFR letter should clearly state the basis for review: either new

³⁴ USCIS Adjudicator’s Field Manual, Section 21.9, Petition for Sibling, <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-3481/0-0-0-5928.html>.

³⁵ USCIS RFR Tip Sheet: What do I need to know about writing an RFR?, para. 5, <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-tip-sheet>.

³⁶ USCIS, Form G-28, <https://www.uscis.gov/g-28>.

³⁷ *See* Form G-28, Notice of Entry of Attorney, <https://www.uscis.gov/g-28>.

evidence, significant error, or both.³⁸ Place the strongest arguments at the beginning of the RFR letter. Below is an example of the order in which topics are commonly addressed in the RFR letter. This order is merely a starting point and should be modified to most effectively advocate for your client.

- Summary of Facts, Including Applicant’s Refugee Claim and Prior Interview
- Summary of Reason for Denial
- Summary of Significant Error and/or New Evidence
- Discussion of Procedural Issues (90-day deadline, prior RFR submissions)
- Analysis of USRAP Qualifications (Access, Refugee Claim, Admissibility)
- Discussion of Error (if Applicable)
- Discussion of New Evidence (if Applicable)
- Humanitarian Concerns

4. Addressing Procedural Issues

a. Ninety-Day Deadline

While USCIS states that an applicant must submit an RFR within 90 days of receiving an NOI, the 90-day deadline has not proven to be a significant hurdle as USCIS uses its discretion broadly to waive the 90-day deadline. It is nevertheless important to present strong arguments in the RFR letter explaining why the RFR application is being made after the 90 days. The focus should be on the “reasonability” of the delay and on creating a “good explanation” for it. Unfortunately, USCIS does not provide more specific guidance or examples as to what this threshold actually looks like.

Additionally, IRAP has successfully filed notices with USCIS for cases seeking legal assistance prior to or shortly after the 90-day deadline to demonstrate to USCIS the refugee’s good faith efforts to get legal assistance within the time frame. *See* Appendix 45: Sample 90-day Notice.

It is more effective to present your strongest arguments than an exhaustive list of all possible arguments. Common examples of what IRAP considers to be “good explanations” are listed below. Note: This list is not exhaustive. This is an opportunity to think creatively, practically, and like an advocate.

- Client does not speak or write English.
- Client is illiterate.

³⁸ USCIS RFR Tip Sheet, USCIS RFR Tip Sheet: What do I need to know about writing an RFR?, para. 7, <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-tip-sheet>.

- Client did not have an attorney when they received the notice of ineligibility and did not understand the legal implications of not appealing within 90 days. Client similarly did not understand the process of filing an appeal or the information that would need to be included in an appeal. Client’s appeal involves detailed legal arguments that they would have been unable to formulate on their own.
- Notice of ineligibility decision was so opaque or vague, that the client was unable to understand the reason for denial, therefore making it difficult to meet the deadline.
- Client made a good faith attempt to file (e.g., client turned in a handwritten appeal within 90 days; however, it was not in English, and it may not have conformed to the requirements of the RFR).
- No fault of the client (e.g., client never received their notice of ineligibility or didn’t receive it until after 90 days from the date of the decision).
- Client or client’s family had or has serious health problems (physical or mental).
- Client is of an age of minority (under 18).
- Client was under the threat of continued persecution.
 - **Example:** In 2010, “Ali” was living in hiding from members of his now ex-wife’s family and was afraid and unable to seek help for his appeal. Persecutor (P) told Ali that he would block Ali’s resettlement case and would kill him if he contacted UNHCR. Because of these recurring threats, Ali was living in constant fear for his life. Ali was afraid to contact UNHCR for help with his appeal because he thought that P might be looking for him there, and because P had threatened to kill him if he went to UNHCR. Ali was therefore not able to seek any help in appealing his notice of ineligibility for resettlement within the 90-day deadline.
- Changed circumstances.
 - **Example:** Changed circumstances since 2010 support an exception to the 90-day deadline. In June 2011, “Ali’s” daughter’s mother died. His daughter is currently living with extended family in Chicago but no longer has either of her parents with her. It is imperative that Ali’s RFR be considered by USCIS so that Ali has the opportunity to be reunited with his daughter in Chicago. Ali’s daughter needs the love, care, and support of her father—her only surviving parent.
- UNHCR referred client to IRAP after the 90-day deadline, and it is a lengthy process to collect documentation, receive information from a FOIA request, and verify all the client details for the RFR. (In this case, you may also want to request a note from UNHCR about the timing of the referral).
 - **Example:** By the time “Ali” felt safe enough to approach UNHCR for help with his appeal, the 90-day deadline had passed. UNHCR still thought that Ali had a pressing case for resettlement. UNHCR referred Ali’s case to the Iraqi Refugee

Assistance Project. IRAP accepted the case and referred it to IRAP representatives at Fordham Law School. I received this case from IRAP past the 90-day deadline, and it took additional time to collect documents related to Ali's case and to corroborate the information in the RFR. I did not receive USCIS's response to my FOIA request about Ali's case until October 10, 2012, which contained important documents for putting together Ali's RFR. Ali's RFR was sent to USCIS on October 23, 2012.

b. Prior RFR Submissions

As discussed above in Section B(a)(1)(ii), reviewing officers examine the full case file for any possible errors. Therefore a subsequent RFR should explain clearly why a further review is still necessary and appropriate.

c. Signature Requirements

The USCIS Tip Sheet indicates that the client should sign the RFR.³⁹ Applicants should always sign their RFR if submitting pro se, or sign their declaration and G-28 if submitting via an attorney. If there is no declaration, it is recommended that the client sign the RFR letter itself. In practice, most RSCs generally accept a scanned signature on the G-28 and declarations included in the RFR packet as sufficient. However, cases within USCIS Athens jurisdiction, including cases in Turkey and Lebanon, will now be required to submit an original signature, either mailed to the RSC or delivered in person. According to RSC TuME, USCIS Athens will not waive the wet-signature requirement, but the complete RFR package can be mailed to the RSC directly, and the client can send only a declaration with an original signature. UCIS Athens noted that the date the RFR package is received will be the date that the RFR is considered submitted on. Contact the RSC well in advance of the 90-day deadline or when you plan to submit, in order to determine their respective requirements for RFR letter submission. While the USCIS guidance generally requires that G-28s have original signatures, apart from cases in USCIS Athens/ICMC jurisdictions, a scanned copy has been sufficient. It is recommended that the client keep a copy of all of their originally signed documents to provide authentication if needed.

5. Compiling and Submitting an RFR

Once the RFR letter has been drafted, all supporting exhibits should be compiled prior to submission. Use the checklist below to ensure that your client's RFR application has all the required elements.

³⁹ USCIS RFR Tip Sheet: What do I need to know about writing an RFR?, para. 4, <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-tip-sheet>.

a. RFR Checklist

- RFR Letter**
 - Is the RSC or (Overseas Processing Entity [OPE]) case number on EVERY page?
 - Are the RFR and all supporting documents in English?
 - Does the RFR list a complete return address?
 - Does the RFR list the name and relationship of the attorney or organization assisting the applicant?
 - Has the applicant signed the RFR?
- Supporting Exhibits**
 - Does the RFR application include a signed affidavit from the client?
- G-28 Form**

b. Submitting the RFR

The method for submitting the RFR will vary depending on your client’s USCIS jurisdiction. USCIS maintains filing information online:

RFR Filing Locations in Europe, Middle East and Africa (“EMEA”) District:

<https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-tip-sheet>

RFR Filing Locations in Asia Pacific (“APAC”) District:

<https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-filing-locations-asia-pacific-apac-district>

RFR Filing Locations in Latin America, Canada and the Caribbean (“LACC”) District:

<https://www.uscis.gov/humanitarian/refugees-asylum/refugees/request-review-filing-locations-latin-america-canada-and-caribbean-lacc-district>

The two most common jurisdictions for IRAP clients are: (1) The USCIS Amman Field Office,⁴⁰ which has jurisdiction over refugee processing in Jordan, Bahrain, Egypt, Iraq, Israel,

⁴⁰ IOM in the Amman Jurisdiction has requested RFR submissions by email. To ensure a faster response, use “IRAP” in the subject line of the email. IOM has an email size limitation of 10 MB, so resize any attachments to ensure that the total size is under 10 MB, or send the attachments in multiple emails. After submitting an email, you should immediately receive an IOM autoreply. IOM will send a confirmation of receipt within two weeks. If you do not receive a confirmation receipt, alert IRAP National.

Oman, Qatar, Saudi Arabia, and Syria; and (2) the USCIS Athens Field Office,⁴¹ which has jurisdiction over refugee processing in Greece, Albania, Bulgaria, Cyprus, Iran, Kuwait, Lebanon, Romania, Turkey, United Arab Emirates, and Yemen.

c. Email Content for Electronic Submissions

If you will be submitting an RFR by email, the body of the email should include text like the following:

Dear _____,

Please find attached to this email a Request for Review file for _____, A-file Number: _____. His/her Case number is _____. Also attached to this email is a Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28). The Request asks for a review of _____'s resettlement denial. [If applicable, depending on jurisdiction, {We have also mailed a hard copy of the complete application, so it should follow shortly.}]

We thank you for your careful review of this important matter. If you have any questions or require further information, please feel free to contact any of us at the contact information below. Please confirm receipt of this RFR.

E. RFR FOLLOW-UP, DISPOSITIONS, AND ALTERNATIVES

1. Following Up on an RFR Submission

In situations in which an RFR has been pending without determination for an unreasonable period of time, an inquiry may be made to attempt to move the case along or seek information on the status of the case. Typically, after 3 months it is advisable to file a request with the Ombudsman seeking information on the delay in the RFR adjudication. Individuals who have family members who are lawful permanent residents or US citizens, or who have former supervisors who provided employment verification for their application, may have those US ties make congressional inquiries about their pending applications. See Appendix 46 for a guide to congressional inquiries.

⁴¹ In the past, USCIS Athens and the Resettlement Support Center have indicated that they prefer hard copies of RFRs delivered to the RSC. However, ICMC has indicated that they can accept emailed RFRs in time-sensitive situations (e.g., a 90-day deadline, or a client with an urgent protection need).

2. RFR Dispositions

USCIS will deliver a response via a Request for Review Response letter. See Appendix 43, pp. 13–14, for a sample RFR response letter.

a. RFR Based on Significant Error

If significant error is found, the reviewing officer may either require a re-interview or reverse the denial. According to the RFR Guidance, re-interviews are appropriate if the reviewing officer finds that there is insufficient information to determine the applicant's eligibility for resettlement. An application may be reversed and approved without re-interview if "it is clear that in the absence of the error, the case may be approved." If no significant error is found, the denial will be affirmed.

b. RFR Based on New Evidence

There are three possible dispositions of RFRs based on new evidence: affirm denial; schedule re-interview; and reverse and approve without re-interview.

First, a denial will be affirmed if the preponderance of the evidence fails to indicate that the applicant qualifies for resettlement.⁴²

Second, USCIS may schedule a re-interview in order to assess the credibility of the new information if the preponderance of new and old information indicates that the applicant should qualify for resettlement.⁴³ If your client is scheduled for a re-interview, you should review IRAP's general interview-preparation guidance, available as an appendix in English and other languages, and conduct interview preparation, including a mock interview. See Appendix 26: USCIS Interview Prep Sheet.

Finally, the reviewing officer may, at their discretion, reverse and approve the application without a re-interview if (1) the original denial was specifically based on non-corroboration of material information; (2) the new information provides the specified corroboration; and (3) the reliability of the new information is clear.⁴⁴ The RFR Guidance Memo provides an example of when the reliability of the new information is clear: "if the applicant's testimony was generally credible except for the fact that his or her story was not consistent with known country conditions, a subsequent submission of verifiable country conditions information which supports the applicant's claim could form the basis of a reversal without re-interview."⁴⁵

⁴² See *id.* at 5.

⁴³ See *id.*

⁴⁴ See *id.*

⁴⁵ See *id.* at note 3.

3. Opportunities if the RFR Is Denied

In all cases where an RFR has been denied, contact IRAP National's POC to discuss how to counsel the client and determine whether any other options may remain available to the client. For RFRs that have been denied, there are three general options: (a) resubmission to another country, which is only potentially available to UNHCR-registered refugees; (b) filing another RFR; and (c) other immigration options.

a. Resubmission to Another Country

If the client is registered with UNHCR, UNHCR may be able to resubmit the case to another country. Although UNHCR automatically assesses P-1 UNHCR referral claims denied by the United States, resubmission is *extremely limited*. The vast majority of denied cases are not re-referred due to limited resettlement slots in other countries and reluctance by other countries to accept previously denied cases. Moreover, the resettlement process essentially starts over, is unpredictable, and often takes a year or more to complete. Consequently, it is important to manage client expectations surrounding the likelihood of their resettlement and the time frame for a response to their resubmission. Sometimes clients will be counseled to approach UNHCR directly, but other times it may be beneficial for IRAP to facilitate a submission to UNHCR with the RFR attached as additional evidence in support of a resubmission. For IRAP-facilitated submissions, more information is provided below.

If the United States denies a case that UNHCR has submitted as a P-1 referral, UNHCR will receive notice of the denial and reevaluate the case. The reevaluation will consider an in-depth review of the merits of a case in which the resettlement country's denial was prejudicial, as well as the family composition, circumstances of the case, and whether the need for resettlement have changed, especially if a significant time has passed since the last submission.⁴⁶ A country's resettlement denial is prejudicial if (1) the reasons for denial raise new information that questions UNHCR's determination of resettlement need/eligibility; (2) the reasons for denial raise security concerns; or (3) the country categorically refused to consider resettlement.⁴⁷

UNHCR reassesses cases for resubmission based on the following criteria:

- *Viability*: Is the refugee still eligible for resettlement according to UNHCR policy? Is resubmission still a viable option for this specific profile, its submission history, and/or the limited availability of places?⁴⁸

⁴⁶ See UN High Commissioner for Refugees, *UNHCR Resettlement Handbook*, July 2011, available at <http://www.unhcr.org/en-us/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-country-chapters.html> [accessed April 5, 2017] at 373 [hereinafter UNHCR Resettlement Handbook].

⁴⁷ See UNHCR Resettlement Handbook, *supra* at 371–72.

⁴⁸ See *id* at 372.

- *Appropriateness*: Even if resettlement options are still be available, have the circumstances that led to the original resettlement decision changed such that resettlement is no longer necessary or appropriate?⁴⁹

UNHCR prioritizes emergency and urgent cases for resubmission.⁵⁰ UNHCR selects resettlement countries for resubmission based on which country is most likely to accept a given case (i.e., to what extent it matches that country’s policies/priorities) and generally will not share past submission history unless it is in the interest of the refugee.⁵¹ Unless there is a compelling reason to request a specific country for resubmission, such as immediate family reunification or medical care, it is best to let UNHCR determine which country to target for resubmission. This demonstrates the urgency of the case, builds good faith, and avoids unnecessary delays. UNHCR does not limit the number of resubmissions for a case; however, multiple denials will affect the determination of a case’s viability and appropriateness.⁵²

For more information, review the UNHCR Resettlement Handbook, as well as the UNHCR Guidelines on the Resubmission of Resettlement Cases. Chapter 7.9 of the Handbook addresses resubmissions,⁵³ and Chapter 6 generally addresses resettlement submissions.⁵⁴

To request a resubmission on behalf of an IRAP client, the attorney and students can draft a short referral (1–2 pages maximum) addressed to UNHCR, highlighting the following:

- *Viability*: Why the denial was wrongful (this can reference the RFR, which can be attached), and why the client meets the refugee definition;
- *Appropriateness*: Why resettlement is still needed, and how the client meets UNHCR’s resettlement categories.

The request should also highlight any new information affecting the client’s vulnerability in the country of refuge or the underlying refugee claim. Additionally, the request should include the client’s contact details, as UNHCR will contact the client directly, not IRAP. An IRAP National or Field Office staffer will send the request to UNHCR on behalf of the attorney and students.

⁴⁹ *See id.*

⁵⁰ *See id.* at 370–73 (stating that refugees in emergency cases that “typically involve immediate life-threatening situations” are expected to depart in seven days, while refugees in urgent cases should expect to depart within six weeks).

⁵¹ *See id.* at 373.

⁵² *See id.*

⁵³ *See id.* at 370–74.

⁵⁴ *See id.* at 243–99.

[b. Filing Another RFR](#)

Absent significant new evidence or a change in law, there is almost no chance of success, and it is not recommended. However, USCIS has discretion to review multiple RFRs, so the possibility exists, particularly if genuinely new information has come to light. Consult with IRAP National before pursuing this.

[c. Other Immigration Options](#)

Generally, other immigration options are extremely limited. However, it is important to note that family-based immigration options may exist that are not necessarily precluded by a refugee application denial or an RFR denial. For instance, while an inadmissibility determination may bar immigration, failing to prove a refugee claim would likely have no negative effect on future family-based immigration (e.g., one relatively common scenario is that a parent of a US citizen may be denied refugee status but then apply for family-based immigration). Or clients may wish to pursue paths that were initially a long shot (e.g., finding five Canadians willing to form a sponsorship) but now are the only remaining options. Consult IRAP National for any questions about alternative options, as limited as they may be for many clients.