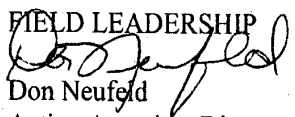


Documents in
response to Question 1.



Interoffice Memorandum

TO: FIELD LEADERSHIP
FROM: 
Don Neufeld
Acting Associate Director, Domestic Operations

DATE: APR 24 2008

RE: Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns

Introduction

A central mission of United States Citizenship and Immigration Services (USCIS) is to protect the integrity of the U.S. immigration system and preserve the safety of our homeland. National security (NS) matters are a primary consideration in USCIS adjudications and measures must be adopted to ensure a consistent approach in resolving these concerns. In order to efficiently process cases with NS issues and mitigate potential risks to national security, USCIS is delegating decision-making authority to the field. This authority includes the responsibility for the vetting and adjudication of applications and petitions involving national security concerns.

Purpose

This memorandum and attached operational guidance provides instruction to USCIS Field Offices for vetting and adjudicating cases with national security concerns. Issuance of this memorandum implements the recently distributed policy memorandum entitled, "*Policy for Vetting and Adjudicating Cases with National Security Concerns.*" This

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new policy establishes the Controlled Application Review and Resolution Program (CARRP), which consists of a four-step process of evaluating national security concerns.

Effective immediately, all Field Offices are directed to comply with the attached operational guidance and instructions when adjudicating applications or petitions with national security concerns.

Training

A train the trainer session has been scheduled from May 5-9 in Washington, DC for identified field officers. These new trainers, along with FDNS personnel, will then be deployed to provide training to additional staff from May 12-23.

The additional field officers who will be identified to receive this training will attend a one week training session during the week of May 12 or May 19. Training sites during the week of May 12 will be at the National Benefits Center, Texas Service Center, California Service Center and a location to be determined in the New York City area. Training sites during the week of May 19 will be at the 3 aforementioned centers.

Coordination of this training is being handled by Headquarters, Regional Office and Service Center representatives.

Contact

USCIS personnel with questions regarding this memorandum should raise them through the appropriate channels to the Office of Field Operations and Service Center Operations.

Distribution List: Regional Directors
 District Directors
 Field Office Directors
 Service Center Directors

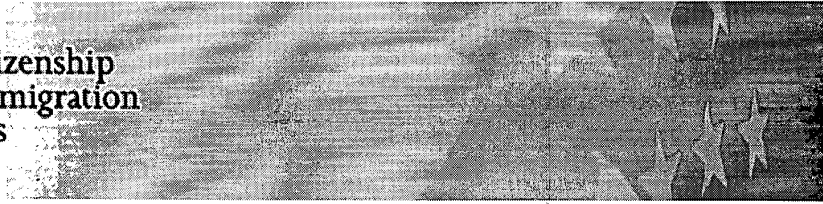
Attachments: CARRP Policy Memorandum
 Operational Guidance
 KST Flowchart
 Non-KST Flowchart

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U.S. Citizenship
and Immigration
Services



Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns

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I. INTRODUCTION

On April 11, 2008, U.S. Citizenship and Immigration Services (USCIS) issued the national policy memorandum¹ for vetting and adjudicating cases with National Security (NS) concerns. This Operational Guidance contains implementation instructions for Domestic Operations personnel.

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II. SCOPE AND IMPLEMENTATION

(b)(5)

The policy memorandum and this Operational Guidance apply to all applications and petitions that convey an immigrant or non-immigrant status in which an officer identifies a NS concern. Offices in the Field² must modify existing procedures to handle and process cases where there are indicators of NS concerns in accordance with this Operational Guidance.

Because the Policy Memo rescinded instructions on how to handle ancillary benefit applications and I-90 applications with NS or Egregious Public Safety (EPS) concerns, officers should refer to Sections VIII and IX of this Operational Guidance for instructions on adjudication of applications/petitions that do not convey an immigrant or non-immigrant status that have a NS or EPS concern.

A. Controlled Application Review and Resolution Program Processing

The Controlled Application Review and Resolution Program (CARRP) process provides a disciplined approach to identify, record, and adjudicate applications/petitions where a NS concern is identified. It involves four (4) distinct, yet not mutually exclusive, processing steps, which include:

1. **Identifying a NS Concern:** The process of identifying and confirming whether the indicator relates to the applicant, petitioner, beneficiary or derivative (hereafter, "individual"³), and whether there is an articulable link between the individual and activities, individuals or organization described in section 212(a)(3)(A), (B) or (F) or 237(a)(4) (A) or (B) of the Immigration and Nationality Act (INA) (see "Attachment A: Guidance for Identifying National Security Concerns;" hereafter "Attachment A").⁴

¹ Jonathan R Scharfen, Deputy Director, *Policy for Vetting and Adjudicating Cases with National Security Concerns* (April 11, 2008)

² For purposes of this Operational Guidance, "the Field" refers to Field Offices, Service Centers and the National Benefits Center.

³ For purposes of this memorandum, the term "individual" may include a petitioning company.

⁴ Attachment A replaces *Appendix A* of the current IBIS SOP. *Attachment A* identifies some of the most common indicators of NS concern encountered in Letterhead Memoranda (LHM) (produced by the FBI as a result of a positive response to a FBI Name check), IBIS/TECS records, and other sources.

2. **Assessing Eligibility in Cases with a NS Concern:** If it is determined that a NS concern exists, the case is forwarded to a designated officer⁵ for a thorough review of the record associated with the application/petition to determine if the individual is eligible for the benefit sought, hereafter referred to as the *Eligibility Assessment/Internal Vetting* stage.
3. **External Vetting:** If after completion of the eligibility assessment and internal vetting, the individual appears eligible for the benefit sought, or if Field management determines further processing is necessary to strengthen or support a decision, the application/petition proceeds to the *External Vetting* stage (Non-KST cases only⁶) to obtain any information relevant to CARRP adjudication. If the application/petition is otherwise approvable for KST⁷ cases, Field management **must** request vetting assistance from HQFDNS.
4. **CARRP Adjudication:** The focus of this stage is to evaluate any additional information obtained during the vetting process to determine if the NS concern has been resolved or confirmed, whether the application/petition should be approved or denied, and when appropriate, to proceed with removal, rescission, termination, or revocation.

B. Field Management Requirements

- (b)(5) 1. Ensure that all officers responsible for vetting NS concerns have access to the required electronic systems (USCIS, DHS).
- (b)(7)(e) 2.
3. Establish local procedures for supervisory review at the conclusion of the vetting process. The supervisory review is intended to confirm the facts discovered during the vetting process to ensure that the NS recommendation is consistent, that proper and conclusive coordination with law enforcement is fulfilled, and that the Background Check and Adjudicative Assessment (BCAA) worksheet is complete.
4. Establish local procedures for supervisory review of applications/petitions in which the individual appears eligible for the benefit and where a NS concern has been identified prior to approving the transfer of the file to HQFDNS.
5. Maintain the national security infrastructure by ensuring that each office in the Field is properly equipped to receive, transmit, and store classified information per the following guidelines:

⁵ For purposes of this memorandum, a **designated officer** is an Immigration Analyst, Immigration Officer, Adjudications Officer, Asylum Officer or Refugee Officer who has been designated by local management to be trained, competent and knowledgeable in CARRP procedures.

⁶ See Glossary for definition of Non-KST.

⁷ See Glossary for definition of KST.

- a. Obtain a minimum of a SECRET security clearance for each officer involved in vetting NS concerns or adjudicating applications/petitions where a NS concern has been identified;
 - b. Procure and maintain secure telephones (STU III, STE) and secure (classified) fax machines for receiving and discussing classified information;
 - c. Maintain sufficient classified storage space in approved containers for classified materials.
 - d. Procure courier cards for all personnel involved in transporting classified information; and
 - e. Arrange for security training for all personnel involved in handling classified information.
- (b)(5) 6. Ensure all processing steps and actions taken with respect to any case with a NS concern are recorded and updated in the appropriate tabs within the **Fraud Detection and**
- (b)(7)(e) **National Security Data System (FDNS-DS)**⁸ and ensure the appropriate sections of the BCAA worksheet, which replaces the National Security Record, are complete.

7.

Note: The Field may contact HQFDNS for guidance at any time during the processing of an application/petition with a NS concern. Such requests should be sent via email to:

FDNS-NSB@dhs.gov

The request for guidance must include the following information:

- *Subject: Request for Assistance (Vetting) or Request for Assistance (Adjudication)*
- *Full Name (Applicant, Petitioner, Beneficiary, Derivative or Company)*
- *A-Number*
- *Date of Birth*

⁸ The FDNS-DS was designed to serve the most pressing requirements of FDNS by providing a central repository of fraud lead/case data available to FDNS staff nationwide. The FDNS-DS is a web-based application that employs the Siebel Public Sector COTS product and resides on an Oracle database platform. FDNS-DS was first launched September 2005 and was formerly known as FTS (Fraud Tracking System).

- Pending Application(s) and/or Petition(s) Form Type(s)
- Nature of assistance requested
- Requesting Officer and Contact Information
- FDNS-DS NS concern number (b)(7)(c)
- Litigation Case information if relevant*

*If a case requires immediate action due to pending litigation etc, offices must ensure that the e-mail to the FDNS-NSB Mailbox is marked urgent and contact the HO National Security Advisory Unit (NSAU) main number [REDACTED]
The body of the email should include the District Court Case # and suspense date.

C. Confidentiality

Federal law and agency policy protect against unauthorized disclosure of information collected and maintained in USCIS systems of records both in the electronic and paper form. The Privacy Act, 5 U.S.C. 552(a), restricts disclosure of information relating to U.S. citizens and LPRs in the absence of a written waiver from the individual to whom the information pertains or a routine use contained in a DHS SORN. By policy, DHS has extended the protections afforded by the Privacy Act, 5 U.S.C. 552(a), to personally identifiable information contained in mixed records systems (i.e., systems containing information on visitors and aliens as well as on LPRs and U.S. citizens). Specific categories of data collected and maintained by USCIS may also have their own confidentiality provisions. For example, sections 210 and 245A of the Immigration and Nationality Act limit the use and disclosure of information provided by "amnesty" applicants under the 1986 Immigration Reform and Control Act. Section 384 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, as amended, 8 U.S.C. 1367, limits the use and disclosure of information relating to aliens seeking protection under the Violence Against Women Act (VAWA), as amended, or as T or U non-immigrants. Under 8 C.F.R. § 208.6, information regarding an individual's status as an asylum seeker or asylee, information contained in or pertaining to his or her application, and records pertaining to any credible fear or reasonable fear determination generally must not be disclosed without the written consent of the applicant or a waiver from the Secretary of DHS. By policy, the confidentiality provisions of 8 C.F.R. § 208.6 have been extended to information contained in or pertaining to refugee applications. Finally, even if no specific confidentiality provision applies, much of the information contained in USCIS systems and files is confidential and the disclosure and use of the information is governed by laws and regulations relating to sensitive but unclassified (i.e., For Official Use Only and/or Law Enforcement Sensitive (FOUO/LES)) information.

D. Information Sharing Considerations – Third Agency Rule

All DHS components are considered part of one "agency" for information sharing purposes. As such, there is no restriction on internal (within DHS) information exchange and sharing provided the person has an authorized purpose for accessing the information in the performance of his or her duties (i.e., a valid need-to-know), possesses the requisite security clearance (there is no requirement for a security clearance to access sensitive but unclassified (FOUO) information), and assures adequate safeguarding and protection of the information.

Sensitive but unclassified (FOUO) information may be shared with other agencies or organizations outside of DHS, provided: a need-to-know has been established; the information is shared in the furtherance of a coordinated and official governmental activity, to include homeland defense; and if the information requested or to be discussed does not belong to USCIS, comply with the originating agency's policy concerning third party discussion and dissemination.

Classified information originated by another DHS component, or classified information originated by another government agency shall not be further disseminated outside of DHS without prior approval of the originator.

III. IDENTIFYING A NS CONCERN – STEP 1 OF CARRP PROCESS

As a result of security checks or at any stage of the adjudicative process, an officer may identify one or more indicators that raise a NS concern. (See "Attachment A").

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There are two types of NS concerns:

1. **Known or Suspected Terrorist (KST)**

2. **Non-Known or Suspected Terrorist (Non-KST)**

For a KST NS concern, the designated officer must determine:

1. Whether the indicator(s) relates to the applicant, petitioner, beneficiary or derivative (hereafter, "individual").

For a Non-KST NS concern, the designated officer must determine:

1. Whether the indicator(s) relates to the individual, and
2. Whether an articulable link exists between the individual and an activity, individual, or organization described in INA section 212(a)(3)(A), (B) or (F) or 237(a)(4) (A) or (B).

A. KST NS Concern

1. Determine Identity

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2. Identity Determined

B. Non-KST NS Concern

1. Determine Identity

2. Identity Determined

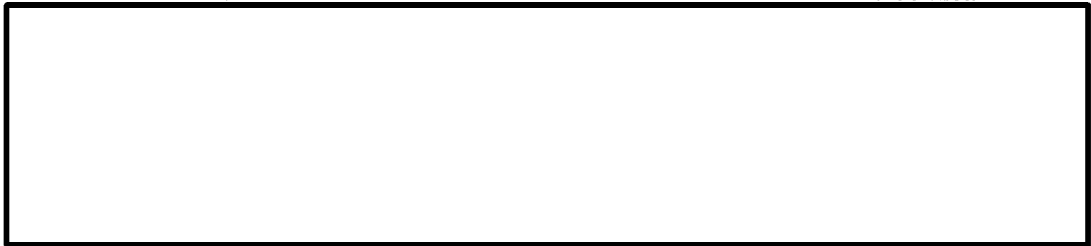
a. Relates

When a Non-KST NS concern has been identified and it **relates** to the individual, the designated officer must then analyze the indicator(s) in conjunction with the facts of the case, consider the totality of the circumstances, and determine whether an

articulable link exists between the individual and an activity, individual, or organization described in INA section 212(a)(3)(A), (B) or (F) or 237(a)(4) (A) or (B).

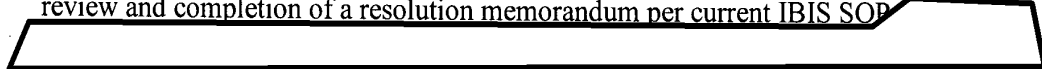
i. Articulable Link

Attachment A is provided as a tool to help designated officers identify what indicators may constitute a NS concern. Attachment A is not an exhaustive list of indicators; it is intended to serve as a supplemental tool to help officers analyze the indicator(s) in conjunction with the facts of the case, consider the totality of the circumstances, and determine whether an articulable link exists between the individual and a NS activity defined in INA section 212(a)(3)(A), (B) or (F) or 237(a)(4) (A) or (B). An articulable link exists if a designated officer can connect the NS information to one of the grounds listed in the INA sections cited above to the individual. The connections need not rise to the level required for NTA purposes; however, some connections between the information and the activities contained in 212/237 must exist for the standard of articulable link to be met.



b. Does Not Relate or No Articulable Link

When the indicator does not relate to the individual or if there is no articulable link between an individual and one or more of the indicators in Attachment A, the application/petition must be released for routine adjudication following supervisory review and completion of a resolution memorandum per current IBIS SOP.



c. Further Assistance

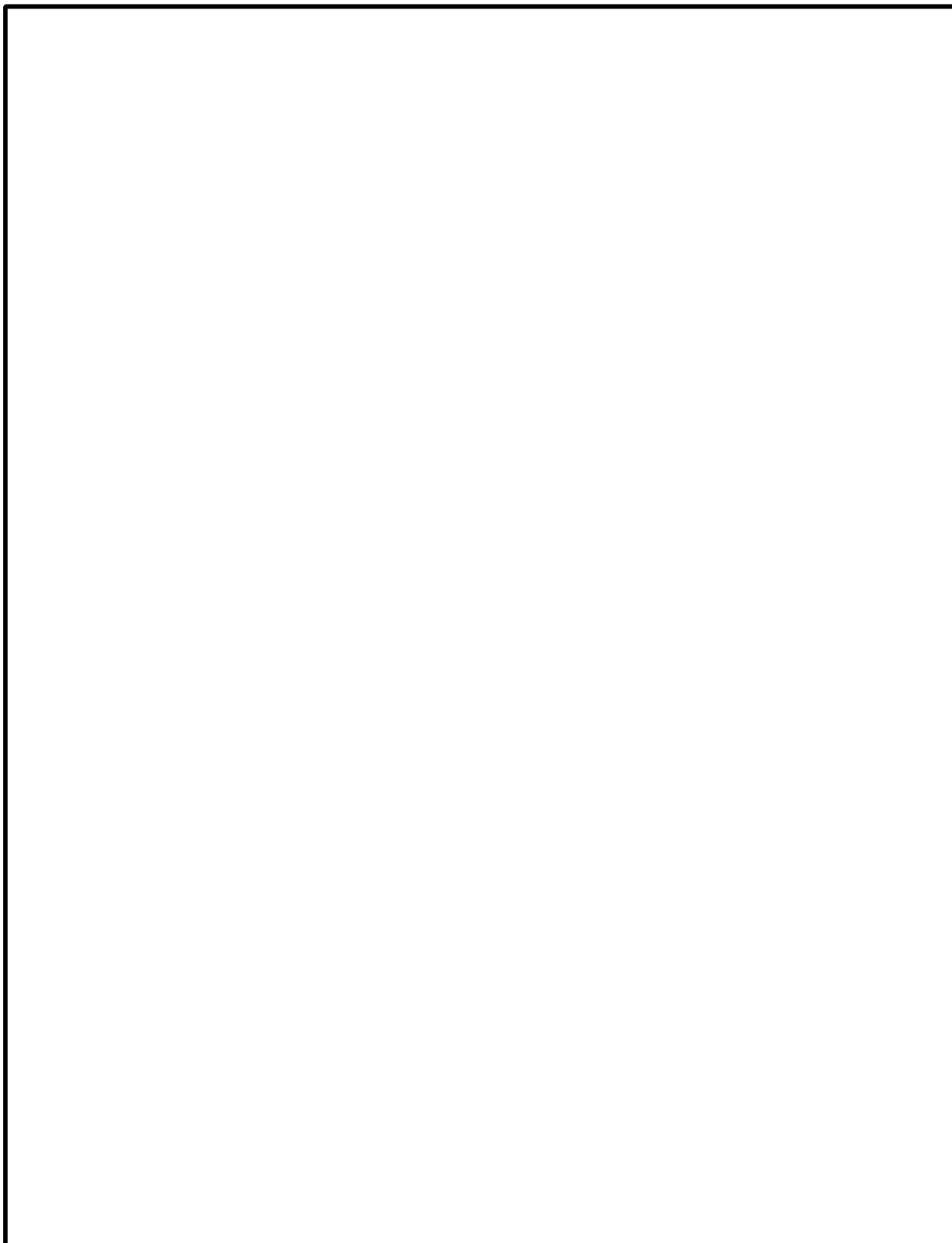
If a determination cannot be made as to whether an indicator rises to the level of a NS concern or whether there is an articulable link between an individual and one or more of the indicators in Attachment A, the Field may request assistance from HQFDNS Background Check Adjudication Unit (BCAU).

C. Family Members and Close Associates



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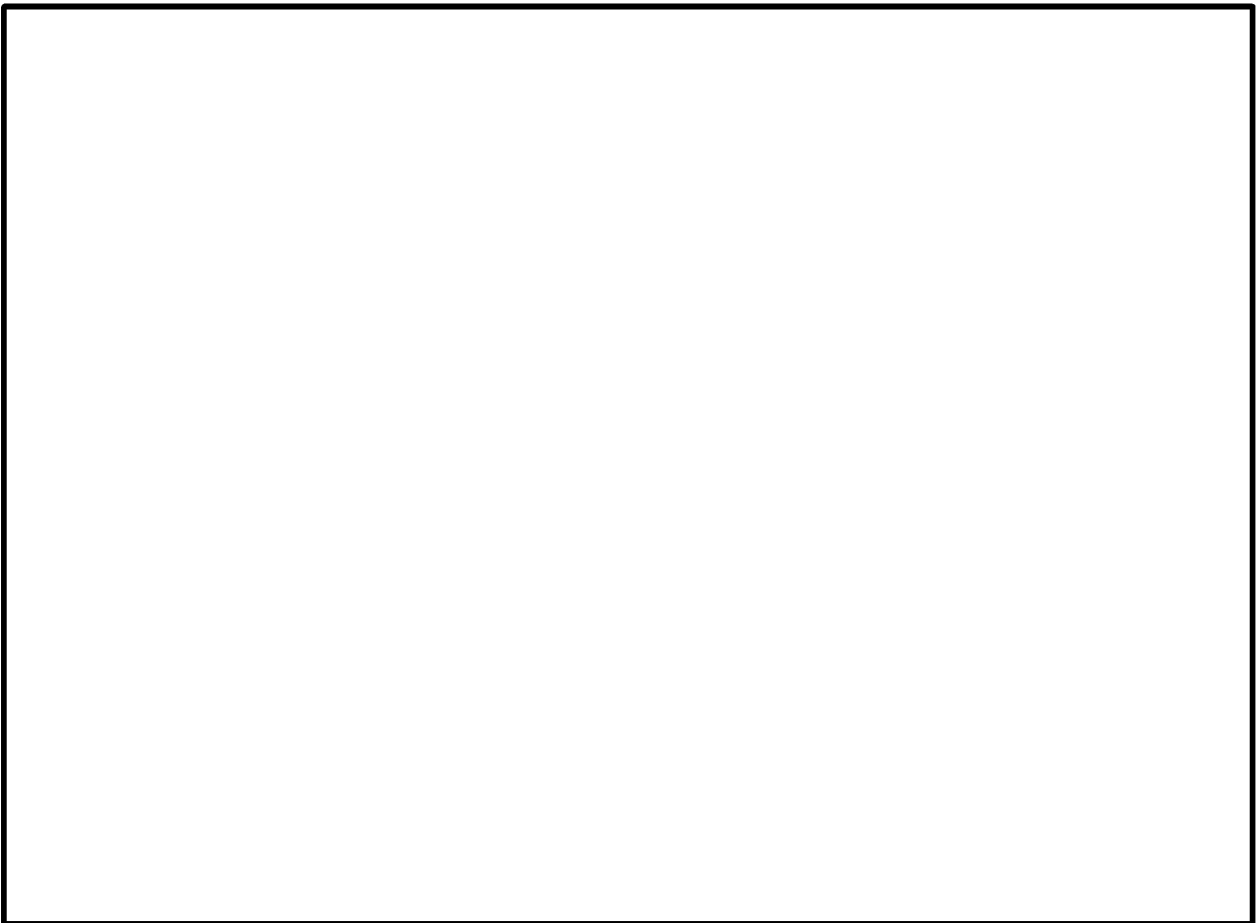
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Note: In the situations described above, when the NS concern involves a principal applicant and the principal applicant otherwise appears eligible for the benefit, adjudication of derivative family members must be placed on hold until the CARRP process is complete for the principal applicant unless an exception applies (see section VIII of this Operational Guidance). No benefit may be granted to the derivative family members unless the principal's application is approved.

Similarly, when the NS concern relates to a derivative family member, the entire "family pack" application, including the principal, must be placed on hold. If the NS concern relates only to a derivative, adjudication of the related applications may continue on a case-by-case basis once vetting is completed for each related individual (unless an exception applies) if the NS concern on the derivative or beneficiary is determined not to present a NS concern for the principal applicant.

D. Documenting Determination of a NS Concern





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IV. ASSESSING ELIGIBILITY IN CASES WITH A NS CONCERN – STEP 2 OF CARRP PROCESS

A. Eligibility Assessment

Once a NS concern has been identified, the designated officer must conduct a complete review of the file in order to **assess the individual's eligibility** for the benefit sought. When statutory/regulatory grounds of ineligibility are identified, the Field may proceed with final adjudication following supervisory concurrence¹⁰ and deconfliction with the record owner (include text in parenthesis). There should be no denial based solely on discretionary grounds at this stage.¹¹

Multiple offices may be in possession of pending applications and/or petitions for the same individual with a NS concern. Each office may initiate an eligibility assessment and proceed to deny (following local supervisory concurrence and deconfliction with the record owner) if statutory/regulatory grounds of ineligibility are identified.

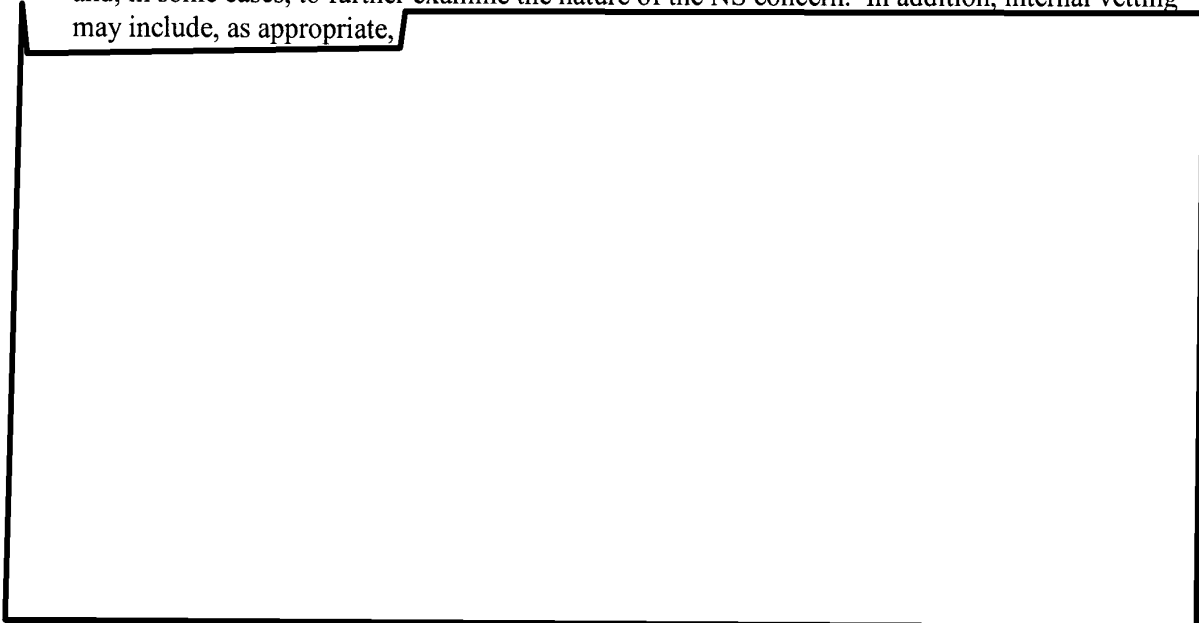
The purpose of the eligibility assessment is to ensure that valuable time and resources are not unnecessarily expended when the individual is otherwise ineligible for the benefit sought.

If the case cannot be completed pursuant to the instructions above, the case must move to the internal vetting process.

B. Internal Vetting

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Internal vetting includes a complete review of the file in order to assess the individual's eligibility for the benefit sought, to obtain any relevant information to support the adjudication and, in some cases, to further examine the nature of the NS concern. In addition, internal vetting may include, as appropriate,

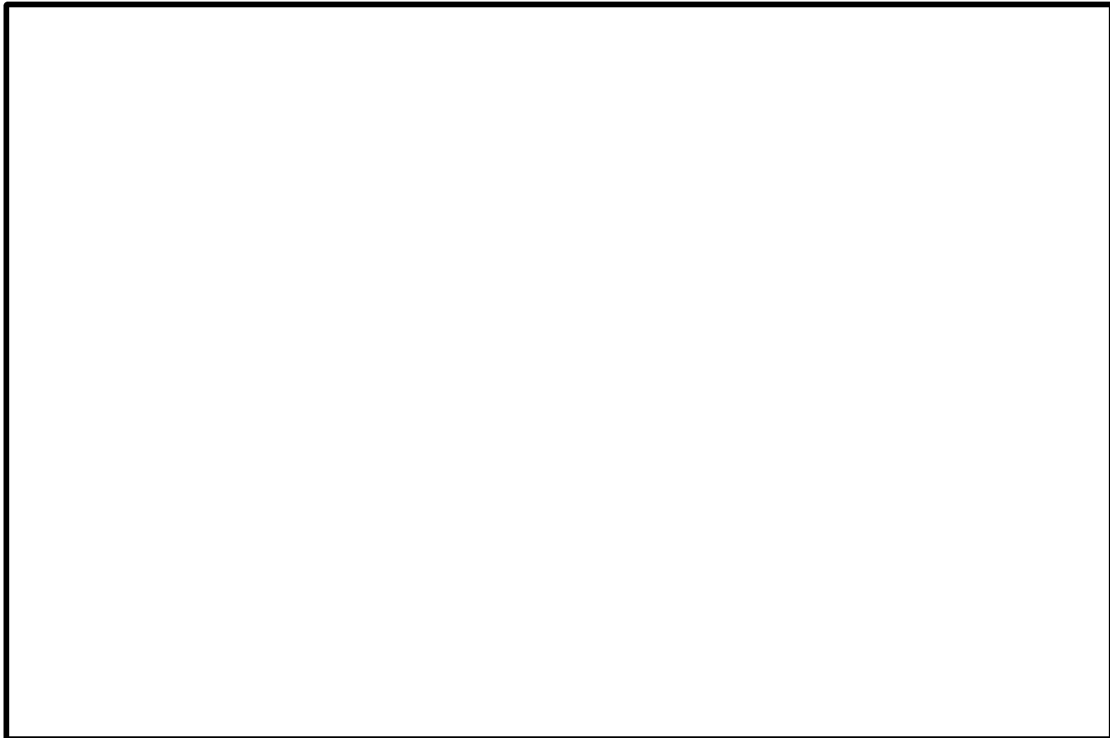




Designated officers should perform the following systems checks as appropriate during the internal vetting process:

1. Required Systems Checks:

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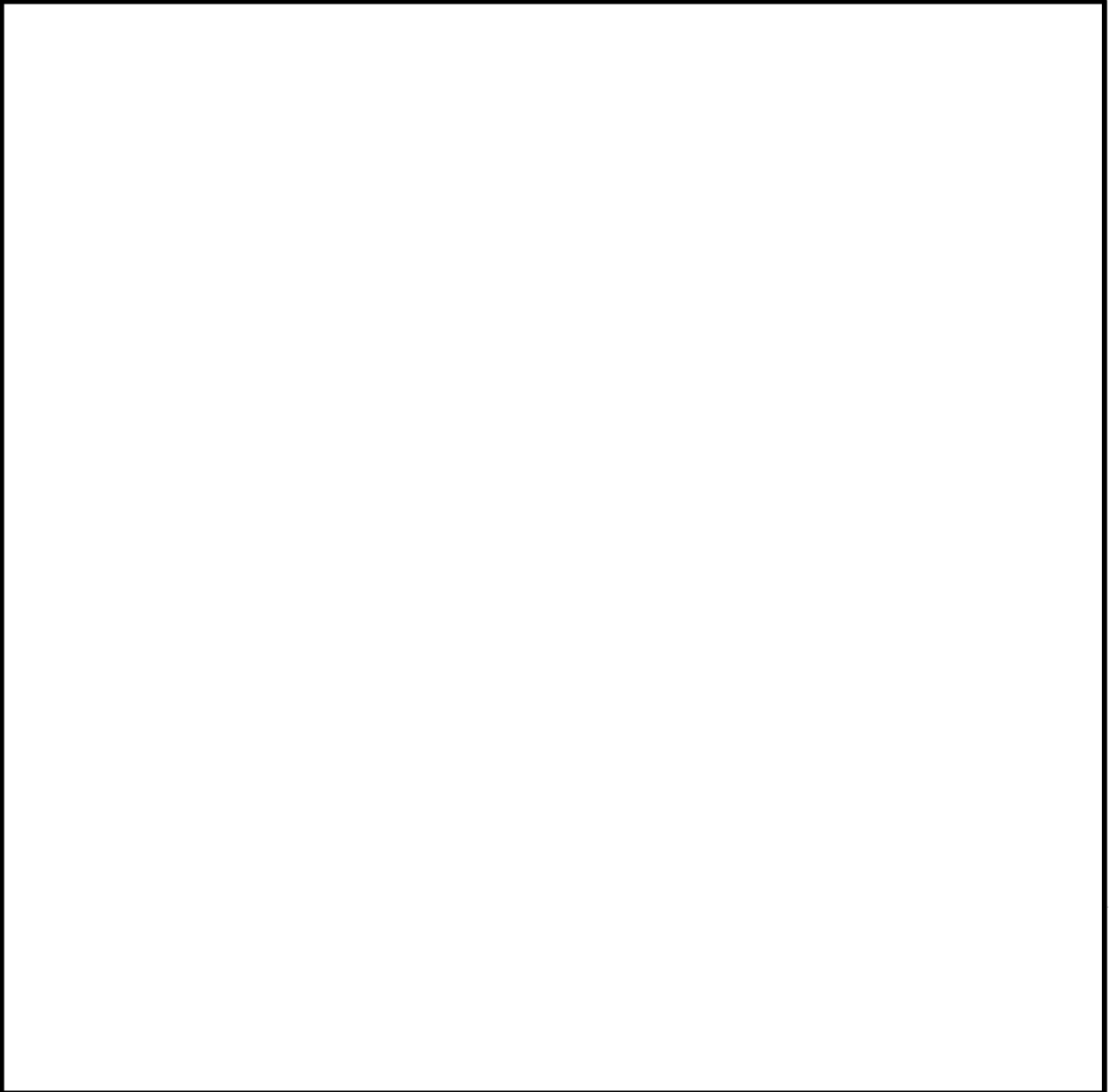


2. Supplemental Systems Checks:

The following additional systems checks may be warranted based on a review of the results of the required systems checks, security checks and file review:



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Designated officers are encouraged to critically consider all information available to them, including information derived from sources not commonly checked in routine adjudications, thereby enabling the designated officer to ask better-informed questions when constructing an RFE, NOID, or during an interview. Such sources include:



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When ineligibility grounds are identified, the Field may proceed with final adjudication following supervisory concurrence and deconfliction (see below) with the record owner.

C. Deconfliction

The designated officer is required to advise the record owner of contemplated adjudicative actions. See Section VIII Part K of this guidance and Title 8, Code of Federal Regulations Section 103.2(b)(18) for instructions on holding a case in abeyance when proposed actions would interfere with an ongoing investigation.

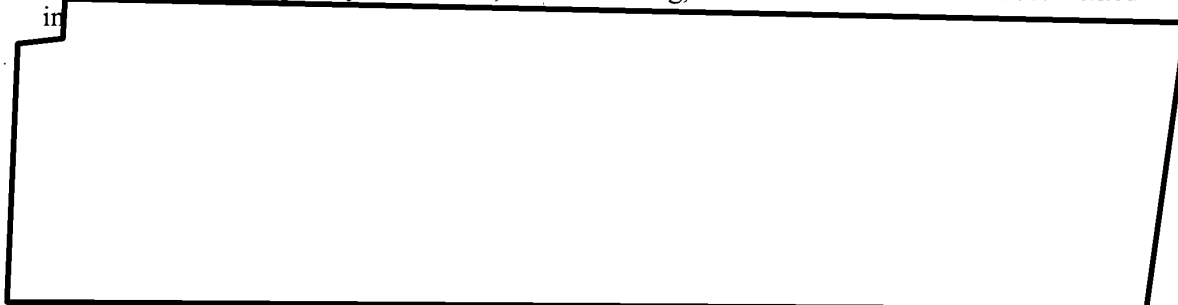


If the individual is otherwise eligible for the benefit or if local management determines further processing is necessary to strengthen or support a final adjudication, cases will proceed to the *External Vetting* stage.

Note: In instances where the individual is deemed ineligible for the benefit and the denial grounds can be overcome with a subsequent filing, the most prudent course of action is to continue with external vetting rather than denying on the initial ground of ineligibility.

D. Documenting Eligibility Assessment and Internal Vetting

The results of the eligibility assessment, internal vetting, and deconfliction must be documented in



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E. Individual Deemed Eligible for the Benefit

When the NS concern remains and the individual is deemed eligible for the benefit at the *Eligibility Assessment/Internal Vetting* stage, no benefit may be granted until external vetting is complete, unless an exception applies. See Section VIII, Case Specific Exceptions and Miscellaneous Guidance.

V. EXTERNAL VETTING – STEP 3 OF CARRP PROCESS

A. KST NS Concerns

HQFDNS has sole responsibility for external vetting of KST NS concerns, which is conducted only as a last resort when no statutory or regulatory grounds of ineligibility have been identified. See Section VI, Requesting Assistance from HQFDNS.

B. Non-KST NS Concerns

For Non-KST NS concerns, the designated officer must initiate the external vetting process^{(b)(7)(e)} before the case may proceed to final adjudication if:



C. Law Enforcement Coordination

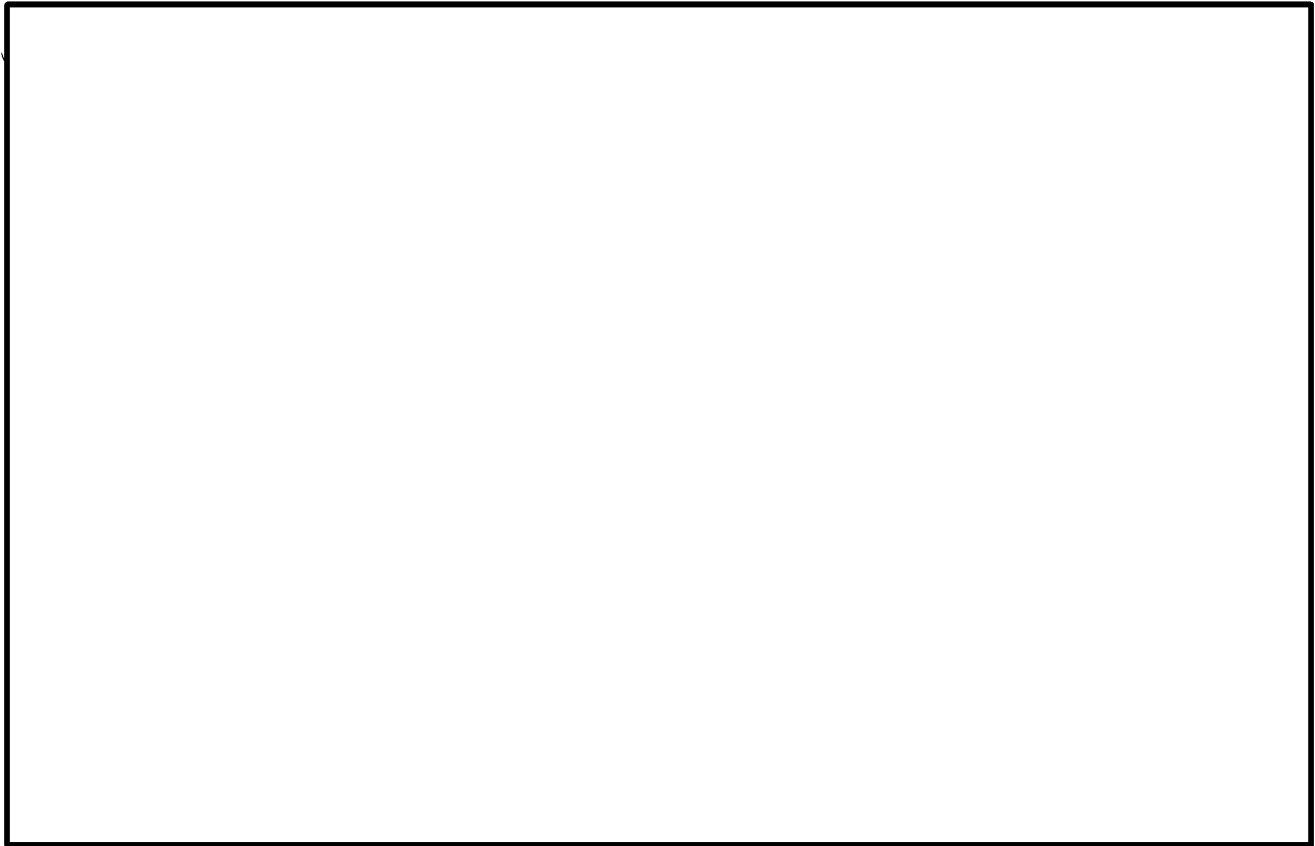
External vetting requires close coordination with law enforcement agencies, the Intelligence Community¹³ or other record owners to determine the nature and extent of the NS concern and to identify information that is relevant to an eligibility determination.

Coordination with law enforcement is essential to understanding the nature of associations that make the individual a concern, the individual's level of involvement in activities of concern, and the progress made to date by law enforcement to investigate those concerns. It also affords the opportunity to understand the impact of adjudicative activities on ongoing and sensitive investigations.

The Field must contact and establish liaison relationships with the LEA/record owner and other relevant agencies in order to coordinate background check vetting and obtain any and all information relevant to understanding the NS concern and adjudicating the application/petition. A limited number of USCIS officers must be the primary points of contact for outreach to the

¹³ Officers in the field are not authorized to contact Intelligence Community members; such outreach is conducted by HQFDNS. See Glossary for definition of Intelligence Community.

LEA/record owner. This will assist USCIS efforts to develop effective information-sharing relationships and to limit the number of contacts with the record owner



D. Contacting the Record Owner

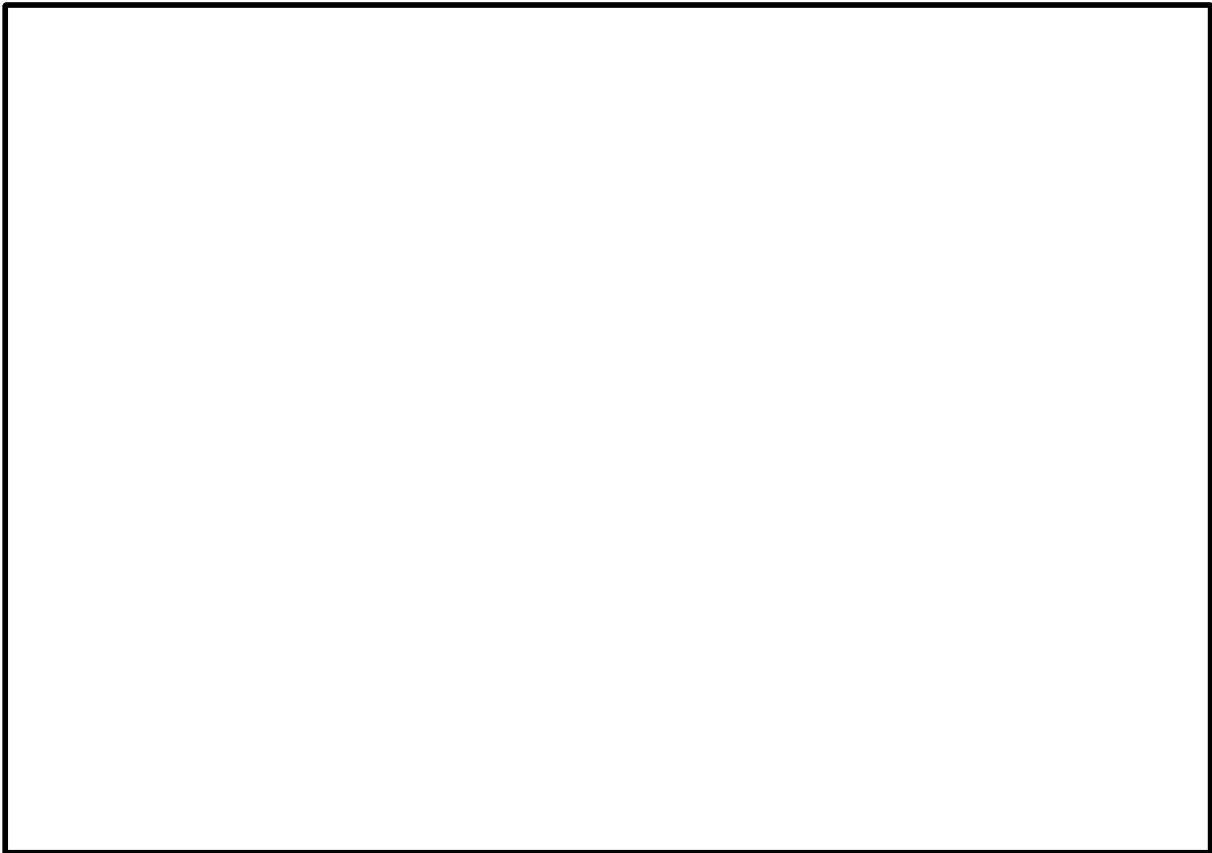
Prior to initiating contact with the LEA/record owner, all required and supplemental systems checks (see above) must have been conducted and recorded on the BCAA worksheet.



¹⁴ When USCIS obtains information from another governmental agency in the vetting process, the information sharing restriction, often referred to as the “Third Agency Rule,” requires USCIS to obtain authorization from the record owner prior to any disclosure of the information. Therefore, in order to use the information during adjudication, prior written authorization must be obtained from the record owner. If the information indicates the individual is ineligible for the benefit sought, and if permission from the record owner has been secured for the use of unclassified information, the application/petition may be denied based on the information. Additionally, under provisions of DHS Policy MD 11042.1, USCIS may not disclose information provided by the record owner to a third agency without the record owner’s prior authorization.

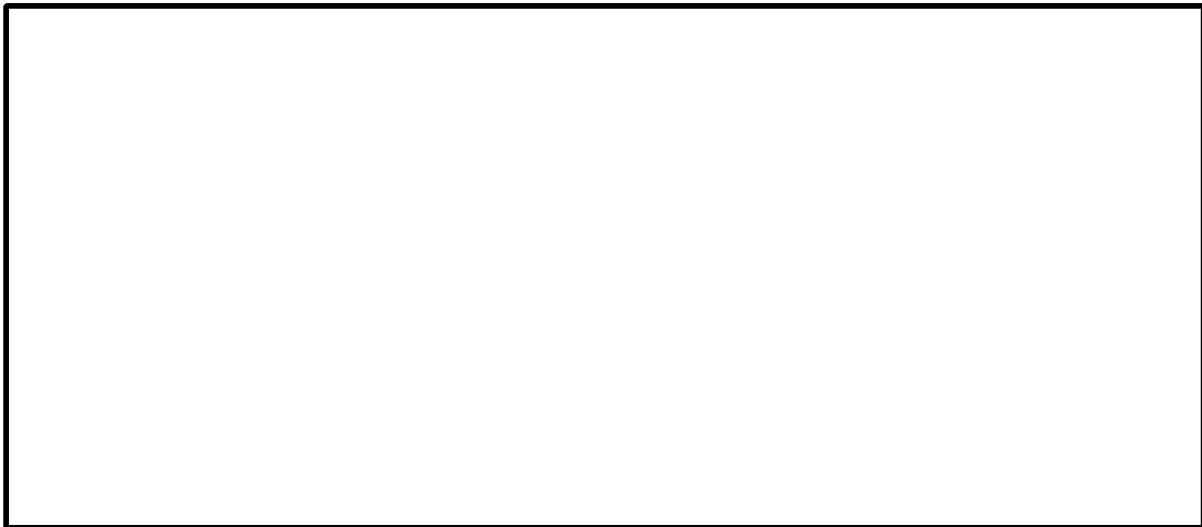
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E. Obtaining Relevant Information

Designated officers should request information the record owner may have about:



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F. Closed Case

In a **closed case**, fundamental questions must be answered to support a comprehensive vetting. Designated officers should ask questions regarding:

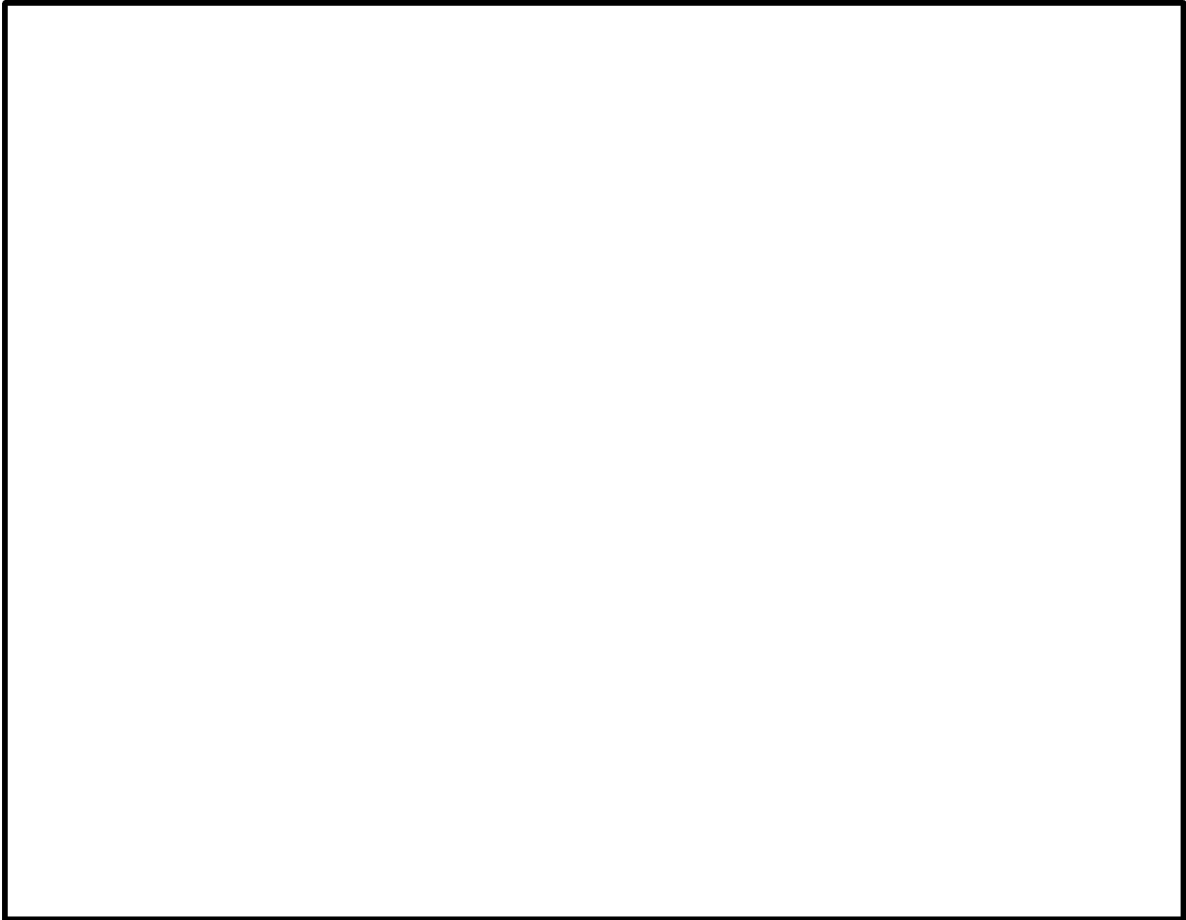
G. Ongoing Investigation

In an **ongoing investigation**, designated officers should ask questions regarding:

H. Vetting Decision Criteria

At the conclusion of the external vetting process for Non-KST NS concerns, the designated officer must consider the facts or fact patterns developed and make one of the following recommendations for supervisory consideration:

I. A NNS determination should be made if results of the external vetting fall into one or more of the following categories:



J. A NS determination should be made if results of the external vetting fall into one or more of the following categories:




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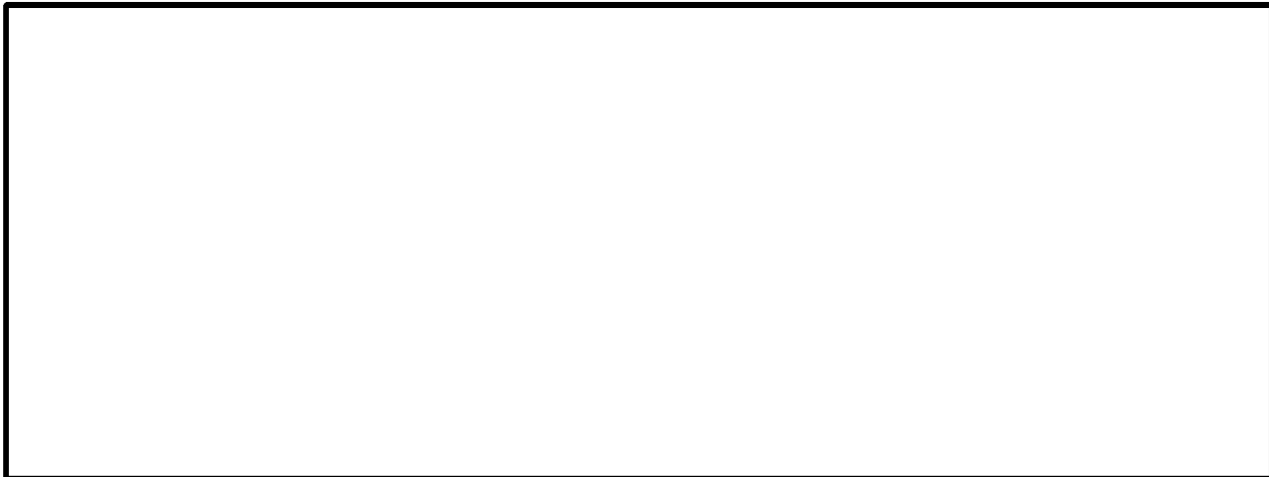
K. Documenting External Vetting Activities



L. Entering Data into FDNS-DS for Non-KST NS concerns



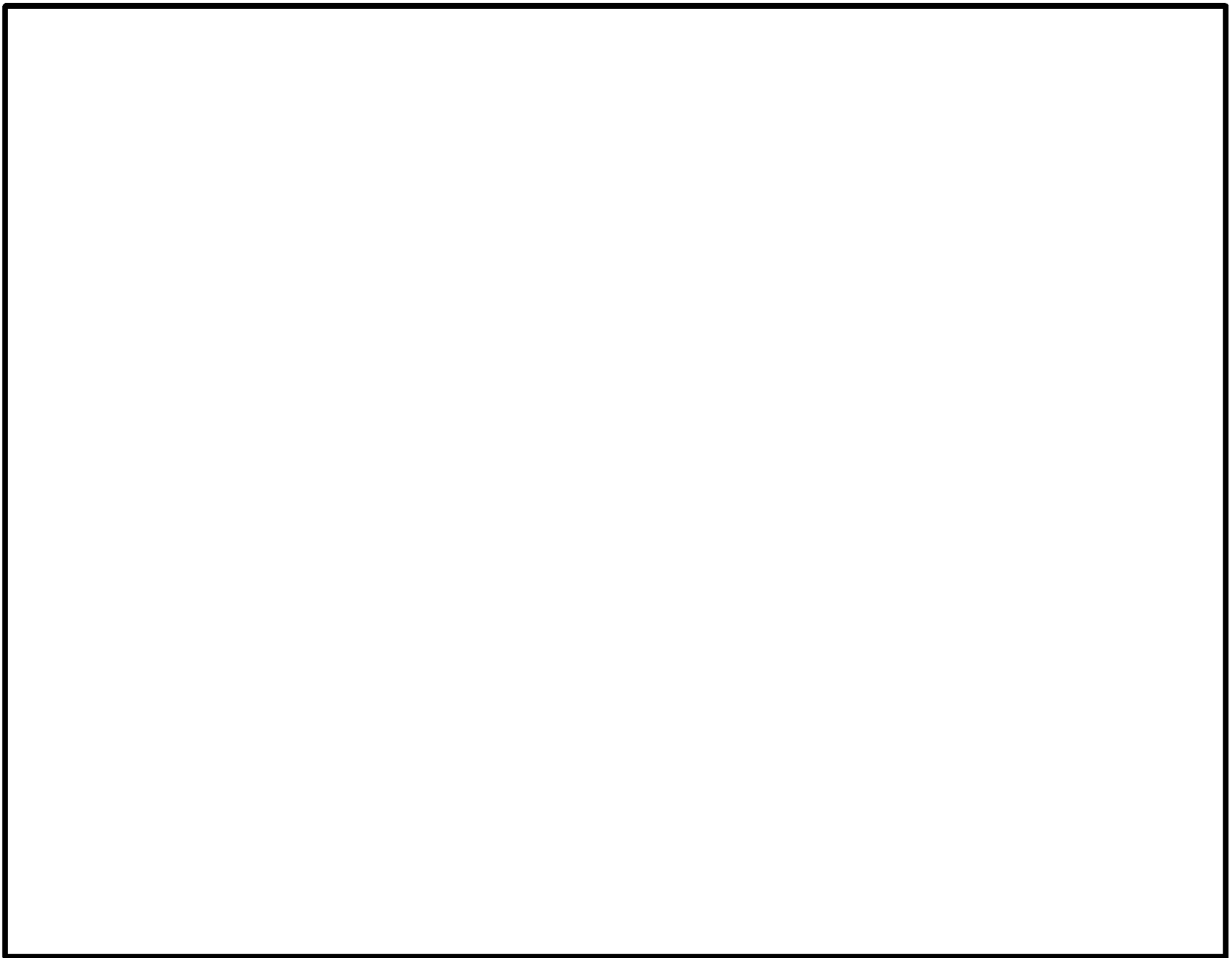
M. Multiple Filings at Multiple Locations



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(b)(7)(e) **VI. REQUESTING ASSISTANCE FROM HQFDNS**

A. Requesting External Vetting Assistance on KST NS Concerns

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Vetting assistance may be requested from HQFDNS in the following circumstances:

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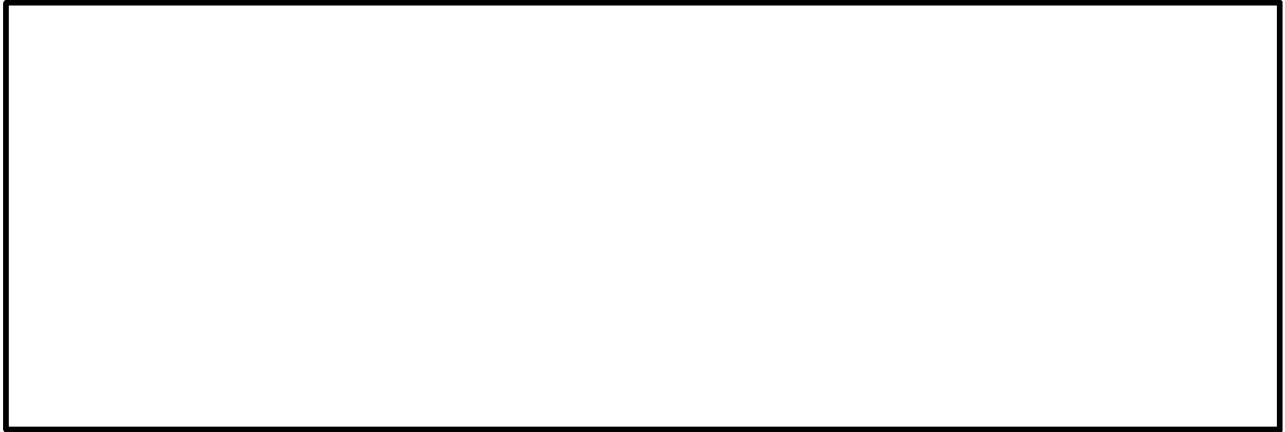
B. Requesting External Vetting Assistance on Non-KST NS concerns

C. Contact Information for HQFDNS Assistance

The Field may contact HQFDNS for guidance at any time during the processing of an application/petition with a NS concern. Such requests should be sent via email to:

FDNS-NSB@dhs.gov

The request for guidance must include the following information:



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VII. CARRP ADJUDICATION – STEP 4 OF CARRP PROCESS



A. Adjudicating Applications with KST NS Concerns



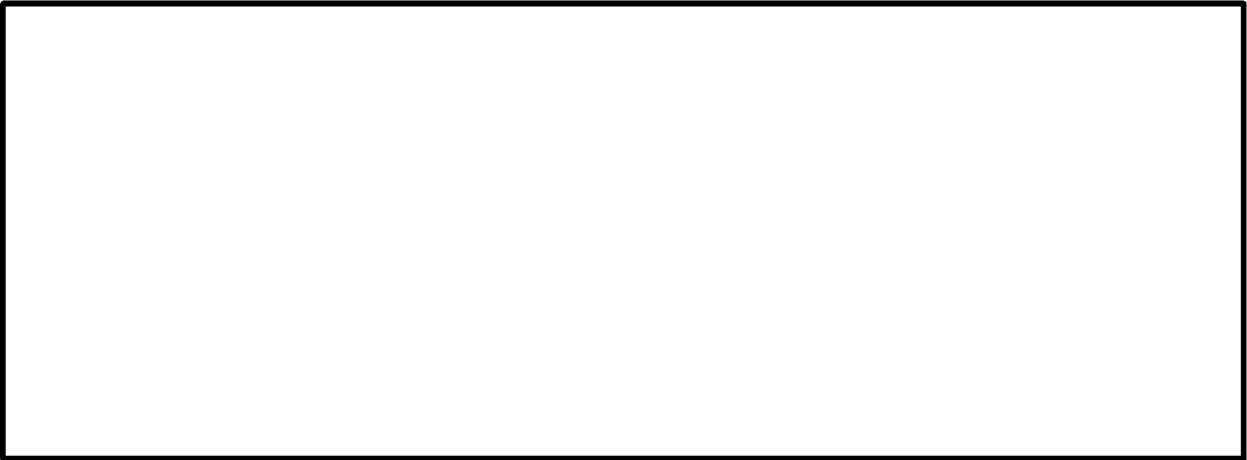
B. Adjudicating Applications/Petitions with Non-KST NS Concerns



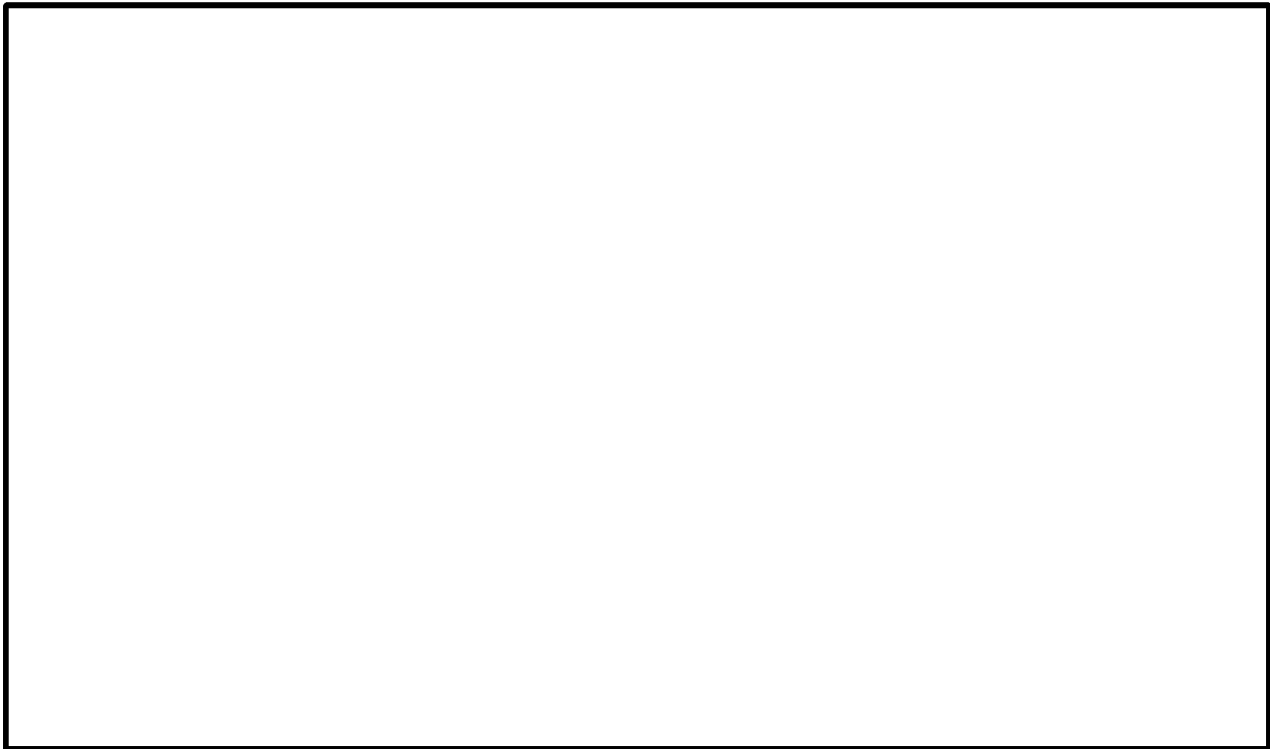
¹⁹ HQ Office of Field Operations (OFO) or HQ Service Center Operations (SCOPS).

**VIII. CASE SPECIFIC EXCEPTIONS AND MISCELLANEOUS
GUIDANCE FOR CARRP ADJUDICATION**

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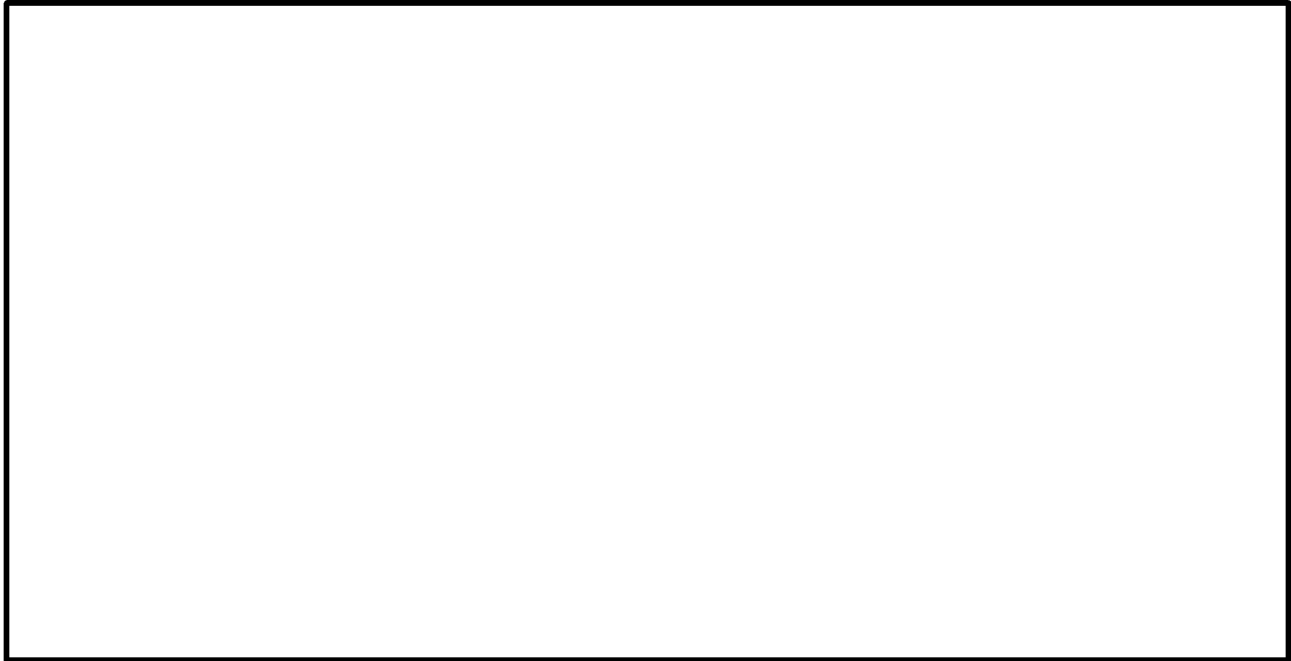


A. Employment and Travel Authorization Applications with EPS or NS concerns

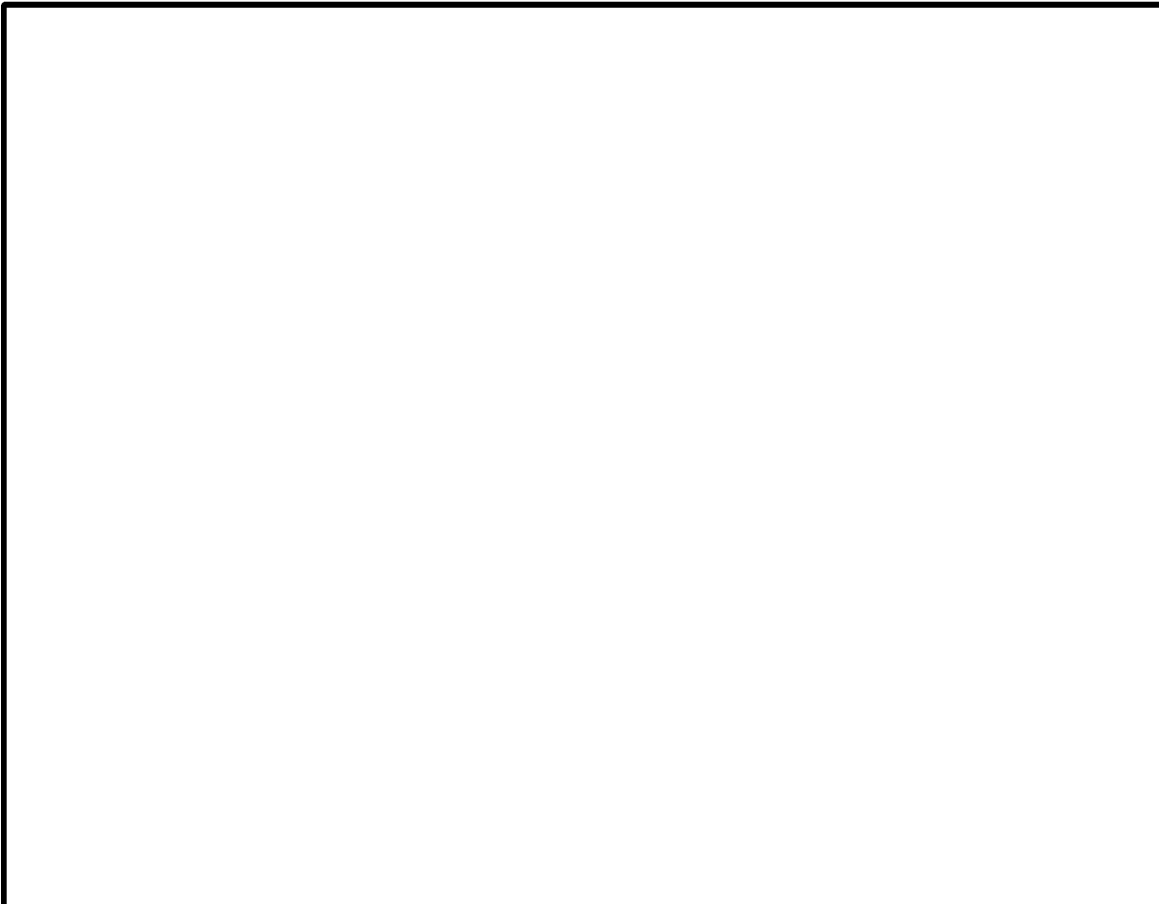


B. Form I-90 with NS or EPS Concerns





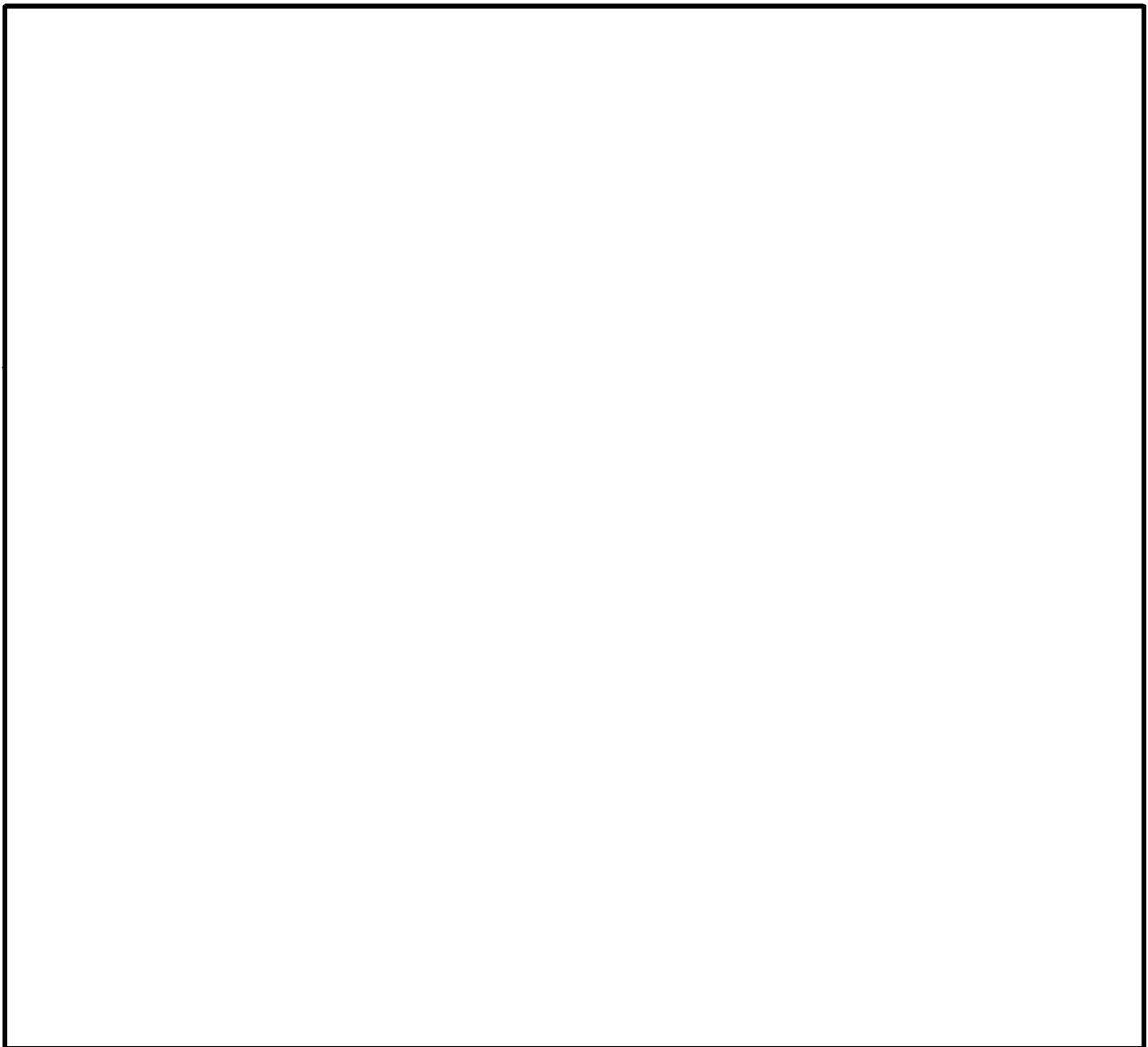
C. *Santillan* Cases Involving EPS or NS Concerns



D. General EPS Guidance

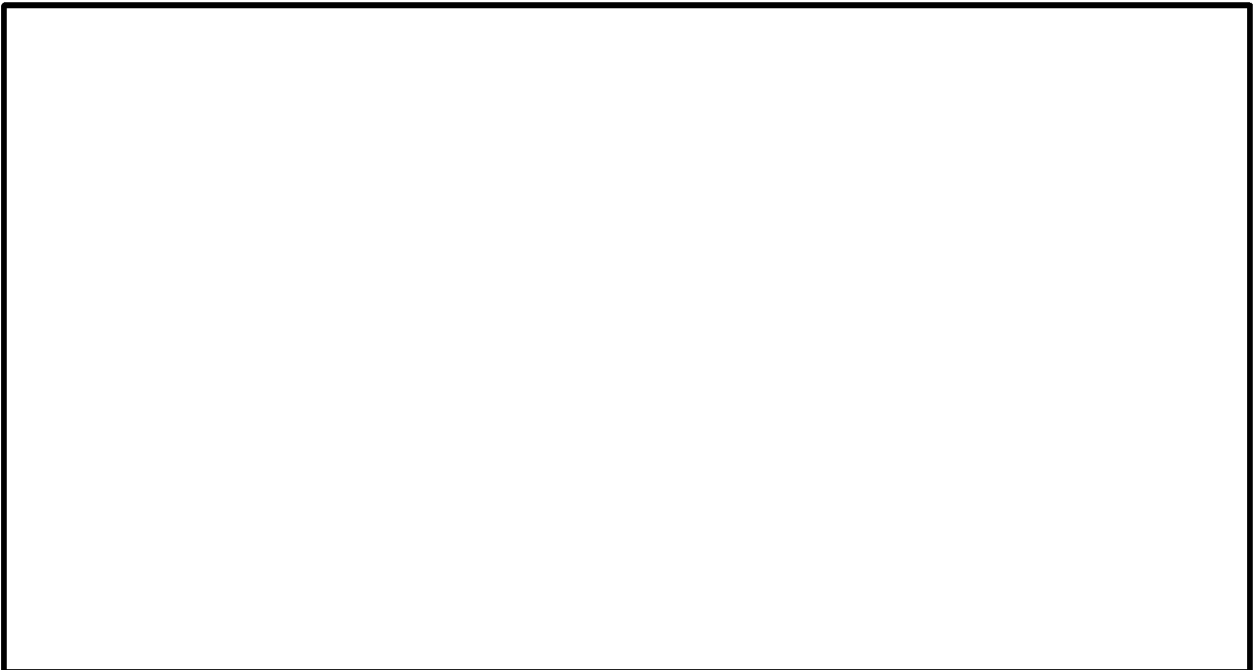
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E. Motions to Reopen/Reconsider with NS Concerns

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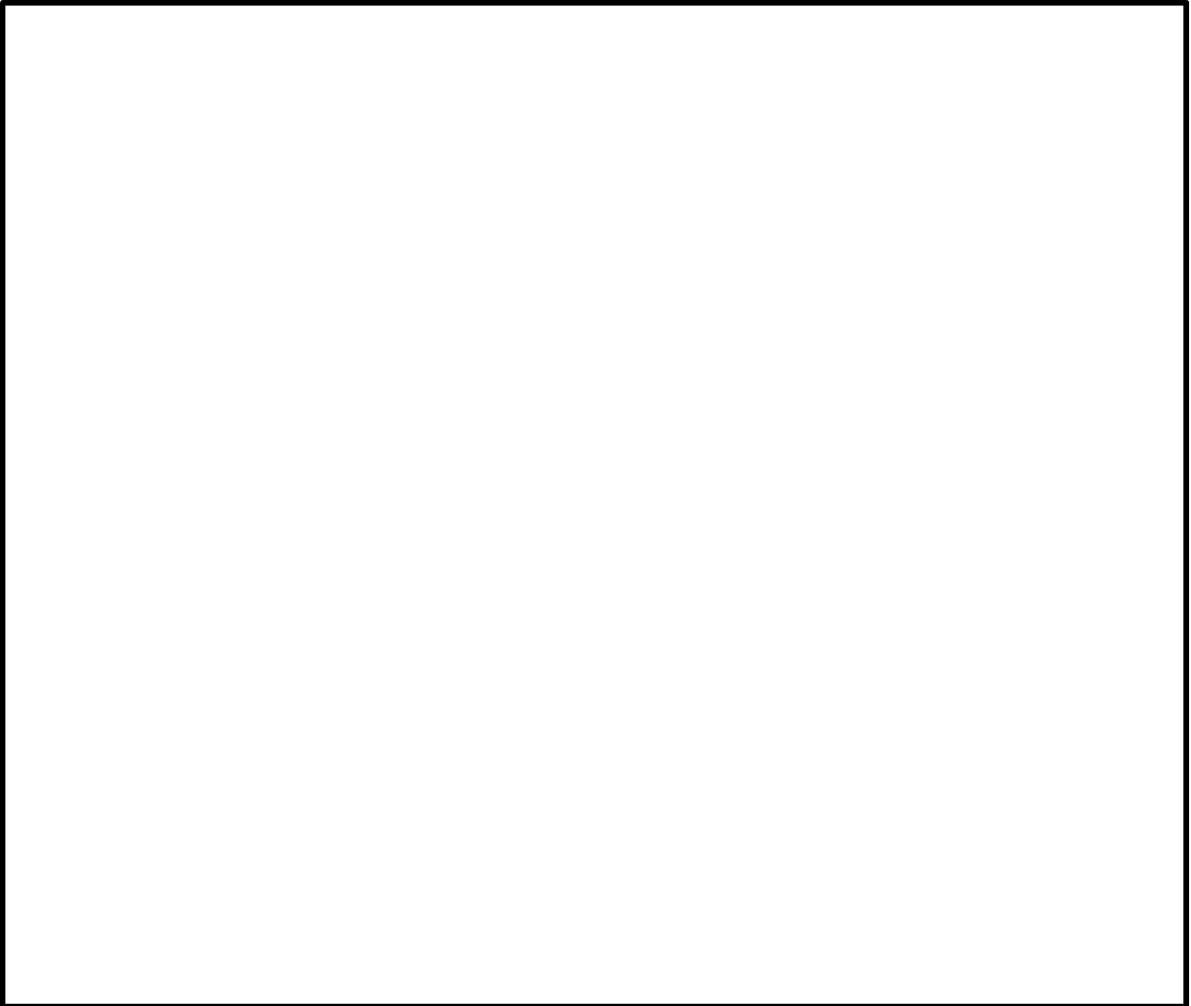
G. Appeals to the Board of Immigration Appeals (BIA) with NS Concerns



H. Exemptions for the INA Section 212(a)(3)(B) Terrorism-Related Provisions and NS Concerns

Under the INA, aliens who fall under the terrorist-related inadmissibility provisions of section 212(a)(3)(B) are ineligible for most immigration benefits. However, under INA section 212(d)(3)(B)(i), as amended by the Consolidated Appropriations Act of 2008, the Secretary of Homeland Security or the Secretary of State, after consultation with each other and with the Attorney General, may exercise discretionary authority to exempt certain terrorist-related

- (b)(7)(e) inadmissibility provisions of INA section 212(a)(3)(B) with respect to either an undesignated terrorist organization or to an individual alien. Therefore,



I. Use of Classified Information in Adjudicating Applications/Petitions with a NS Concern



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J. Use of For Official Use Only (FOUO) or Law Enforcement Sensitive Information in Adjudicating Applications/Petitions with a NS concern



K. Abeyance



L. Litigation



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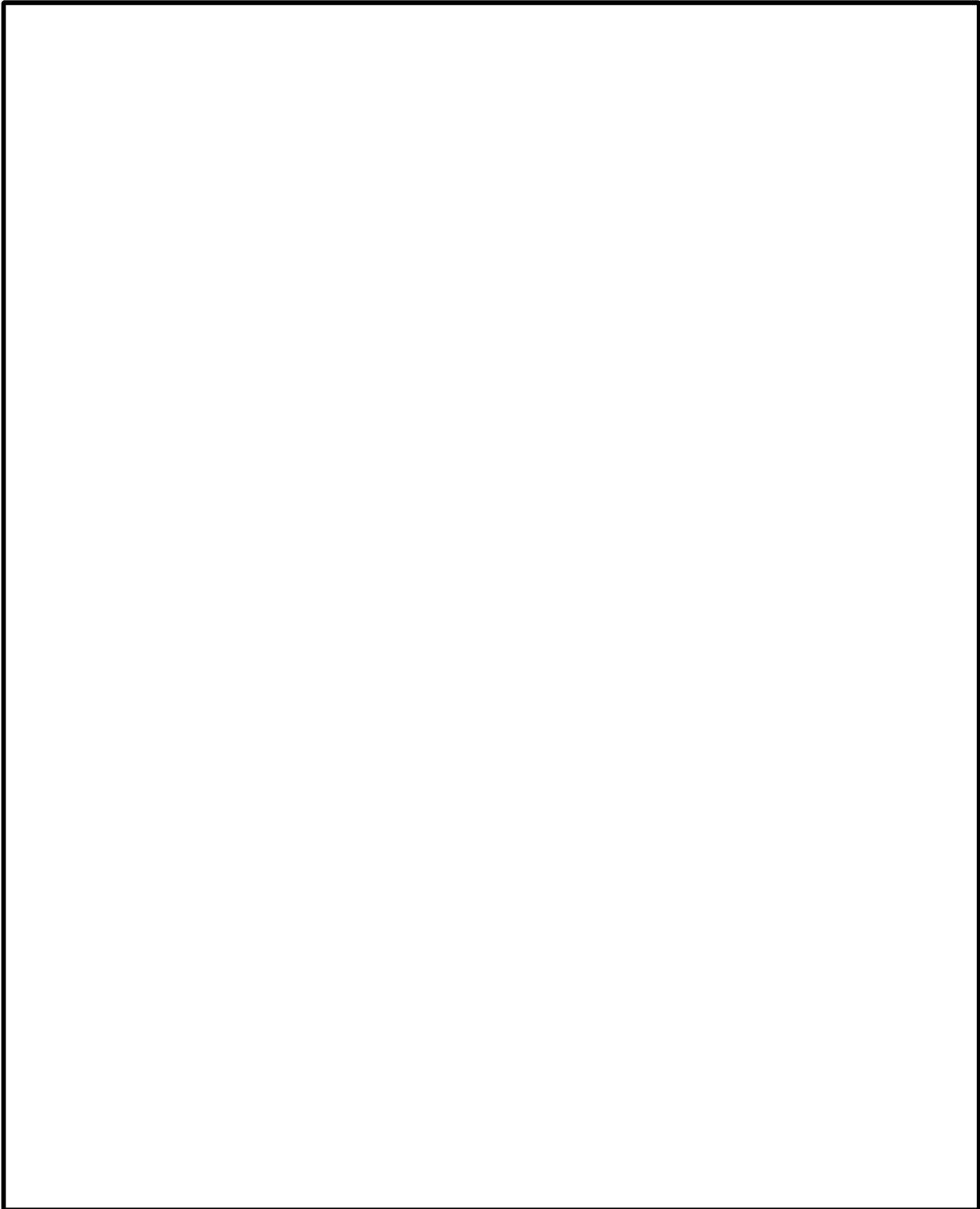
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M. LHM



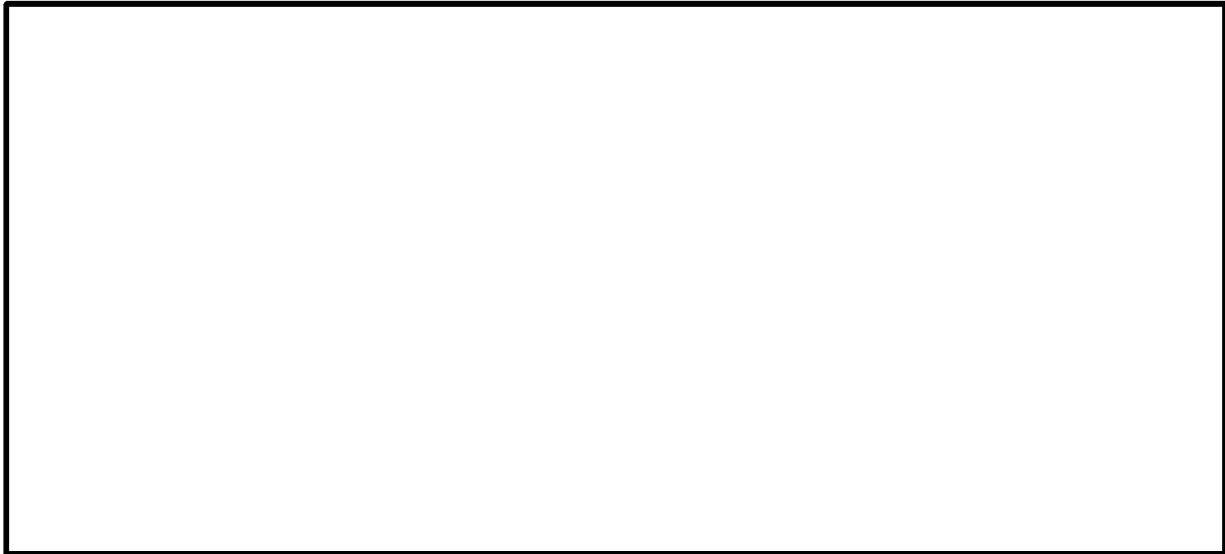
(b)(7)(e)



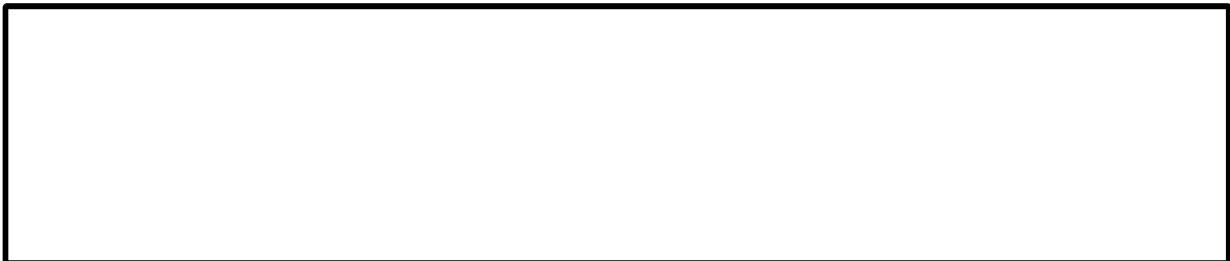
IX. PETITIONS AND OTHER FORMS WITH NS CONCERNS

The guidance provided in this section relates to Forms I-129 (not requesting a Change of Status (COS) or Extension of Stay (EOS)), I-129F, I-130, I-140, I-360 (Religious Worker cases only), I-526, I-600 and I-800 that do not convey an immigrant or non-immigrant status and I-824 (collectively, hereinafter as "petitions").²⁷

The procedures outlined here do not alter outstanding guidance with respect to the consideration of relative (I-130), orphans (I-600 or I-800), and fiancé (I-129F) petitions where the petitioner's eligibility comes into question pursuant to the Adam Walsh Act.²⁸ (b)(7)(e)



A. Operational Guidance for Petitions

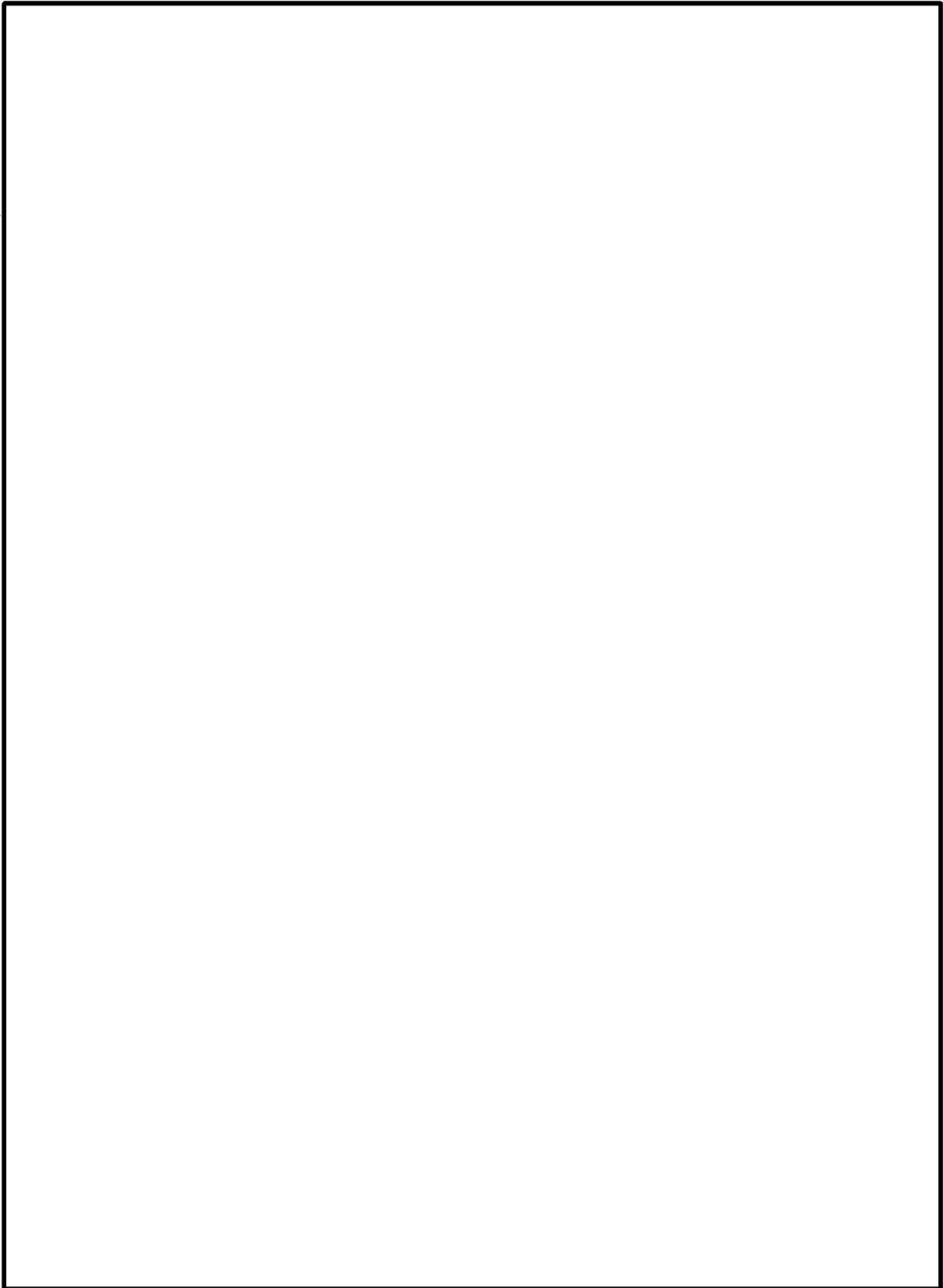


B. Approving Petitions with NS Concerns



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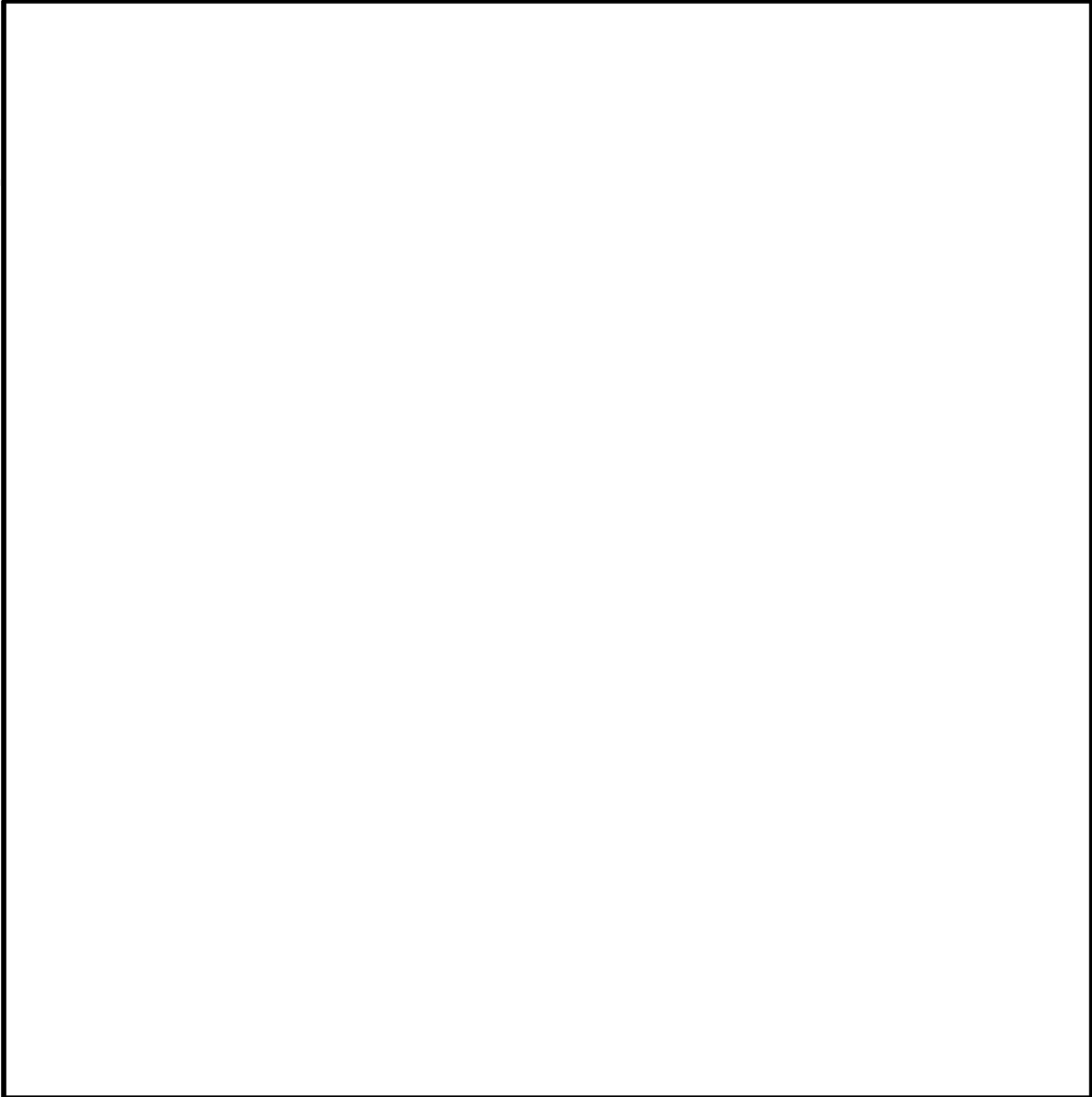


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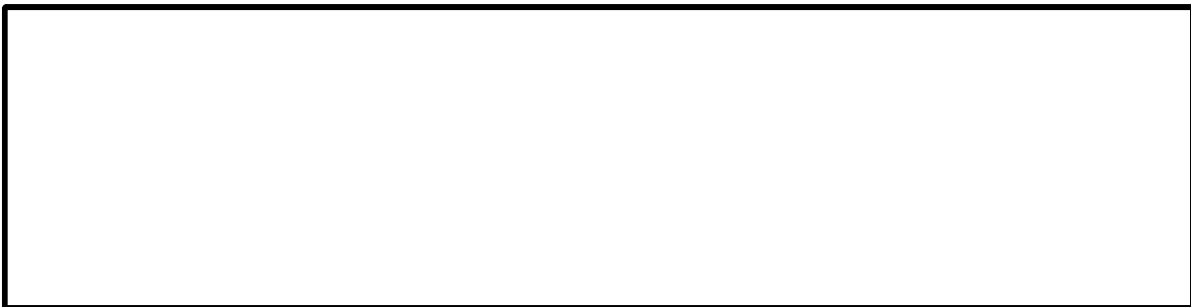
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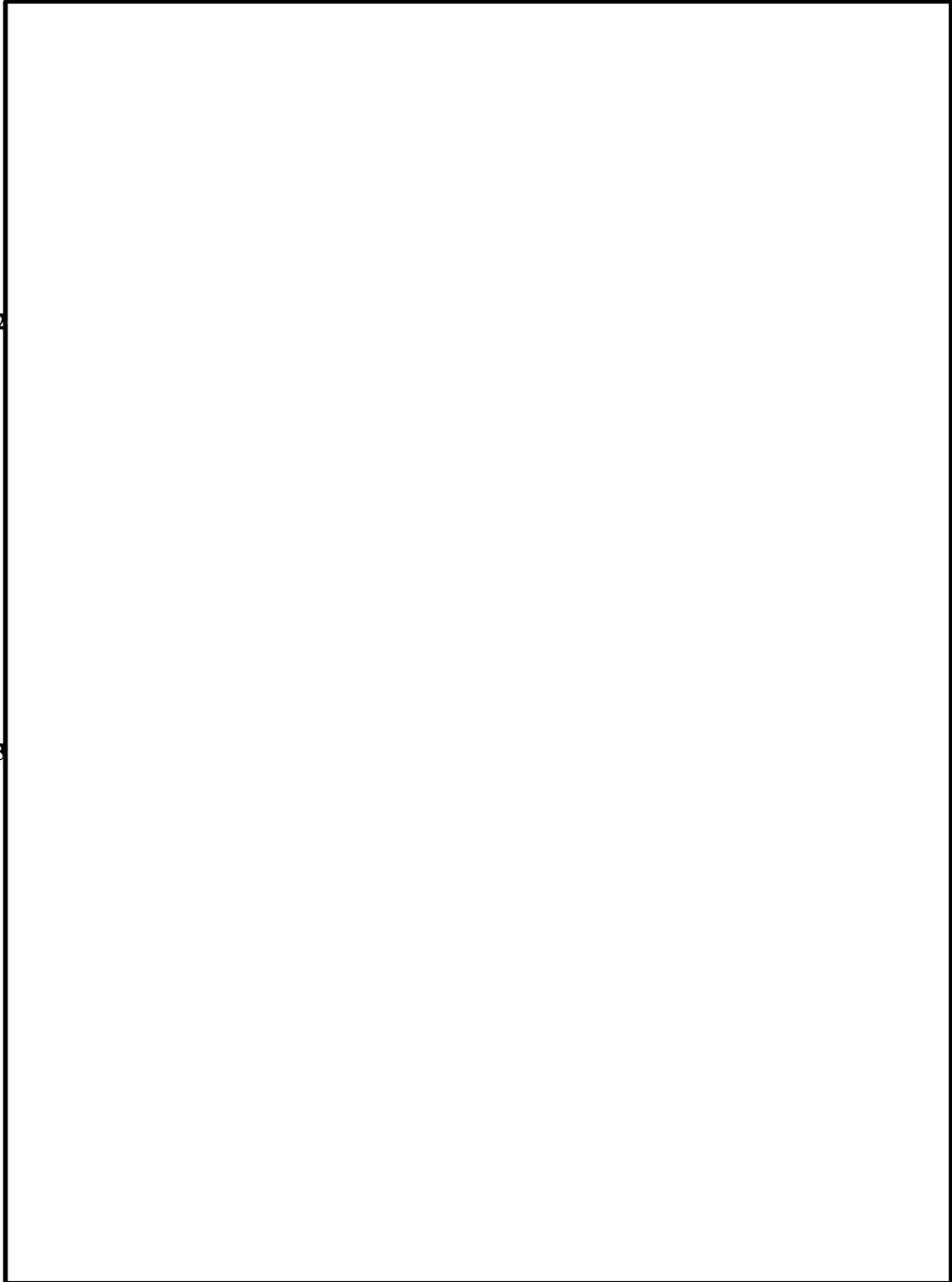


C. Special Considerations



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