



April 6, 2020

Kenneth Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

Re: Postponing Deadlines, Including for RFEs and NOIDs, in Unaccompanied Children's Cases to Support COVID-19 Precautions

Dear Mr. Cuccinelli:

On behalf of Kids in Need of Defense (KIND), I write to urgently request that U.S. Citizenship and Immigration Services (USCIS) further expand its recent announcements that relax certain filing deadlines, in order to ensure that applicants and petitioners, particularly children, do not risk their health to complete requests for additional evidence or meet other timelines in the midst of a national public health emergency. The new measures recently put into place are welcome, but do not go far enough to protect applicants, caregivers and professionals who work with them, or USCIS adjudicators and other government officials who would be forced to comply with, or adjudicate under, deadlines that have lost their meaning in the face of the global pandemic. Further relaxing the deadlines will keep more people safe, and provide for better government stewardship of USCIS resources. Applicants should not have to put their health or lives at risk to complete an application; nor should adjudicators expend their time on applications that may be incomplete or subject to denial, solely because the applicant or petitioner could not supply needed information within the standard timeframe due to circumstances beyond his or her control.

USCIS recently announced the postponement of routine in-person services through at least May 3, 2020, and extended deadlines for response to some Requests for Evidence (RFEs), Notices of Intent to Deny (NOIDs), and other notices – but only those issued between March 1 and May 1 inclusive. As practitioners serving children for whom the pandemic exacerbates inherent vulnerabilities, we believe far broader measures are necessary to safeguard both due process and public health. We urge USCIS to promptly postpone or extend *all* filing deadlines, particularly for those identified as unaccompanied children, during this critical time.

KIND is a national nonprofit organization dedicated to providing free legal representation and protection to unaccompanied immigrant and refugee children in removal proceedings. Since January 2009, KIND has received referrals for more than 20,000 children from 70 countries. KIND has field offices in ten cities: Atlanta, Baltimore, Boston, Houston, Los Angeles, Newark, New York, San Francisco, Seattle, and Washington, DC. Legal services professionals who serve children through KIND provide defense in

removal proceedings and pursue immigration benefits and relief for which their clients may be eligible. KIND also employs social services coordinators throughout the country, providing unaccompanied children with the support they need outside of the courtroom. KIND promotes protection of children in countries of origin and transit countries and works to address the root causes of child migration from Central America. KIND also advocates for laws, policies, and practices to improve the protection of unaccompanied children.

The COVID-19 pandemic has demanded an historic response from people, governments, and communities throughout the United States. Public health authorities have urged social distancing and limitations on public gatherings to prevent spread of the virus, and many regions of the country have issued stay-at-home orders and restrictions on certain businesses, activities, and services. These changes have affected the daily lives of millions, requiring people to shutter their offices and institutions, work from home, and forego in-person appointments and meetings.

Despite these new realities, many unaccompanied children face looming deadlines in their immigration matters. These include deadlines for submitting additional evidence or documentation in support of their applications for relief, typically evidence that they can obtain only from third parties, such as medical professionals, schools, or state courts. If they are unable to timely submit this evidence or address USCIS' concerns about their eligibility for relief, their applications may be denied. For unaccompanied children applying for legal protection from abuse, abandonment, neglect, trafficking, crime, or persecution, this outcome may directly result in deportation to harm, danger, or even death.

On March 27, 2020, USCIS announced limited flexibility for responses to some RFEs and NOIDs. Specifically, USCIS advised that it will consider "any responses submitted within 60 calendar days after the response deadline . . . before any action is taken" on RFEs or NOIDs dated March 1 through May 1, 2020.¹ On March 30, 2020, USCIS extended this provision to appealable decisions within the jurisdiction of the Administrative Appeals Unit (AAO) and to notices of intent to revoke or terminate (NOIRs or NOITs).² KIND commends this step, as well as the agency's recent measures to temporarily suspend in-person services and to accept reproduced signatures to help slow the spread of COVID-19. Yet because the extension of response times is limited to notices issued in a finite period, it will not reach all of the children whose ability to file responses will be severely impacted by the COVID-19 pandemic, including children whose responses will be *due* during this challenging time.

RFEs require a response within twelve weeks. Thus, some unaccompanied children whose RFEs were issued in December, for example, faced response deadlines in mid-March—after the onset of the pandemic. Many children would understandably have been unable to meet filing deadlines since that time, owing to closures of offices and public and private institutions, and other limitations facing legal services providers, state courts, schools, medical professionals, and others on whom children must rely to obtain, copy, and mail necessary documentation, evidence, and explanatory materials. The thirty-day deadlines for NOIDs and NOIRs present similar challenges for unaccompanied children, given that

¹ USCIS, USCIS Announces Flexibility for Requests for Evidence, Notices of Intent to Deny (Mar. 27, 2020), <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-requests-evidence-notices-intent-deny>.

² USCIS, USCIS Expands Flexibility for Responding to USCIS Requests (Mar. 30, 2020), <https://www.uscis.gov/news/alerts/uscis-expands-flexibility-responding-uscis-requests>.

notices issued prior to March 1 have recently become due precisely as the pandemic peaks in many regions in the United States.

In view of these and other barriers to timely filing faced by unaccompanied children due to COVID-19, KIND urges USCIS to promptly postpone, toll, or otherwise extend all filing deadlines, particularly for unaccompanied children, during this pandemic, including but not limited to the below actions:

- (1) Toll the response deadlines for all RFEs issued at any time since mid-December and for all NOIDs or NOIRs due or issued during the COVID-19 pandemic, and provide for a reasonable response time after public health responses to the pandemic have been lifted;
- (2) Extend the filing deadline for SIJS petitioners who turn 21 during the COVID-19 pandemic for at least 12 months from the date on which state courts that closed due to the COVID-19 outbreak fully reopen;
- (3) In any case where a one-year time limit may be applicable to an asylum claim, USCIS should confirm that tolling or an exception or exemption shall prevent operation of the bar;
- (4) Auto-extend until at least 90 days after President Trump's emergency proclamation ends: (A) the validity period of all Employment Authorization Documents (EAD); (B) the validity period of all U and T nonimmigrant status; and (C) all prima facie determinations for Violence Against Women Act (VAWA) petitions.

We understand the unique and evolving challenges posed by the COVID-19 pandemic, and we appreciate your consideration of these recommendations. We look forward to your response and to working with you to protect public health and USCIS' critical role during this difficult time.

Sincerely,



Jennifer Podkul
Vice President for Policy and Advocacy
Kids in Need of Defense

cc: Joseph Edlow, Deputy Director for Policy, USCIS
Kathy Nuebel Kovarick, Chief of Staff, USCIS
AnnMarie Highsmith, Acting Chief, Office of the Chief Counsel, USCIS
Kathryn Rexrode, Associate Director, External Affairs Directorate, USCIS

Michael Dougherty, Ombudsman, Office of the Citizenship and Immigration Services
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