



PRACTICE POINTER: What If You Do Not Receive an RFE or Denial Notice?

Practitioners report that adjudicators at the Vermont Service Center (VSC) have been denying humanitarian cases as abandoned for failure to respond to a Request for Evidence (RFE) even though no RFE was received. In some cases, practitioners have not even received the denial notice, leading to the issuance of a Notice to Appear upon the expiration of the motion/appeal period.

Although ASISTA has notified USCIS of these reports, at this time, the source of the problem is unclear. This advisory contains practice tips for responding to a denial when no RFE was received as well as strategies to handle cases where no denial notice has been received, and as a result, clients have been issued a Notice to Appear. In all cases, we recommend that in addition to filing a Form I-290B Motion to Reopen, you also file a FOIA request to obtain records regarding the issuance and mailing of the missing RFE or denial notice.

1. Preventing Missed RFE and I-290B Deadlines

As a preventive measure, practitioners should follow the [correct procedures for updating their office address](#) when they move. According to USCIS, a representative who needs to update their address should either:

- Submit a new Form G-28 for every pending case and include the receipt number, OR
- Submit a letter on your office stationery that clearly states “ATTORNEY CHANGE OF ADDRESS.” Your letter must include a spreadsheet of pending cases with the form type, receipt number, A-Number, and the applicant's name listed for each case.

The representative must submit the new G-28 or the letter to the USCIS office where their cases are currently pending.

In addition, we recommend that practitioners create a [USCIS account](#) to track pending cases. USCIS is inconsistent about uploading case updates on cases covered under 8 U.S.C. § 1367 to the online account, but occasionally, you will be notified about a new

RFE or decision in your case through the website. If you receive electronic notification of an RFE or decision notice but do not receive the actual notice, [email the service center](#) where the case is located to request the notice.

2. Responding to Denials when RFE was not Received

If you receive a denial notice for failure to respond to an RFE that you never received, ASISTA recommends:

A. Request *sua sponte* reopening

Once you find out about the denial, [email the service center](#) that issued the denial with your G-28 and ask them to reopen the case *sua sponte* and reissue the RFE with a new date for response. It is unlikely that USCIS will reopen the case *sua sponte*, but they may send you a copy of the RFE, which will aid in drafting your Form I-290B filing. Even if USCIS does not respond to your email at all, however, it is important to make a record demonstrating your attempts to address the issue promptly and to inform USCIS of the error.

- You can also request [case assistance from the USCIS Ombudsman](#) and your client's Congressperson (either senator or the Representative can assist)
- Submit a [technical assistance request](#) to ASISTA so we can follow up with the service center and Ombudsman

B. Timely file Form I-290B, Motion to Reopen

In ***all impacted cases***, practitioners should plan to timely file the I-290B. Everyone should include an affidavit from the client stating that they did not receive the RFE. Practitioners should include an affidavit from yourself and anyone else in your office who handles incoming mail. Explain:

- What your procedures are for handling mail
- That you did not receive the RFE
- That your office address is the same as what is listed on the G-28
 - If your office moved while the case was pending, provide evidence that you [properly notified USCIS of the change in your address](#).
- **If you receive the RFE before the Form I-290B is due**, include the response to the RFE in the Form I-290B filing.

- **If you do not receive the RFE before the Form I-290B is due**, file the Form I-290B timely, and in your filing, ask the service center to reopen the case and reissue the RFE.

Note: The Form I-290B should be filed as a Motion to Reopen pursuant to 8 C.F.R. § 103.2(b)(15) (“A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5”).

C. FOIA

To verify whether USCIS actually issued and mailed the RFE, practitioners should consider submitting Freedom of Information Act (FOIA) requests for the affected client’s keystroke records and/or EPMS, CLAIMS, CRIS, or ECHO records. Either the keystroke records or the specified databases should contain records of when and whether USCIS generated an RFE notice as well as when and whether it was mailed. If USCIS generated a notice but there is no record that it was mailed, that will support your argument that the case was not abandoned. Unfortunately, there is no way to prove that a notice that was mailed was not put in the wrong envelope or somehow lost.

- USCIS uses [several correspondence generator systems](#) to generate, print, and track the mailing of notices and documents, including RFEs, NOIDs, and denial notices. Practitioners may consider doing FOIA requests regarding these systems; however, we have not yet seen examples of results of FOIA requests for records from these systems. Nonetheless, given their function in processing RFEs, we believe these systems are likely to contain information on whether and when an RFE was generated, printed, and mailed. If you file a FOIA request related to these databases, please keep ASISTA informed via our technical assistance channels. These systems include:
 - Enterprise Print Manager System (EPMS): Generates notices, including Form I-797 and supports the printing of notices and documents
 - Computer Linked Application Information Management System (CLAIMS): Creates receipt, approval, and reminder notices
 - Customer Relationship Interface System (CRIS): Contains delivery status information for documents mailed by USCIS
 - Enterprise Correspondence Handling Online (ECHO): A web-based application that USCIS officers use to write multiples types of correspondence to applicants

- “Keystroke records” refers to the electronic recording of the actions taken by USCIS. These electronic records are part of the A-file, but typically are not included in a regular FOIA request for the A-file. Results of a “keystrokes” FOIA should include the issuance and mailing date of any notices, including RFEs.
 - A request for your client’s keystroke records is more likely to be deemed a simple request and placed in Track 1 for faster processing as long as you do not combine the keystroke records request with a more complex request. If you need other records pertaining to your client, consider submitting a separate FOIA request for the more complex records to avoid delay in receiving the keystroke records.
 - See **Appendix** for a sample keystroke FOIA request and response.

To file the FOIA, you can [submit the request online](#), which may speed up processing.

- Upload a copy of your signed G-28 or notarized consent form as evidence of your client’s consent
- To describe the records that you want:
 - Keystroke: “I am requesting a copy of all keystroke records pertaining to [Client’s name]’s pending [name of pending application] [form names and receipt number(s)].”
 - Correspondence Generator systems: “I am requesting a copy of all records contained in USCIS’s Correspondence Generator systems, including, but not limited to, EPMS, CLAIMS, ECHO, and CRIS pertaining to [Client’s name]’s pending [name of pending application] [form names and receipt number(s)].”

3. Notices to Appear (NTAs) when Denials were Never Received

If you did not receive a denial notice and (1) have missed the deadline to file Form I-290B; and (2) USCIS has issued an NTA:

- [Email the hotline of the service center](#) that adjudicated the case. Attach your G-28 and explain that you did not receive the denial notice. Ask them to reopen the case and withdraw the NTA. In addition, request a reissuance of the denial notice.
- Once you have emailed the hotline, submit a [Technical Assistance request](#) to ASISTA so that we can do an intervention. We will work with USCIS and ICE to request the withdrawal or dismissal of the NTA. If USCIS confirms that they made an error, they may agree to withdraw the NTA.

- File Form I-290B as a late-filed motion to reopen based on the non-receipt of the denial notice.
 - Include an explanation for the delay in the motion to show that the delay was reasonable and beyond your client's control. See 8 C.F.R. § 103.5(a)(1).
 - Include an affidavit from yourself and anyone else in your office who handles incoming mail. Explain:
 - What your procedures are for handling mail
 - That you did not receive the denial notice
 - That your office address is the same as what is listed on the G-28
 - If your office moved while the case was pending, provide evidence that you [properly notified USCIS of the change in your address](#).
 - Include an affidavit from the client stating that they did not receive the denial notice
 - If you have received a copy of the denial notice before the I-290B is due, include a substantive response to the denial in your I-290B filing.
- File a FOIA, following the instructions in Section 2.C, to obtain records of the generation, printing, and mailing of the denial notice.
 - If your client is now in removal proceedings, provide a copy of the NTA so that your request will be categorized as a Priority Request and processed faster.

If you have questions about your case, ASISTA Members and OVW grantees can submit a Request for Technical Assistance at www.asistahelp.org.

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APPENDIX

RAMIREZ-SMITH & TVINNEREIM

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August 19, 2019

U.S. Department of Homeland Security
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

RE: KEYSTROKE FOIA REQUEST

Applicant:

Alien No.:

Date of Birth:

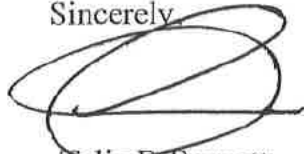
Dear Sir/Madam:

This letter is to request for all keystroke records pending on application for U nonimmigrant status. To facilitate USCIS processing of this case, I have enclosed the following documents:

- Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative;
- Form G-639, Freedom of Information/ Privacy Act Request,
- Forms I-797C Notice of Action, Receipts Notices.

I believe that the documentation submitted herewith provides USCIS all the information required by law and regulation. If, however, you have any questions or require more information, please contact me.

Sincerely,



Talia D Burnett
Attorney at law
Ramirez-Smith & Tvinnereim

[<< Back to Search Results](#)[Print](#)

**eCISCOR-C3-LAN details for [REDACTED]
(EAC [REDACTED] Born [REDACTED] - 1918 [REDACTED]: Petition for
U Nonimmigrant Status**

Person Information

Last Name [REDACTED]
First Name [REDACTED]
Middle Name [REDACTED]
Date of Birth [REDACTED]
Alien Number [REDACTED]
SSN [REDACTED]
Gender [REDACTED]
Last Arrival Date [REDACTED]

Details

Receipt Number [REDACTED]
Receive Date [REDACTED]
Decision Date [REDACTED]
Form Number 1918
Current Status Biometrics Received
Mother's First Name [REDACTED]
Father's First Name [REDACTED]
Card Type [REDACTED]
Naturalization Certificate Number [REDACTED]
Sequence Number [REDACTED]
Country of Citizenship [REDACTED]
Current Class EWI
Class Expires [REDACTED]
Job Code [REDACTED]
Class Granted [REDACTED]
Education Code [REDACTED]
Field of Study [REDACTED]
Beneficiary Comp. Paid [REDACTED]
Person Type BEN
Service Center VSC
Provision of Law [REDACTED]
Class Preference [REDACTED]
Valid From [REDACTED]
Valid To [REDACTED]
Part 2 1 [REDACTED]
Part 2 2 [REDACTED]
Number of Beneficiaries 1
Consulate [REDACTED]
Port Of Entry [REDACTED]

Transaction - [REDACTED]

Transaction Date	12-14-2017
Transaction Priority Value	2
Transaction Destination Organization	NBCISWANZ
Transaction Originating Organization	IDINS0100
Transaction Control Number	[REDACTED]
Native Scanning Resolution	19.69
Nominal Transmitting Resolution	19.69
Record Retention Indicator	true
Case Tracking ID	[REDACTED]
Transaction Receipt Number	[REDACTED]
Activity Reason	I918
Quality Control Id	
Capture Device Make	MORPHO
Capture Device Model	MORPHOTOPR
Capture Device Serial Number	00000
Record Rap Sheet Request Indicator	true
Transaction Major Version	3
Transaction Category Code	FAUF
Record Controlling Agency	
Transaction Search Request Category Code P	
ASC Site Code	XHD1S2
Machine Number	444
Employee Id	[REDACTED] (b)(7)(c)
External Sending System Id	
Transaction Code	3
Routing Code	BN

FBI Response

<https://cpms.dhs.gov/CPMSQuery/Identify/TCN/A216235445201712140815>

FBI Response - [REDACTED]

(The link only works in Internet Explorer and Chrome. Please copy and paste the link into IE or Chrome, if you are using Firefox.)

Transaction - [REDACTED]

Transaction Date	12-14-2017
Transaction Priority Value	2
Transaction Destination Organization	NBCISWANZ
Transaction Originating Organization	IDINS0100
Transaction Control Number	[REDACTED]
Native Scanning Resolution	19.69
Nominal Transmitting Resolution	19.69
Record Retention Indicator	true
Case Tracking ID	[REDACTED]
Transaction Receipt Number	[REDACTED]
Activity Reason	I918
Quality Control Id	
Capture Device Make	MORPHO

Fingerprint Check

CIDN	[REDACTED]
A-Number	[REDACTED]
Form Number	1918
Fingerprint Date	12-14-2017
Send Date	12-14-2017
Original TCN	[REDACTED]
Original TCR	[REDACTED]
FBI Response Description	[REDACTED] (b)(7)(e)
Date Processed By FBI	12-14-2017
Response FBI Number	[REDACTED]
Reject Description	[REDACTED]
Response FBI Name	[REDACTED]
MNU	[REDACTED]
ASC Site Code	XHD1S2
Form Type	1918
AG Directive	
Wants Flash	
Receipt Number	[REDACTED]

Name Check Data

Field Name	Name Check 1
Birth Date	[REDACTED]
Place of Birth	[REDACTED]
Race	U = Unknown
Sex	U = Unknown
SSN	
CIDN	[REDACTED]
CIDN Extension	00
A-Number	[REDACTED]
Last Name	[REDACTED]
First Name	[REDACTED]
Street Name	
Street Number	
City	
State	
Country	
Sent Date	04-25-2018 14:41:57
FBI Processed Date	05-04-2018 20:46:56
Stored Date	05-04-2018 20:46:56
FBI Name Response	[REDACTED]
FBI Birth Date Response	[REDACTED]
Result	[REDACTED] (b)(7)(e)
Prior Result	
ORI	COW-0EACFBDE-4532-44B4-94F2-C26EE9A6D331
Alias(es)	[REDACTED]

Transaction Priority Value	2
Transaction Destination Organization	NBCISWANZ
Transaction Originating Organization	IDINS0100
Transaction Control Number	[REDACTED]
Native Scanning Resolution	19.69
Nominal Transmitting Resolution	19.69
Record Retention Indicator	true
Case Tracking ID	[REDACTED]
Transaction Receipt Number	[REDACTED]
Activity Reason	I765
Quality Control Id	
Capture Device Make	MORPHO
Capture Device Model	MORPHOTOPR
Capture Device Serial Number	00000
Record Rap Sheet Request Indicator	true
Transaction Major Version	3
Transaction Category Code	BIO1
Record Controlling Agency	
Transaction Search Request Category Code P	(b)(7)(c)
ASC Site Code	XHD1S2
Machine Number	444
Employee Id	[REDACTED]
External Sending System Id	
Transaction Code	3
Routing Code	BN

FBI Response

<https://cpms.dhs.gov/CPMSQuery/Identify/TCN/EAC18027510050201712140815>

FBI Response - [REDACTED]

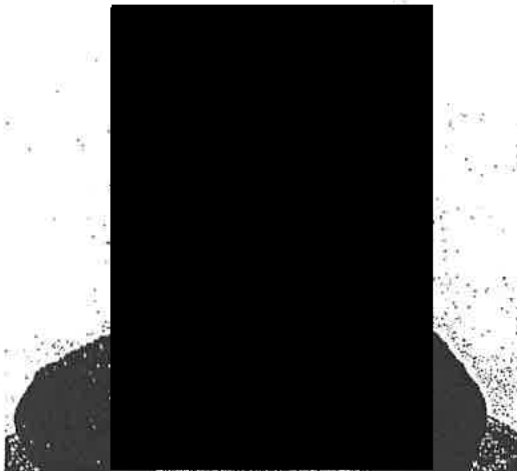
(The link only works in Internet Explorer and Chrome. Please copy and paste the link into IE or Chrome, if you are using Firefox.)

Biographics

Last Name	[REDACTED]
First Name	[REDACTED]
Alternate Last Name	
Alternate First Name	
Date of Birth	[REDACTED]
Alien Number	[REDACTED]
SSN	
Citizenship	[REDACTED]
Country of Birth	[REDACTED]
Gender	[REDACTED]
Race	[REDACTED]
Eye Color	[REDACTED]
Hair Color	[REDACTED]
Height	[REDACTED]
Weight	[REDACTED]

State
Country
Sent Date 04-25-2018 14:41:57
FBI Processed Date 05-04-2018 20:46:56
Stored Date 05-04-2018 20:46:56
FBI Name Response [REDACTED]
FBI Birth Date Response [REDACTED]
Result [REDACTED] (b)(7)(e)
Prior Result
ORI COW-0EACFBDE-4532-44B4-94F2-C26EE9A6D331
Alias(es) [REDACTED]

Photograph



Signature



Press Print

Form Number	I918
Sequence Number	0
Part 2.1	
Case Status	BIOMETRICS RECEIVED FROM ASC
Case Status Date	
Priority Date	
Action Requested	
Date of Action	
Benefit Applied For	PETITION FOR U NONIMMIGRANT STATUS
Issue Code	
Card Issue/Denial Date	
Denial Code	
Eligibility	
Prov Code	
Employment Start Date	
Employment End Date	
Person Gender	
Student Education Level	
Date of Entry	
Port of Entry	UNK
Current Status	
Alien Citizenship Country Name	
File Control Office	EAC
Location State Name	
Location Postal Code	
Citizenship Certificate	
Class of Admission (I-817)	
Associated Receipt	
Current Class Status at time of Application	EWI
Preference Code	
Form Status Code	MA70
Soundex	
Applicant Country Of Residence	
Beneficiary County	
Beneficiary Postal Code	
Beneficiary Phone	
Beneficiary Current Class Description	
Beneficiary Class of Admission Description	
Petitioner Firm Soundex	
Petitioner Soundex	
Petitioner Postal Code	
Action Type Code	BIOMETRICS RECEIVED FROM ASC
Beneficiary	
Beneficiary Last Name	
Beneficiary First Name	

Petitioner Postal Code
Preference Code

Attorney

Attorney Name MONICA E SALAZAR
Attorney Firm Name SALAZAR LAW PLLC
Attorney Address 1 PO BOX 354
Attorney Address 2
Attorney City NAMPA
Attorney State ID
Attorney ZIP 83653
Attorney Province
Attorney Postal Code
Attorney Country
Attorney Type of Appearance A

Adjudication

Adjudication Paragraph 0
Adjudication Class
Adjudication Valid From Date
Adjudication Valid To Date
Adjudication Consulate
Adjudication Port of Entry
Adjudication Related Receipt Number [REDACTED]
Adjudication Related Form Number I918
Adjudication Date Filed [REDACTED]
Adjudication Date of Last Decision

History

Action Code	Description	Date	Location	User	Timestamp
MA70	BIOMETRICS RECEIVED FROM ASC	12-14-2017	VSC	EACBRU01	11:50:00
KEAN	A NUMBER CHANGE	11-13-2017	VSC	EACKAR01	12:54:00
KE	DATA CHANGED IN RECORD	11-13-2017	VSC	EACKAR01	12:54:00
IAA	RECEIPT NOTICE SENT	11-08-2017	VSC	EACPSERV	13:18:00
KE	DATA CHANGED IN RECORD	11-07-2017	VSC	EACVLB01	09:31:00
LAC	NOTICE SENT TO EPMS PRINT SERVER	11-07-2017	VSC	EACPSERV	09:12:00
ABA	RECEIVED, FEE WAIVED	11-07-2017	VSC	EACVLB01	09:11:00

IDENT details for [REDACTED]

- Application DHS CIS ASC, I918, EID = [REDACTED]