



COVID-19 Practice Pointer:
Filing Deadlines for RFEs, NOIDs, NOIRs and I-290Bs¹
Current as of April 10, 2020

On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. Subsequently, on March 13, 2020, President Trump declared a national state of emergency over the coronavirus outbreak in the U.S. States and municipalities have since declared their own states of emergencies and implemented public health protocols that promote social distancing. As a result of the many difficulties caused by COVID-19, immigrant survivors are facing significant barriers to obtain immigration benefits.

We appreciate the many important measures already taken by USCIS and are awaiting further guidance. We have prepared this Practice Pointer to assist you in meeting deadlines during this national emergency. We encourage you to also visit [ASISTA's COVID-19 Resource Page](#) and that of our partners, [CLINIC](#) and [CAST](#).

A. Deadline for Certain RFEs, NOIDs, and NOIRs Responses

Currently USCIS is extending RFE, NOID and NOIR² response deadlines only for those cases that USCIS dated and issued the notice from 3/1/2020 to 5/1/2020.

[USCIS states](#), “A response received within 60 calendar days after the response due date set forth in a Request for Evidence, Notice of Intent to Deny, Notice of Intent to Revoke, or Notice of Intent to Terminate will be considered before taking any action if such request or notice is issued and dated by USCIS between March 1 and May 1, 2020, inclusive.”

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² [USCIS is also applying this deadline flexibility to Notice of Intent to Terminate \(NOIT\) regional investment centers](#). These notices are outside the scope of this Practice Pointer. While the language on this USCIS news alert limits NOITs to “Notices of Intent to Terminate (NOIT) regional investment centers”, other USCIS webpages more broadly refer to “[a...Notice of Intent to Terminate](#)” issued and dated between March 1 and May 1. We are seeking clarification as to the NOITs included in USCIS’s deadline flexibility policy.

In essence, USCIS is extending the deadline only for these specific RFEs, NOIDs, and NOIRs for “within 60 days” from the deadline provided on the RFE, NOID or NOIR notice. Though USCIS has not provided specific instruction, we suggest erring on the side of caution and ensuring receipt by USCIS no later than on the 59th day from the original deadline date to be safely “within” the 60 day deadline..

B. Deadline for Certain Form I-290B Deadlines

[USCIS will consider certain Forms I-290B](#) “(from an appealable decision with AAO jurisdiction³ issued and dated between March 1 and May 1, 2020, inclusive) it receives up to 60 calendar days from the decision date of (sic) before it takes any action.”

Therefore, these specific I-290Bs may be filed up to 60 days (inclusive of the 60th day) **from the decision date**, not from the original deadline date. In essence, because the I-290B appeal filing deadline in most cases is 33 days⁴ from the date of the decision when the denial is issued by mail, USCIS is adding 27 days to the existing deadline.⁵ For example, denials issued March 1, 2020 have an I-290B filing deadline of April 30, 2020 (the 60th day).

C. Practice Pointers for Notices Dated and Issued Prior to March 1, 2020

1. **File a Response.** Where possible, timely respond with any and all available documentation or information. If applicable, notify USCIS that you plan to supplement the record as soon as record access is viable. Include any available evidence you have to demonstrate unavailability of the requested document as mentioned above. Even if you do not have any documents to provide (other than the client affidavit and/or attorney affidavit), it is still important to respond with something within the deadline to avoid denial based on abandonment, which would limit access to AAO Appeals (denials based on abandonment can only be reopened or reconsidered, not appealed). You should document your and your client’s attempts to obtain the requested evidence and explain why it is not available. Importantly, USCIS has not suspended the [NTA Policy Memo](#) and therefore, a failure to meet an I-290B deadline [could lead USCIS to issue an NTA](#).
2. **Request a Deadline Extension.** For any response where you are unable to submit all the requested evidence due to COVID-19, you should still timely submit what you can, but

³ [USCIS also indicated, "Any Form I-290B](#) received up to 60 calendar days from the date of the decision will be considered by USCIS before it takes any action." We are seeking clarification as to whether I-290Bs for non-appealable form types (such as I-192s) are included in USCIS’s deadline flexibility policy.

⁴ The deadline for an appeal of a revocation is 18 days from the date of service by mail, plus the additional 60 days.

⁵ The amount of additional time provided to file an I-290B may be less than 27 days for those decisions served by mail. In those cases, the 33 days starts at the completion of service and, under AAO policy, service is complete upon mailing of the denial notice, not upon receipt of the notice. The actual amount of additional time will depend on the delay in receiving a denial notice.

also request an extension of time within which to respond fully. Request an amount of time that is realistic for the type of evidence USCIS has requested and provide client-specific details about why you are asking for the requested extension and all efforts made to obtain the requested evidence. As mentioned in Practice Pointer 1 above, provide any evidence to back up your arguments (e.g. client’s affidavit, city/state executive orders, etc.).

Note: The regulations at 8 C.F.R. §103.2 (b)(8) provide, “The request for evidence or notice of intent to deny will indicate the deadline for response, but in no case shall the maximum response period provided in a request for evidence exceed twelve weeks, nor shall the maximum response time provided in a notice of intent to deny exceed thirty days. Additional time to respond to a request for evidence or notice of intent to deny may not be granted.”⁶

However, USCIS’s COVID-19 response page indicates, “*Failure to Appear for an Interview or Biometrics Appointment, or Failure to Respond to a Request for Evidence. If you did not appear for a scheduled interview or appointment, or did not submit evidence or respond to a notice or request in a timely manner for reasons directly tied to the special situation, you may show how the disrupting event affected your ability to appear for interview or submit documents as required.*”⁷ This language appears to currently apply⁸ to RFE notices issued prior to March 1, 2020. We read even this less generous policy to allow for the consideration of an untimely RFE response if you show that the failure to timely respond is directly tied to the special situation.

3. **Cover Letters.** Remember that your cover letter is not evidence. Include in your cover letter your legal arguments and a road map of your client’s eligibility for the relief requested, but always refer to the evidence you are submitting to support those arguments. **These arguments should be tailored to your client’s individual circumstances.**

For example, consider an RFE for a VAWA self-petition. A possible way to frame your COVID-19 specific arguments may be as follows:

Example: Any Credible Evidence Legal Argument

⁶ Despite this regulation, USCIS’s decision to be flexible regarding deadlines for those RFEs and NOIDs issued between 3-1-2020 and 5-1-2020 demonstrates USCIS’s ability to extend RFE and NOID deadlines beyond the regulatory 12 weeks (for RFEs) or 30 days (for NOIDs).

⁷ This policy is taken from USCIS website “[Special Situations](#)” page. The [USCIS CoronaVirus Response Page](#) does not address filing deadlines, expiration dates and age-out issues. Instead USCIS instructs users to visit its Special Situations page to “learn about measures to assist you in extreme situations.”

⁸ As of April 1, 2020, we are awaiting confirmation of the scope of this general policy.

In both VAWA self-petitions and regular family-based petitions, the burden of proof is on the petitioner to establish eligibility for the benefit sought by a preponderance of the evidence. The preponderance of the evidence standard is lower than the “clear and convincing evidence” standard used in other immigration contexts⁹ and the “beyond a reasonable doubt” standard found in criminal courts. In simple terms, the preponderance standard is met even if the decision-maker is just slightly above 50% convinced by what is being argued.¹⁰ The preponderance of the evidence standard requires examination of “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the *totality of the evidence*, to determine whether the fact to be proven is probably true.”¹¹

In adjudicating a VAWA self-petition, USCIS is statutorily required to consider any credible evidence provided.¹² While USCIS retains discretion to determine whether evidence is credible and what weight to afford it, the agency cannot require a self-petitioner to provide a particular piece of evidence or to demonstrate the unavailability of primary or secondary evidence.¹³ In addition, adjudicators should recognize that many domestic violence survivors may lack access to documents that would otherwise be available to ordinary family-based petitioners and beneficiaries and should evaluate the evidence submitted in that light.¹⁴

The COVID-19 global pandemic and the resulting public health guidance issued by the CDC and shelter-in-place orders issued by state and local governments have further limited access to documentary evidence for survivors. For example, domestic violence victims who reside with their abuser may face increased danger when communicating with their attorneys, counselors, or other service providers during this time because their abuser may also be confined in the home

⁹ As an example, the clear and convincing standard is used where a lawful permanent resident, who obtained that status through a prior marriage, has remarried an alien within five years and filed a visa petition on his/her behalf. If the lawful permanent resident’s former spouse is still alive, the lawful permanent resident must show through clear and convincing evidence that the status-conferring marriage was not entered into for the purposes of evading immigration laws. See 8 C.F.R. § 204.2(a)(1)(i)(A).

¹⁰ See *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring).

¹¹ See e.g., *Matter of Chawathe*, 25 I. & N. Dec. 369, 376 (BIA 2010) (emphasis added); see also Questions/Discussion Topics at Vermont Service Center Stakeholder Meeting (Aug. 20, 2009) (good faith marriage determined by examining the “total picture presented by the record”) found at <https://asistahelp.org/extensions-adjustment-of-status-derivatives/>.

¹² INA §204(a)(1)(J) (“In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.”)

¹³ USCIS Memorandum, “‘Extreme Hardship’ and Documentary Requirements Involving Battered Spouses and Children,” Paul W. Virtue, General Counsel, Oct. 16 1998, available at <https://asistahelp.org/wp-content/uploads/2018/10/Virtue-Memo-on-Any-Credible-Evidence-Standard-and-Extreme-Hardship.pdf>.

¹⁴ *Id.*

and have more opportunity to monitor their communications.¹⁵ In addition, the closure of many non-essential businesses may make it impossible for a survivor to obtain certain documents to substantiate her case. In keeping with the statutory mandate to consider any credible evidence for self-petitioners, USCIS should recognize the special evidentiary considerations facing domestic violence victims during the COVID-19 pandemic.

4. **Evidence unavailable because of COVID-19.** Based on current USCIS guidance, best practice is to personalize your RFE response by detailing your client's *specific* barriers to obtaining evidence.

COVID-19 Restrictions in Your client's Community

Do not assume that USCIS will recognize the national emergency as a circumstance which made it impossible for your client to meet the deadline. Have your client explain, 1) that they do not already have the evidence USCIS is requesting, and 2) that they are unable to obtain the evidence due to the COVID-19 emergency. To support your client's statements, include evidence (printed copies) relating to the closing of public resources in your client's town such as public transportation, city or county clerk's office, police records clerk, etc.

Example: Community-wide barriers

Include a copy of your state's shelter-in-place order. Highlight any sections that require your client to stay home (for example, if your client is not an essential worker, highlight that section and have your client state that in their affidavit as well):

As explained by my client in her affidavit at Exhibit 1, Ms. XXX is currently unable to obtain certified copies of her children's birth certificates due to her city's shelter in place order, which allows only essential workers in specified industries to leave their homes. *See Exhibit 2*, Executive Order of City of XXX Mayor XXX issued March ___, 2020. Additionally, Ms. XXXX state's Department of Health and Human Services requires in-person requests for first time certified copies issuance. *See Exhibit 3*, Texas DHHS instructions dated XXX for obtaining a Texas birth certificate. See also, Exhibit 1, Affidavit of Ms. XXX in Support of her Form I-360.

¹⁵ See, e.g., Christina Carrega, "Isolation of families for coronavirus raises concerns about domestic violence," abcnews.com, March 20, 2020, available at <https://abcnews.go.com/US/isolation-families-coronavirus-raises-concerns-domestic-violence/story?id=69663886>; Melissa Godin, "As Cities Around the World Go on Lockdown, Victims of Domestic Violence Look for a Way Out," March 18, 2020, available at <https://time.com/5803887/coronavirus-domestic-violence-victims/>; Alisha Haridasani Gupta and Aviva Stahl, "For Abused Women, a Pandemic Lockdown Holds Dangers of Its Own," *The New York Times* (March 24, 2020), at <https://www.nytimes.com/2020/03/24/us/coronavirus-lockdown-domestic-violence.html>

Include in your cover letter language from the shelter-in-place order relating to penalties for violating the order (some states have financial or criminal penalties for failing to shelter in place).

Example: Individualized barriers

Our allies working with DV survivors have shared that one of the most common barriers for DV survivors is that they are sheltering in place with their abuser and are unable to leave the home or make contact with any of their support systems. Include any evidence you do have showing joint residence with the abuser or highlight those sections of your client's affidavit which explains her living arrangements:

In her previously submitted affidavit, Ms. XXX verified that she is currently living with the abuser; that he threatens to harm her or her children if she attempts to leave the home; that he checks all calls, texts, and email communications on her cell phone; and that he answers all phone calls coming to their home phone. *See Exhibit 1 paragraphs, 9, 13, 14 and 15.* Since the writing of her affidavit, a state of emergency has forced Ms. XXX to shelter in place with her abuser. As a result, Ms. XXX is currently unable to obtain certified copies of her children's birth certificates.

5. **Electronic Signatures.** Because we do not know what USCIS will consider as appropriate electronic signatures, prepare your own affidavit (or the affidavit of the person in your office responsible for collecting the client's signature) about the steps you took to collect your client's electronic signature in order to ensure that the electronic signature is your client's signature.

Example: Affidavit on obtaining client's electronic signature

I met with my client via *Zoom Meeting* on March ___, 2020. During our video meeting, Mr. XXX signed Form I-918, Page ___ Part ___, *Applicant's Signature*. Because Mr. XXX does not have access to a computer, Mr. XXX took a picture of the signed Page ___ during our video meeting and sent me a text with the picture of his original signature on Form I-918 which I then printed for submission. Mr. XXX confirmed that he will maintain the original Page ___ with his 'wet signature' for future submission to USCIS.

6. **Domestic Violence, Sexual Assault or Human Trafficking Survivors.** If your client is a survivor of domestic violence, sexual assault or human trafficking, include any additional barriers your client faces in obtaining documentation during this national

emergency. This could include for example, information about additional restrictions implemented at the domestic violence shelter where your client resides. Remember to continue to be mindful of state laws on the nondisclosure of physical addresses of domestic violence shelters and redact any physical address information.

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