

Immigration Officers' Union Slams Proposed Asylum Overhaul

By **Suzanne Monyak**

Law360 (July 16, 2020, 5:13 PM EDT) -- The union representing immigration officers warned that the Trump administration's plans to overhaul protections for asylum-seekers will flout decades of case law, joining lawmakers and nonprofits in opposition to a recent proposal.

The National Citizen and Immigration Services Council 119, which represents 14,500 employees at U.S. Citizenship and Immigration Services, including asylum officers, submitted the public comment Thursday, urging the administration to rescind the proposed sweeping changes to the way asylum and other fear-based claims are processed.

"The most extreme in a recent series of draconian changes to the American asylum process, the proposed regulation dismantles our carefully crafted system of vetting asylum claims, and with it, America's position as a global leader in refugee protection," the union said.

While clarifying that it opposes the entire regulation, the union highlighted the portions of the proposed rule it said were "particularly egregious," including proposals that would make it easier for pro se filers to be penalized for accidentally filing "frivolous" asylum requests and have their claims denied early without a full immigration court hearing.

Additionally, the proposal to narrow the definition of "persecution," such as by excluding individuals who were threatened repeatedly but not yet physically injured, "is deliberately designed to deny asylum applicants the protections that are required by law," the union said.

"Asylum seekers should not have to endure physical harm or death for themselves or their family in order to prove persecution. It would be akin to having to drown to prove that you are not a witch," the union said. "That is part of our past that is best left behind."

The union has previously come out against a number of the Trump administration's other immigration policies, including its asylum cooperation agreements with El Salvador, Honduras and Guatemala and the administration's program requiring migrants to wait in Mexico for their U.S. immigration court dates.

The union's comment was one of around 80,000 submitted by Thursday in response to the proposal, which was published in the Federal Register last month and has not yet taken effect. The public was given 30 days to offer feedback.

House Judiciary Committee Chair Jerrold Nadler, D-N.Y., and Zoe Lofgren, D-Calif., who leads the committee's immigration panel, led a group of 70 lawmakers in filing another comment against the proposed policy. The lawmakers claimed the proposal flies in the face of the Refugee Act and other federal immigration laws.

The American Immigration Council and the American Immigration Lawyers Association also submitted a joint comment stressing that the proposed restrictions and narrower eligibility criteria would make it "insurmountably difficult for asylum seekers to qualify for protection."

Muhammad U. Faridi, a partner at Patterson Belknap Webb & Tyler LLP and attorney for the union, accused the administration of "trying to ram this through" quickly with the shorter 30-day comment window.

Citing past court decisions interpreting asylum eligibility criteria to conform with the U.S.' international obligations, he also said the rule would "completely abrogate that body of case law that our judges and our courts have carefully developed over the last several decades."

The asylum officers who would be tasked with carrying out this policy "believe that it puts them in the position to violate the laws of our nation as established by Congress in consultation with our own international treaties," Faridi told Law360.

The proposed rule, if implemented, would be the one of the most severe changes to asylum since President Donald Trump took office, he added.

Unlike other policies that target the U.S.-Mexico border, such as the administration's "Remain in Mexico" policy and restrictions on migrants who transit through another country en route to the U.S., the proposal targets the asylum system at every angle and would affect individuals from across the world.

The U.S. Department of Homeland Security and U.S. Department of Justice, which issued the proposed rule jointly, said in that filing that the changes would "better allocate limited resources and time and more expeditiously adjudicate meritorious asylum claims" and ensure that claims for protection "receive the most expeditious consideration reasonably possible."

A DOJ spokesperson declined to comment Thursday and a spokesperson for DHS didn't immediately respond to a request for comment.

--Editing by Stephen Berg.