



U.S. Department of Justice

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Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Director

February 19, 2019

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

CFE for RJR
2/28/2019

FROM: James R. McHenry III *JRM*
Director

SUBJECT: Immigration Judge and Appellate Immigration Judge Hiring
Process

PURPOSE: To submit for the Attorney General's consideration a proposed
new process for hiring Immigration Judges (IJs) and Appellate
Immigration Judges (AIJs).

TIMETABLE: At the Attorney General's earliest convenience.

DISCUSSION: Attached for your review and approval is a memorandum
proposing a new process for hiring IJs and AIJs (*see* Tab A). If
approved, this proposal would revise the current process for hiring
IJs implemented on March 28, 2018, (*see* Tab B) and the process
of hiring members of the Board of Immigration Appeals
implemented on September 12, 2007, (*see* Tab C).

The Justice Management Division, the Executive Office for
Immigration Review, and the Office of Attorney Recruitment and
Management have each concurred with the proposal.

Memorandum for the Attorney General
Subject: IJ and AIJ Hiring Process

RECOMMENDATION: That the Attorney General approve the attached Recommended IJ and AIJ Hiring Process.

APPROVE: WPBarr

Date: March 8, 2019

Concurring components:

OLC: SB 2-2619

DISAPPROVE: _____

Nonconcurring components:

None.

OTHER: _____

Attachments

TAB A

Recommended Immigration Judge and Appellate Immigration Judge Hiring Process**December 2018**

In March 2018, the Attorney General revised the hiring process for Immigration Judges (IJs). *See* Tab B. In September 2007, the Attorney General established a hiring process for members of the Board of Immigration Appeals. *See* Tab C. The position of Board Member, going forward, will be known as Appellate Immigration Judge.¹ *See* Tab C. The Executive Office for Immigration Review (EOIR) now recommends modifications to both processes, including replacement of the 2007 Board Member hiring process with the step-specific process outlined herein. These changes will harmonize the separate processes into one general process and will maintain efficiency without undermining the thoroughness of applicant review in a compressed time frame. This memorandum details the proposed modifications, with an explanation for how the modifications change the prior processes. EOIR has consulted with the Office of the Deputy Attorney General, the Justice Management Division, and the Office of Attorney Recruitment and Management, which have each confirmed its approval of the proposal.²

PRELIMINARY STAGE

Before reviewing applications, EOIR will post a general vacancy announcement seeking applications for IJ or Appellate Immigration Judge positions, noting the cities in which positions are available and directing applicants to identify the cities where they would be willing to serve. This vacancy announcement will run for no more than fourteen days, unless a longer or shorter period is approved by the EOIR Director, the Deputy Attorney General, or the Attorney General or is required by the Office of Personnel Management (OPM).

¹ EOIR has now entitled the Board Members “Appellate Immigration Judges,” a class of “Immigration Judges” under 8 U.S.C. § 1101(b)(4), and thus uses the terms interchangeably. *See* Dep’t of Justice Position No. BIA145, Position Description for “Appellate Immigration Judge” (Sept. 19, 2018) (“BIA145”). This change is justified for two reasons. First, Appellate Immigration Judges hear appeals in immigration proceedings. *See* 8 C.F.R. § 1003.1(b); BIA145 at 3 (“As a Board Member, the incumbent is commissioned to serve in the capacity of an appellate immigration judge in formal, quasi-judicial proceedings to review the determinations of immigration judges in removal and related proceeding.”). Second, Appellate Immigration Judges have been “appointed by the Attorney General to act as the Attorney General’s delegate in the cases that come before them,” 8 C.F.R. § 1003.1(a)(1), which may include the “specified classes of proceedings” that Immigration Judges are qualified to conduct under 8 U.S.C. § 1101(b)(4). *See* BIA145 at 4 (“The incumbent is also qualified to conduct, and may be assigned to conduct, the proceedings outlined in sections 1, 2, 3, 4, 5 and 8 above in the first instance as an immigration judge and to have his/her decisions reviewed on appeal by other members of the Board.”). New Appellate Immigration Judges are thus compensated as Immigration Judges. *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, § 371(c), 110 Stat. 3009, 3009-546, 3009-645 (setting IJ pay scale); BIA145 at 1 (putting Appellate Immigration Judges on IJ pay scale).

² Certain IJ positions (Chief Immigration Judge and Deputy Chief Immigration Judge) and certain Appellate Immigration Judge positions (Chairman and Vice Chairman) are Senior Executive Service (SES) positions, and those positions are subject to additional selection requirements and procedures beyond those in this Memorandum.

Change: The proposed change establishes the length of time a vacancy announcement runs for an IJ position. It reduces the length of time a vacancy announcement runs for an Appellate Immigration Judge position from thirty days in order to begin the application review process more quickly. The proposed change allows exceptions to ensure flexibility as hiring needs evolve. The proposed change harmonizes the process for announcing vacant Appellate Immigration Judge positions with the process for announcing vacant Immigration Judge positions and eliminates specifications for vacancy announcements that are unnecessary.

STEP ONE

Upon receipt of initial application materials, Supervisory IJs (for IJ positions), current permanent Board Members, or Appellate Immigration Judges (for Appellate Immigration Judge positions) will evaluate incoming applications and separate them into two tiers: (1) “Recommend” or (2) “Do Not Recommend.” Current Immigration Judges with at least one year of experience will be sorted into the “Recommend” tier for Appellate Immigration Judge positions. This separation will occur within three weeks of receipt of the applicant list and materials from OPM or EOIR’s Office of Administration.

Change: For IJ positions, the proposed change reduces the tiers to streamline the process. Reducing the tiers should also reduce the amount of time to conduct the tier separation. For Appellate Immigration Judge positions, the proposed change recognizes that OPM, rather than EOIR, often performs the initial screening of applicants. The proposed change also harmonizes the Appellate Immigration Judge hiring process with the Immigration Judge hiring process, eliminates the need for a specific scoring system, and provides a deadline to ensure efficiency in the process.

STEP TWO

EOIR will contact all first-tier applicants to schedule an interview and for a writing sample and references, if not already provided. First-tier applicants who have previously interviewed for an IJ position or Appellate Immigration Judge position with EOIR within the preceding 12 months will not be interviewed again but will be considered based on their prior interviews.

Change: We do not recommend any changes to this step for IJ positions. For Appellate Immigration Judge positions, the proposed change further harmonizes the Appellate Immigration Judge hiring process with the Immigration Judge hiring process.

STEP THREE

Panels composed of EOIR Supervisory IJs for IJ positions and of current permanent Board Members or Appellate Immigration Judges for Appellate Immigration Judge positions, will interview all first-tier candidates and complete written interview summaries, which will be included in each candidate’s application materials. These interviews will be completed within three weeks of the conclusion of Step One, and evaluations of candidates and application

materials will be forwarded to the EOIR Director within three days of completing interviews. To help meet this timeframe, EOIR should form multiple interview panels, running concurrently.

Change: For IJ positions, the proposed changes reduce the deadline for interviewing candidates from one month to three weeks and reduce the timeline for submitting evaluations to the EOIR Director from one week to three days. For Appellate Immigration Judge positions, the proposed change establishes an additional round of applicant interviews conducted by current Board Members or Appellate Immigration Judges and further harmonizes the Appellate Immigration Judge hiring process with the Immigration Judge hiring process.

STEP FOUR

Based on review of the applications, including the evaluations at Step Three, the EOIR Director (or his designee) will select a sufficient and appropriate number of candidates to recommend and forward for consideration in Step Five. Before forwarding candidates for consideration in Step Five, EOIR will initiate reference checks, prior employment vouchering, and vetting through other federal agencies (as appropriate) for the recommended candidates, with these checks to be completed by the end of Step Five. EOIR will forward recommended candidates for consideration in Step Five within three days of the completion of Step Three.

Change: The proposed change clarifies this step to indicate that the relevant checks will be initiated before Step Five but that candidates may be forwarded to Step Five while the checks are ongoing or being completed. Due to this clarification, the proposed change also reduces the deadline to forward recommended candidates to Step Five. The proposed change also reverts to the prior process of submitting candidates unranked which provides greater flexibility to the Finalist Panel. The proposed change also harmonizes the Appellate Immigration Judge hiring process with the Immigration Judge hiring process regarding the forwarding of recommended candidates to Step Five.

STEP FIVE

A three-member panel (Finalist Panel), comprising the Assistant Attorney General for Administration (AAG/A) (or a career-SES employee designated by the AAG/A), an employee designated by the Deputy Attorney General, and the EOIR Director (or other senior EOIR official designated by the Director) will interview as many of the recommended candidates as appropriate. The Finalist Panel will either recommend or not recommend a candidate to the EOIR Director for a position vacancy. The EOIR Director will consult with the Office of the Deputy Attorney General and the Office of the Attorney General about each recommended candidate, including the most appropriate selection and location if multiple candidates who applied to the same locations are recommended.

This step will be completed within three weeks. To help meet this timeframe, the AAG/A, the Deputy Attorney General, and the EOIR Director should consider designating multiple

individuals to sit on Finalist Panels so that separate Panels can sit concurrently to make recommendations for multiple position vacancies.

Change: For IJ positions, the proposed change has the Finalist Panel make recommendations to the EOIR Director, instead of the Deputy Attorney General, and directs that the EOIR Director will consult with the Offices of the Deputy Attorney General and Attorney General about each recommended candidate. It is expected that this change will streamline the process leading up to the initial conditional offer in Step Six. The proposed change clarifies that this consultation will include a consultation about the most appropriate selection and location in situations where separate Finalist Panels interviewed candidates who applied for positions in multiple locations, including locations with multiple vacancies. In addition, the proposed change reduces the deadline to complete this step. For Appellate Immigration Judge positions, the proposed change replaces on the Finalist Panel a career SES designee of the Deputy Attorney General with the AAG/A or his designee. It also provides greater flexibility for the Deputy Attorney General to designate individuals to serve on the Panel consistent with the current Immigration Judge hiring process.

STEP SIX

Pursuant to a delegation from the Attorney General, the EOIR Director will determine whether to select the candidate for an initial conditional offer. The initial offer is conditional upon the candidate's successful completion of a preliminary or full background check, as well as final selection and appointment by the Attorney General.

Change: This step has been substantially revised based on the proposed delegation of the Attorney General's authority to select candidates for initial conditional offers, which is being transmitted in a separate package for the Attorney General's consideration. Previously, the Attorney General would determine whether to select the candidate for an offer of employment.

STEP SEVEN

The candidate will go through a preliminary background check and then a full background investigation, and the candidate's file will be routed to the Attorney General, through the Deputy Attorney General, for his consideration for appointment. The Attorney General retains discretion over the selection and appointment of candidates. While the full background check is pending, the Attorney General may choose to give a twenty-four month appointment to the candidate, regardless of whether the candidate is a current federal employee or from outside the federal government. If the Attorney General appoints the candidate to a twenty-four month term and if the candidate completes a full background investigation prior to the expiration of that term, the candidate's application package will go before the Deputy Attorney General and then the Attorney General for a performance review and possible conversion to a non-term-limited appointment.

Change: The proposed changes to this step clarify that the candidate's file will be routed to the Deputy Attorney General and then the Attorney General for the Attorney General's consideration of the candidate for appointment, and that the Attorney General retains discretion to select candidates of his choosing for appointment.

TAB B



U.S. Department of Justice

Office of the Deputy Attorney General

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Washington, D.C. 20530

March 15, 2018

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *[Signature]* 3/19/18

FROM: David Wetmore *[Signature]*
Senior Counsel to the Deputy Attorney General

SUBJECT: Recommend Immigration Judge Hiring Process

RECEIVED
DEPT OF JUSTICE
EXECUTIVE SECRETARIAT
2018 MAR 20 PM 1:28

PURPOSE: To submit for the Attorney General's consideration a proposed new process for hiring Immigration Judges.

TIMETABLE: At the Attorney General's earliest convenience.

DISCUSSION: In March 2018, the Attorney General revised the hiring process for Immigration Judges (IJs) (March 2018 Policy; *see* Tab B). The Office of the Deputy Attorney General (ODAG) now recommends a minor modification to this Policy that will maintain efficiency without undermining the thoroughness of applicant review in a compressed time-frame. This memorandum details the proposed modification, with an explanation for how the modification changes the March 2018 Policy. ODAG has consulted with the Executive Office for Immigration Review (EOIR), Justice Management Division, and Office of Attorney Recruitment and Management, who have each confirmed their approval of the proposal.

PRELIMINARY STAGE

Before reviewing applications, EOIR will post a general vacancy announcement seeking applications for IJ positions, noting the cities in which positions are available and directing applicants to identify the cities where they would be willing to serve.

Change: We do not recommend any changes to this step.

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STEP ONE

Upon receipt of initial application materials, Supervisory IJs will evaluate incoming applications and separate them into three tiers: (1) "Highly Recommend," (2) "Recommend," and (3) "Do Not Recommend." This separation will occur within three weeks of receipt of the applicant list and materials from the Office of Personnel Management or EOIR's Office of Administration.

Change: We do not recommend any changes to this step.

STEP TWO

EOIR will contact all first-tier applicants to schedule an interview and for a writing sample and references. First-tier applicants who have previously interviewed for an IJ position with EOIR within the preceding 12 months will not be interviewed again but will be considered based on their prior interviews.

Change: We do not recommend any changes to this step.

STEP THREE

Three-member panels, composed of EOIR supervisory IJs, will interview all first-tier candidates and complete written interview summaries, which will be included in each candidate's application materials. These interviews will be completed within one month of the conclusion of Step Two, and recommendations for each location will be forwarded to the EOIR Director within one week of completing interviews. To help meet this timeframe, EOIR should form multiple interview panels, running concurrently.

Change: We do not recommend any changes to this step.

STEP FOUR

Based on review of the application packet, the EOIR Director (or his designee) will select a sufficient and appropriate number of candidates for each location to recommend and be forwarded for consideration in Step Five. EOIR will rank the candidates for each location. Before forwarding candidates for consideration in Step Five, EOIR will conduct reference checks, prior employment vouchering, and vetting through other federal agencies (as appropriate) for the recommended candidates. EOIR will forward recommended candidates for consideration in Step Five within five weeks of the completion of Step Three.

Change: We do not recommend any changes to this step.

STEP FIVE

This is the last step before the Attorney General makes a selection. A three-member panel (Finalist Panel), comprising the Assistant Attorney General for Administration (AAG/A) (or a career-SES employee designated by him), an employee designated by the Deputy Attorney General, and the EOIR Director (or other senior EOIR official designated by the Director) will interview as many of the recommended candidates as appropriate. The Finalist Panel will recommend a single candidate to the Deputy Attorney General for each vacancy. The Deputy Attorney General will then determine whether he agrees with that recommendation and will forward any approved recommendation to the Attorney General.

This step will be completed within one month. To help meet this timeframe, the AAG/A, the Deputy Attorney General, and EOIR Director should consider designating multiple individuals so that separate Panels can sit concurrently to make recommendations for multiple vacancies.

Change: The proposed change would give the Deputy Attorney General greater flexibility in designating multiple individuals in order to ensure that the Panels can operate in a timely manner and can most efficiently make recommendations for multiple vacancies.

STEP SIX

The Attorney General will review the Deputy Attorney General's recommendation and determine whether to select the candidate. The Attorney General may request additional candidates from the Deputy Attorney General if he does not want to select the recommended candidate.

Change: We do not recommend any changes to this step.

STEP SEVEN

The applicant will go through a preliminary background check and then a full background investigation. While the full background check is pending, the Attorney General may choose to give a twenty-four month temporary appointment to the candidate, regardless of whether the candidate is a current federal employee or from outside the federal government. Once the candidate completes a full background investigation, and prior to the expiration of the temporary appointment, the candidate's application package will go before the Deputy

Memorandum for the Attorney General
Subject: Recommend Immigration Judge Hiring Process

Page 4

Attorney General and then the Attorney General for a performance review and possible conversion to a permanent appointment.

Change: We do not recommend any changes to this step.

APPROVED: _____

A handwritten signature in black ink, appearing to be "J. S. ...", written over a horizontal line.

NOT APPROVED: _____

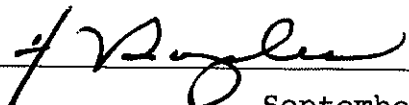
DATE: _____

March 28, 2018

TAB C

RECOMMENDATION: As described in the attached memorandum, I recommend that you approve the process for filling positions on the Board of Immigration Appeals.

Attachments

APPROVE: 
September 12, 2007

Concurring Components:

- EOIR
- OLC
- JMD
- OARM

DISAPPROVE: _____

Nonconcurring Components:

None

OTHER: _____

Board of Immigration Appeals Appointment Process

Currently there are six vacancies on the Board of Immigration Appeals. Four of these vacancies are designated for "regular" Board Members and are classified as Schedule A positions that are authorized to be paid at the senior-level pay scale. The other two vacancies are designated for individuals who are appointed as Board Members, but who also are appointed as either the Chair or Vice Chair of the Board. These vacancies are classified as career-reserved SES positions. Because the rules for filling career SES positions differ from those for filling Schedule A positions, the processes to be used in each instance are addressed in separate sections of this memorandum.

I. Regular Board Positions

A. Vacancy Announcement

- A memorandum issued in 2003 by Deputy Attorney General Thompson requires the Department to widely advertise all attorney positions.
- Accordingly, the first step in filling the four regular Board positions will be to post on both the Department's public website and on the USAJobs website a multiple-vacancy announcement.
- The announcement will be posted for 30 days.

B. Criteria

- The announcement will specify that each applicant must: 1) have a law degree; 2) be a U.S. citizen; 3) be an active member of the bar; 4) have a minimum of seven years of relevant, post-bar admission legal experience; and 5) have at least one year of experience at a level equivalent to the GS-15 level in the Federal Service.
- The announcement also will specify the following preferred qualifications: 1) comprehensive knowledge of the field of immigration laws, including the Immigration and Nationality Act, regulations, and administrative and judicial case law, or the proven ability to become fully knowledgeable about a complex field of the law and to apply that knowledge to specific cases; 2) excellent analytical, decision-making, and writing ability; 3) proven ability to manage cases; and 4) proven ability or potential to serve as an effective and collegial decision-maker when dealing with a large caseload.
- The announcement will encourage applicants who are eligible for veterans' preference to submit supporting documentation.
- Applicants will be required to provide a writing sample, letters of recommendation, and additional references from individuals who can speak to their overall qualifications based on personal knowledge.

C. Review of Applications and Interviews

- Applications initially will be screened by EOIR Human Resources, which will be charged with rejecting those that do not meet the minimum qualifications.
- Qualified applications will be reviewed by a panel consisting of the EOIR Director or his designee, a noncareer SES designated by the Deputy Attorney General, and a career SES designated by the Deputy Attorney General.
- The panel will agree on a system for scoring the applications. Each panel member then will individually score the applications, after which the panelists will meet to select a group of top-tier candidates to interview.
- Through whatever mechanism it deems appropriate, the panel will conduct additional reference checks before making final decisions on the group to be interviewed. Notes of reference checks will be kept and shared with the full panel.
 - All references and recommendations will be considered as permitted in 5 U.S.C. § 2302(b). Specifically, the “recommendation or statement” shall not be considered unless it “is based on the personal knowledge or records of the person furnishing it and consists of: (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or (B) an evaluation of the character, loyalty, or suitability of such individual.”
- The panel will interview all the candidates it determines fall in the top tier.

D. Selection

- The panel will recommend to the Deputy Attorney General at least one candidate for each of the four Board vacancies. At this stage, any relevant veteran’s preference will be used as a potentially positive factor, breaking a tie in favor of a veteran if there are two substantially equivalent candidates. If the panel determines that there are not enough highly qualified candidates in the pool of applicants, it may recommend fewer candidates and direct that the remaining seats be re-advertised. The panel will consider any applicable veterans’ preference in deciding between two candidates it believes are equally qualified.
- The Deputy Attorney General will forward the name of at least one candidate for each vacancy to the Attorney General. If the Deputy Attorney General determines that there are not enough highly qualified candidates among those recommended by the panel, he will direct the panel to recommend additional candidates. If necessary, the panel then may direct that one or more seats be re-advertised.
- The Attorney General will make the final selection of the Board Members. If the

Attorney General determines that there are not enough highly qualified candidates among those recommended by the Deputy Attorney General, he will direct the Deputy Attorney General to send forward additional candidates. The Deputy Attorney General may do so either by forwarding the names of additional candidates who initially were recommended to him by the panel, by directing the panel to recommend additional candidates from the list of those people who initially applied, or by directing the panel to re-advertise one or more of the seats.

E. Appointment

- Following the Attorney General's conditional approval of a candidate for appointment, the Executive Office for Immigration Review, the Office of Attorney Recruitment and Management, and the Security and Emergency Planning Staff of the Justice Management Division will work together to complete the ordinary administrative processes applicable to appointments for Schedule A positions within the Department, such as an initial background check.
- Once all administrative processes required for initial or permanent appointment are satisfactorily completed, the selected candidate then will receive an initial or permanent appointment from the Attorney General.

II. Chair (and Vice Chair)

Although the Chair position will be advertised immediately, the selection process for the SES Vice Chair will be postponed to allow the new Chair to have a voice in the decision-making process.

A. Vacancy Announcement

- Per OPM, unless a current or former member of the career SES is transferred into the Chair or Vice Chair position, these vacancies must be advertised on USAJobs for at least 14 days.
- Accordingly, the Chair position will be posted on the Department's public website and on USAJobs.
- The Chair position will be advertised for 30 days.

B. Criteria

- The announcement will specify that each applicant must: 1) have a law degree; 2) be a U.S. citizen; 3) be an active member of the bar; and 4) have a minimum of seven years of relevant, post-bar admission legal experience.

- The announcement will include OPM's mandatory Executive Core Qualifications.
- The announcement will specify that applicants must possess the following technical qualifications as well: 1) broad knowledge in the general field of law, both domestic and foreign; 2) comprehensive knowledge of immigration law and procedure, with particular expertise in administrative and judicial case law and regulations, or the proven ability to become fully knowledgeable about a complex field of the law and to apply that knowledge to specific cases; and 3) demonstrated decision-making, problem-solving, and legal writing skills.
- Applicants will be asked to provide a writing sample and letters of recommendation and additional references from individuals who can speak to their overall qualifications based on personal knowledge.
- Applications will be screened by EOIR's Human Resources office who will screen for minimum qualifications prior to the Executive Resources Board review under Section C.

C. Executive Resources Board

- The next step is the appointment of an Executive Resources Board (ERB).
 - o The ERB must be composed of members of the SES (who may be career or non-career).
 - o The ERB may delegate the initial screening of candidates to eliminate those who do not meet the minimum specified qualifications.
 - o The ERB will develop merit-based procedures to identify the best qualified candidates based on their knowledge, skills, abilities, and other job-related factors.
- The ERB will present to the Attorney General a list of the best qualified candidates.
- The Attorney General may select any of the candidates identified by the ERB as best qualified, or he may choose to not make a selection and readvertise the position.

D. Appointment

- Following the Attorney General's conditional approval of a candidate for appointment, the Executive Office for Immigration Review, the Office of Attorney Recruitment and Management, and the Security and Emergency Planning Staff of the Justice Management Division will work together to complete the ordinary administrative processes applicable to appointments for excepted service schedule or SES positions within the Department, such as an initial background check.

- Once all administrative processes required for initial or permanent appointment are satisfactorily completed, the selected candidate then will receive an initial or permanent appointment from the Attorney General.

Concurrence: 8/21/07 EOIR
8/22/07 JMD
8/21/07 OARM
8/21/07 OLC
9/10/07 ODAG
_____ OAG