



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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Falls Church, Virginia 22041

October 10, 2003

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Judicial Law Clerks
All Immigration Court Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 03-06:
Procedures for Going Off-Record During Proceedings

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I. Introduction

This Operating Policy and Procedures Memorandum (OPPM) provides guidance regarding procedures to be used by Immigration Judges when going off-record during a hearing. This OPPM supplements OPPM 98-2, *Guidelines for Recording Immigration Court Hearings* and is effective immediately. It must also be read in conjunction with OPPM 98-10, *Classified Information in Immigration Court Proceedings*, and OPPM-02-02, *Protective Orders and the Sealing of Records in Immigration Proceedings*.

II. Scope of the Policy

Except for non-classified bond hearings, Immigration Judges must maintain and preserve a thorough and complete record of the proceeding. This is mandated by § 240(b)(4)(C) of the Immigration and Nationality Act (INA), which states that “a complete record shall be kept of all

testimony and evidence produced at the proceeding.” Additionally, 8 C.F.R. § 1240.9 provides that:

[t]he hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge.

This OPPM relates to the procedures for when an Immigration Judge grants such permission.

III. Procedures for Going Off-Record


Immigration Judges should limit all off-record dialogue. On rare occasions, the Immigration Judge may authorize such an off-record dialogue when necessary to the fair, expeditious and proper conduct of the hearing. The Immigration Judge may initiate the decision to go off-record or a party may make such a request. In these instances, Immigration Judge should inform the parties that off-record discussions will be summarized on the record. The decision to authorize such an off-record discussion is solely within the discretion of the Immigration Judge, and the Immigration Judge should make clear on the record that the parties are aware that the tape recorder is being turned off.

When the off-record discussion is completed, whether initiated by the Immigration Judge or by the parties, the Immigration Judge shall summarize the off-record discussion immediately upon returning to the record. Additionally, the Immigration Judge must ask the parties if the summary is a true and complete representation of the off-record discussion and ask the parties if they have anything to add to the summary.

IV. Conclusion

These procedures will assist in meeting the obligation to preserve a true and complete record of the hearing and will serve to enhance the integrity of the hearing. In addition, these procedures will also protect the court regarding conversations that occurred off-record.

If you have any questions regarding this OPPM, please contact my Counsel at (703) 305-1247.



Michael J. Creppy
Chief Immigration Judge