SAN FRANCISCO IMMIGRATION COURT ANSWERS TO AILA QUESTIONS FOR EOIR SEPTEMBER 26, 2007 MEETING

1. Can we have an updated schedule of judges weekly Master hearings, i.e., when does each judge have his/her Master hearing?

A master calendar sheet roster has been updated and will be provided to the AILA liaison.

2. Does a person who is in removal proceedings and is filing different applications for relief (EOIR-42A and I-601) at the same time have to pay biometrics twice?

Confusion arises because at the master hearing, OCC hands out two copies of "instructions for submitting certain applications in immigration court and for providing biometric and biographic information to US Citizenship and Immigration Services." One copy is marked EOIR 42A by the TA and the other I-601. Reading of the instructions tells me to file the applications together and to only pay one biometrics fee. Clarification is greatly appreciated.

This question would be best addressed to DHS.

3. Can we have instruction from EOIR to not stop an alien's clock when the alien is placed in removal proceedings after being referred by the Asylum Office but DHS fails to serve the NTA on the Court?

Cases have arisen where the asylum-seeker appears at the Court and is told that the case is being closed for lack of prosecution because there is no file at the Court. The Court then administratively closes the case and STOPS the employment authorization clock. The Court stops the clock despite the asylum-seeker following every instruction and the failure to go forward being completely the result of DHS error. In a couple cases, it took DHS over two months to make a motion to recalendar the case and for the case to come before the Court. In the meantime, the asylum-seeker was prevented from applying for a work permit while the clock was stopped. <u>This appears to be in violation of the regulations which allow an individual to apply for a work permit after 180 days of a pending application.</u> Although the application is not before the Court due to DHS error, it is <u>still</u> pending.

Until the NTA is filed with the Court, we have no jurisdiction over a case. Upon filing of the NTA, the court is willing to consider a request to review the clock status on these cases. Letters of inquiry should be directed to the Court Administrator by mail. In addition, the Court runs weekly reports that indicate which NTAs have not yet been filed by the Asylum Office and other departments of DHS, and if a case is identified, we work with DHS in trying to get the NTA filed before the scheduled hearing.

4. For client who has his case reopened by BIA and remanded to Immigration Court to apply for AOS based on approved I-130, where does alien file and fee in his I-485 and I-765 packet?

Respondents should follow the PreOrder Instructions issued by CIS, dated 8/7/06 for filing of the I-485 application which indicates that it should be filed with the Immigration Court, and a copy sent to USCIS Texas Service Center. The Court has no jurisdiction over the I-765, and all questions in this regard should be addressed to DHS.

5. The DMV will accept an immigration judge's order as proof of legal presence (with verification through USCIS). However order must be original or certified copy. Triplicate paper copy is ok. The DMV has refused to accept, however, orders that the judge has photocopied for service on the respondent. Could the Immigration Court either serve respondents with an original copy or place a stamp on the photocopy that indicates it is a certified copy? (Perhaps even the Court's "Filed" stamp would suffice.)

The court is willing to consider requests for verification of the judge's order via written request of the attorney/respondent. The verification will consist of a summary of the final order on Department of Justice, EOIR letterhead.

6. There have been instances where the Immigration Judge accepts the conviction information contained in NTA as proof that alien is removable as charged. This usually occurs when the government is not ready to submit the conviction record. If an alien admits to having been convicted and wants to accept an order of removal, one is entered. Isn't it the duty of the Immigration Judge to first have evidence in the form of a conviction record before entering an order of removal? If there are no conviction documents, usually because government isn't prepared, then shouldn't the alien be released from custody?

This type of situation is handled individually on a case by case basis by the Immigration Judge.

7. Is it true that CIS will not fee-in EOIR applications since July 28, 2007? Was there a notice to this effect?

Parties should follow the Pre-Order Instructions issued by CIS, dated 8/7/06 for filing instruction of EOIR applications. Copies of the Pre-Order Instructions can be picked up at the 8th floor reception window or in Court. The CIS cashier will continue to fee in fees regarding Motions to Reopen/Reconsider.

8. What is the processing time for feeing-in EOIR applications at the Texas Service Center?

This is a question best addressed to DHS.

9. Why does the Texas Service Center send out a notice stating that an I-485 was filed when an EOIR application is filed?

This is a question best addressed to DHS.

10. What is the procedure for filing EOIR applications for a client in detention when the merits hearing is set sooner than the Texas Service Center is able to send back a fee'd in application?

Parties should file written proof that a copy of the application was submitted to the Texas Service Center.

11. Is it true that the procedure is to just file the application with the immigration court with a copy of the check sent to Texas (as I was told by an immigration judge's secretary)?

Following up on question #10, where there is insufficient time for the Texas Service Center to send the payment confirmation, the Court will accept a photocopy of the application and check for the filing. The respondent should also follow up by filing the Service Center payment confirmation when it is received.

12. Does a case get heard without the biometrics? Was there a notice of this procedure?

This is within the discretion of the individual judge to go forward or not, but yes cases can go forward without biometrics. In most cases, the results of the biometrics are needed if any applications will be granted. Biometrics are not normally needed for cases in which the applications will be denied.

13. In non-custody cases, should attorney file a motion to continue case if client has not yet been scheduled for biometrics appointment but has filed application with Texas Service Center in timely fashion?

Yes, a motion to continue should be filed. However, it is within the discretion of the Immigration Judge whether the motion to continue will be granted or not.

14. How does it promote efficiency when it used to be possible to fee-in an application at CIS and file it the same day at EOIR, but now we must wait maybe a month to get back the fee'd in application from the Texas Service Center?

While we understand the frustration in following this procedure, DHS has authority over application fees.

15. Why can't EOIR require District Counsel to serve copies of the NTA on attorneys filing a G-28 and EOIR-28. Now attorneys representing clients in detention are required to have the client send a copy of the NTA.

The Court will contact DHS to see if any changes can be made in the process for serving NTAs. In the meantime, an attorney of record may request a copy of the NTA and other documents of record from the court staff at Sansome Street. In most cases, the documents will be provided to the attorney of record if the file is located at the court.

16. Will EOIR consider promulgating a rule requiring Immigration Judges to require IJ's , absent good cause, to grant telephonic hearings for master and bond hearings for counsel representing clients in distant and/or isolated locations on prior motion by respondent's counsel? Now some judges refuse to allow this procedure even though the vast majority of judges do allow this procedure. Doesn't this promote needless confusion and give too much leeway for the fringe opinions of certain judges?

Telephonic hearings are within the judge's discretion. See 8 CFR 1003.25 (c). EOIR does not contemplate a regulation on this topic at this time.

17. One IJ in Eloy Arizona refuses to allow telephonic expert testimony, even though the detention facility is located in the middle of the desert. Would EOIR consider promulgating a rule requiring IJ's to allow telephonic expert witness testimony, absent good cause, upon written motion?

This specific situation would be best addressed to the Assistant Chief Immigration Judge for Eloy, Arizona (Judge Rico Bartolomei). A regulation is not contemplated at this time.

18. Would EOIR consider promulgating rules of court which would apply nationwide?

The Attorney General's initiative included a publication of a Practice Manual which is currently being drafted and we anticipate publication by the end of the year.

19) When the Asylum Office refers a NACARA case to the court, the referral letter sent to the applicant will state: "Though a copy of your I-881 and supporting documents will be given to the immigration judge, the immigration judge may give you permission to supplement your application." This is misleading. In most cases we encounter, the Asylum Office sends the A file, with the NACARA application, to the ICE Chief Counsel's office, not to the court. It is then up to the alien to persuade the ICE to file the I-881 application and supporting documents with the court. But in many cases, the ICE expects the alien's attorney to file a copy of the I-881 plus all supporting documents with the court - at least one ICE attorney informed private counsel that it was too time consuming for ICE attorneys to do this. A major problem arises when the alien's attorney did not represent the alien in proceedings with the asylum office, and does not have copies of the application and supporting documents. Can we come to some agreement between EOIR, ICE, and the Asylum Office, as to the proper method for having an I-881 and supporting documents filed with the court prior to an individual calendar hearing date?

The Court Administrator contacted the San Francisco Asylum Office which indicated that they normally provide the Court with the I-881 and supporting documents in referred NACARA cases. Emilia Bardini, Director of the San Francisco Asylum Office has stated that they will send out a reminder to the support staff to ensure this procedure happens for referred NACARA cases. In the future, please bring any such cases to the attention of the Court Administrator.

20) Are immigration judges willing to re-evaluate their approach to adjudication of EOIR-42B cases? EOIR judges routinely deny the vast majority of cancellation applications on the ground there is no likelihood of "exceptional and extremely unusual hardship" to a qualifying relative if the applicant is removed – by stating that the hardship factors advanced are the normal consequences of removal, even if the consequences are draconian. The term, "exceptional and extremely unusual hardship" has been analyzed and defined by the Board of Immigration Appeals in three cases: Matter of Monreal, 23 I&N Dec. 56 (BIA 2001); Matter of Andazola, 23 I&N Dec. 319 (BIA 2002); and Matter of Recinas, 23 I&N Dec. 467 (BIA 2002). All three cases interpret INA Section 240A (b) applications at some length, and they offer more flexibility and room for re-appraisal in interpreting Section 240A(b) than most judges are willing to admit. For example, you don't have to prove a qualifying relative has a life-threatening disease or disability, said the BIA in Recinas, among other things. I would like to know whether judges will be more flexible in their review of case facts in light of the standards set forth by the BIA.

This is a case-by-case determination made by an Immigration Judge. If a party disagrees with a particular determination, he or she can raise the issue on appeal to the Board of Immigration Appeals.