

Thursday, September 9, 2010

EOIR at a Glance

This fact sheet provides an agency overview for general informational purposes only and is not a substitute for legal advice; nor does it constitute any legal opinion by the Department of Justice, or create any rights or benefits. This fact sheet is not fully inclusive, does not address all applicable laws or case interpretation, and may be subject to change as new laws and regulations are enacted.

The Department of Justice's Executive Office for Immigration Review (EOIR) administers the nation's immigration court system. EOIR primarily decides whether foreign-born individuals, who are charged by the Department of Homeland Security (DHS) with violating immigration law, should be ordered removed from the United States or should be granted relief or protection from removal and be permitted to remain in this country. To make these critical determinations, EOIR's Office of the Chief Immigration Judge (OCIJ) has more than 235 immigration judges who conduct administrative court proceedings, called removal proceedings, in 57 immigration courts nationwide.

EOIR's appellate component, the Board of Immigration Appeals (BIA), primarily decides appeals of immigration judge decisions. Certain BIA decisions that the BIA designates as precedent decisions apply to immigration cases nationwide. The BIA is the highest administrative tribunal for interpreting and applying U.S. immigration law.

EOIR's third component, the Office of the Chief Administrative Hearing Officer (OCAHO), hears cases that do not relate to removal proceedings; they relate to employer sanctions for illegal hiring of unauthorized workers, document fraud, and unfair immigration-related employment practices (fact sheet at <http://www.justice.gov/eoir/press/2012/OCAHOFactSheet05292012.pdf> <<https://www.justice.gov/eoir/press/2012/OCAHOFactSheet05292012.pdf>>).

Removal Proceedings

DHS initiates removal proceedings when it serves the individual with a charging document, called a Notice to Appear, and files that Notice to Appear with one of EOIR's immigration courts. The Notice to Appear orders the individual to appear before an immigration judge and provides notice of the removal proceedings, the alleged immigration law violations, the ability to seek legal representation at no expense to the government, and the consequences of failing to appear at scheduled hearings.

When the immigration court receives the Notice to Appear from DHS, the court schedules a removal hearing before an immigration judge. There may be one or multiple hearings, depending on what happens in the case. The two parties in the hearing are the individual named in the Notice to Appear and DHS.

The DHS attorney represents the government and seeks to prove that the individual should be removed from the United States. The individual in removal proceedings may, at his/her own expense, seek an attorney or other authorized legal representative (fact sheet at <http://www.justice.gov/eoir/press/09/WhoCanRepresentAliensFactSheet10022009.pdf> <<https://www.justice.gov/eoir/press/09/WhoCanRepresentAliensFactSheet10022009.pdf>>).

Removal proceedings begin with a "master calendar" hearing, where the immigration judge ensures the individual understands the alleged immigration law violations. The judge also provides information on available free legal representation resources in the area. Then, generally, the immigration judge will schedule an "individual" hearing, where both parties present the merits of the case to the immigration judge.

The outcome of many removal proceedings depends on whether the individual is eligible for relief from removal. Immigration law provides relief from removal to individuals who meet specific criteria. In most removal proceedings, individuals admit that they are removable, but then apply for one or more forms of relief. In such cases, individuals must prove that they are eligible for relief, such as cancellation of removal, adjustment of status, asylum, or other remedies provided by immigration law (fact sheet at <http://www.justice.gov/eoir/press/04/ReliefFromRemoval.pdf> <<https://www.justice.gov/eoir/press/04/ReliefFromRemoval.pdf>>).

Other Hearings and Reviews

While immigration judges usually conduct removal proceedings, they may also conduct the following hearings and reviews:

- * Bond Redetermination Hearings -- to determine whether to lower or eliminate the amount of a bond set by DHS for an individual detained by DHS. The detained individual makes a request for a bond redetermination hearing to the immigration judge. These hearings are generally informal and are not part of the removal proceedings.
- * Rescission Hearing -- to determine whether a lawful permanent resident should have his/her residency status rescinded because he/she was not entitled to it when it was granted.
- * Withholding-Only Hearing -- to determine whether an individual who has been ordered removed is eligible for withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act or under the Convention Against Torture.
- * Asylum-Only Hearing -- to determine whether certain individuals who are not entitled to a removal hearing (crewmen, stowaways, Visa Waiver Pilot Program beneficiaries, and those ordered removed from the United States on security grounds) but claim a well-founded fear of persecution in their home country are eligible for asylum. (See above Caveat Regarding Asylum Claims

in the CNMI.)

* Credible Fear Review -- to determine whether an individual in expedited removal has a credible fear of persecution or torture (fact sheet at

<http://www.justice.gov/eoir/press/09/AsylumWithholdingCATProtections.pdf><<https://www.justice.gov/eoir/press/09/AsylumWithholdingCATProtections.pdf>>). Expedited removal allows DHS to remove certain individuals from the United States without placing them in removal proceedings.

* Reasonable Fear Review -- to determine whether an individual in expedited removal, who has been previously removed from the United States, has a reasonable fear of persecution or torture (fact sheet at

<http://www.justice.gov/eoir/press/09/AsylumWithholdingCATProtections.pdf><<https://www.justice.gov/eoir/press/09/AsylumWithholdingCATProtections.pdf>>).

* Claimed Status Review -- to determine whether an individual in expedited removal has a valid claim to U.S. citizenship, lawful permanent residency, refugee or asylum status, when the individual claims under oath to have such status.

* In Absentia Hearing -- to determine whether an individual who does not appear for a scheduled hearing may be ordered removed in his/her absence, which is called in absentia. The immigration judge will order an individual removed in absentia if DHS establishes by clear, unequivocal and convincing evidence that the individual is removable, and that DHS served the individual with a written notice to appear for the hearing that included information on the consequences of being absent for a hearing.

Immigration Judge Decisions

At the conclusion of the case, the immigration judge usually issues an oral decision, but on occasion will issue a written decision sometime after the hearing. Immigration judge decisions are made on a case-by-case basis according to U.S. immigration law, regulations and precedent decisions.

When the immigration judge grants the individual relief from removal, the individual may remain in the United States, sometimes temporarily and sometimes permanently. When the immigration judge orders the individual removed, DHS may remove the individual from the United States. However, an immigration judge's decision may not be the final decision in the case because both parties have the opportunity to appeal an immigration judge's decision in removal proceedings and in the other hearings and reviews specified above.

Appeals of Immigration Judge Decisions -- BIA Review Within 30 days of the immigration judge's decision, either party or both parties may appeal the immigration judge's decision to the BIA. The BIA decides the appeal by conducting a "paper" or record review; the BIA, generally, does not conduct courtroom hearings, though it may hold oral argument in selected cases.

Appeals of BIA Decisions -- Federal Court Review If the individual in proceedings disagrees with the BIA's ruling, he/she may file an appeal ("petition for review") with the appropriate federal circuit court of appeals. DHS, however, may not do so.

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The Executive Office for Immigration Review (EOIR) is an agency within the Department of Justice. Under delegated authority from the Attorney General, immigration judges and the Board of Immigration Appeals interpret and adjudicate immigration cases according to United States immigration laws. EOIR's immigration judges conduct administrative court proceedings in immigration courts located throughout the nation. They determine whether foreign-born individuals-whom the Department of Homeland Security charges with violating immigration law-should be ordered removed from the United States or should be granted relief from removal and be permitted to remain in this country. The Board of Immigration Appeals primarily reviews appeals of decisions by immigration judges. EOIR's Office of the Chief Administrative Hearing Officer adjudicates immigration-related employment cases. EOIR is committed to ensuring fairness in all of the cases it adjudicates.

Executive Office for Immigration Review

Updated January 8, 2016

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