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Fact Sheet

August 22, 2011

USCIS and ICE Procedures Implementing EOIR Regulations on Background and Security Checks on Individuals Seeking Relief or Protection from Removal In Immigration Court or Before the BIA

Introduction:

On April 1, 2005, the agencies responsible for immigration court proceedings and status documentation modified the procedures for aliens who ask the court for relief from removal or for protection in the United States. These procedures are designed to protect national security and public safety and to ensure and speed final documentation processing for aliens found eligible for relief or protection. These procedures apply to requests for asylum, withholding of removal, adjustment of status, cancellation of removal, suspension of deportation, and certain applications for waivers of grounds of removal.

The procedures are designed to make the best use of the resources of the agencies involved. Immigration courts are operated by the Executive Office for Immigration Review (EOIR), a component of the Department of Justice (DOJ). Immigration judges hear the cases, and administrative appeals are decided by EOIR's Board of Immigration Appeals (BIA). The government is represented in immigration court by attorneys from Immigration and Customs Enforcement (ICE), within the Department of Homeland Security (DHS). If EOIR grants relief from removal or other forms of protection, in most cases, the individual is issued evidence of his or her new status and work authorization by the United States Citizenship and Immigration Services (USCIS), another agency within DHS.

Since April 1, 2005, EOIR regulations have prohibited immigration judges and the BIA from granting relief from removal to an individual unless DHS reports that all required identity, background and security checks have been completed concerning the individual. See 70 FR 4743 (January 31, 2005) (*codified at 8 C.F.R. Parts 1003 and 1208*). As a result, following most court grants of relief or protection made on or after April 1, 2005, USCIS can issue documentation to the individual without waiting for more background checks.

Modified Procedures:

In order to facilitate the completion of background and security checks before the conclusion of removal proceedings and to meet other requirements in the EOIR regulations, USCIS and ICE implemented the following procedures on April 1, 2005. These procedures focus on the alien's initial submission of a copy of his or her application(s) for relief to USCIS with any relevant fees; the alien's



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filing of the original application(s) with the immigration court; the alien's attendance at an appointment for biometrics collection and the consequences of failure to comply; the government's completion of the applicant's background and security checks before a decision by the immigration judge or the BIA; prompt notification by ICE to USCIS of an EOIR final order of relief; and the alien's appearance at an appointment at USCIS to be processed for documentation of status and work authorization, where applicable. The EOIR regulations ensure that individuals seeking relief from removal are specifically instructed in the following three critical steps that require the individual to take action:

- Submitting copy of the relief application to USCIS. Since April 1, 2005, when a person informs the immigration judge during proceedings (usually at the Master Calendar hearing) that he or she plans to seek relief, the ICE attorney provides the individual and his or her attorney or accredited representative, if any, with DHS' written instructions for submitting a *copy, not the original*, of the application(s) to designated USCIS service centers, along with any required application and biometric fees, and for providing biometrics (e.g., fingerprints and photographs) to DHS. If the immigration judge has granted an application fee waiver, the order granting such a waiver must be submitted with the copy of the application to USCIS. No fees are required for asylum and withholding applications. These DHS "Instructions for Submitting Certain Applications in Immigration Court and For Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services" ("Pre-Order Instructions") can be obtained from USCIS' web site at <http://www.uscis.gov/files/article/PreOrderInstr.pdf>. Application copies, along with the filing and biometric fees, are submitted to USCIS because EOIR and ICE normally do not receive such fees, and USCIS systems can also be used to facilitate background checks. ICE attorneys will report any relevant background check results to the immigration court, and the court will adjudicate the application. Note: Persons who filed for relief with the immigration court and paid any applicable fees *before* April 1, 2005 *are not required* to submit copies of their applications to the USCIS service centers.

The application *copies* that currently must be submitted to USCIS under these procedures are:

- Form I-589 (Application for Asylum and for Withholding of Removal);
- Form I-485 (Application to Register Permanent Residence or Adjust Status);
- Form EOIR-40 (Application for Suspension of Deportation);
- Form EOIR-42A (Application for Cancellation of Removal for Certain Permanent Residents);
- Form EOIR-42B (Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents);
- Form I-881 (Application for Suspension of Deportation or Special Rule Cancellation of Removal);



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- Form I-191 (Application for Advance Permission to Return to Unrelinquished Domicile);
- Form I-601 (Application for Waiver of Grounds of Excludability);
- Form I-602 (Application by Refugee for Waiver of Grounds of Excludability).

These forms are available online at the USCIS website at www.uscis.gov/forms/ or by calling 1-800-870-3676. Forms are also available online at the EOIR website at www.usdoj.gov/eoir/formspage.htm or at the immigration courts.

- Appearing for Biometrics; Filing Original Application(s) with the Immigration Court, and Serving ICE Counsel with Complete Copies. Upon receipt of the application(s), the appropriate USCIS service center enters information about the individual into the same systems that USCIS uses to process applications for persons who are not in court proceedings. These systems automatically initiate certain background checks and schedule the applicants for prompt biometrics collection at Application Support Centers (ASCs). Biometrics collection is necessary for both Federal Bureau of Investigation (FBI) fingerprint checks and the production of immigration documents. The process is designed to serve both biometrics purposes with one trip by the alien.

The service center will mail the alien and his representative (if any) both (1) an application receipt notice (often called a “fee receipt notice,” if fees are required) and (2) an ASC biometrics appointment notice. All applicants must bring their ASC biometrics appointment notices to their biometrics appointments. The ASC will provide the individual with an ASC biometrics confirmation notice after biometrics have been collected. All applicants should retain this confirmation notice as evidence that their biometrics were taken and should bring a copy of the confirmation to future immigration court hearings.

Applicants for asylum and withholding of removal should file their original applications with the EOIR immigration court promptly as instructed by the immigration judge. These applicants do not need to wait for a fee receipt from USCIS to file with the court because neither an application nor a biometric fee is required for asylum or withholding. Applicants for all other forms of relief, however, must wait for the USCIS fee receipt notice and submit it to the immigration court along with the original application for relief to show that the appropriate application and biometric fees have been paid, unless the application fee has been waived. If the immigration judge has waived your application fee, you do not need to wait for the fee receipt notice to file your application with the court. If the immigration judge has waived your application fee, you must submit the evidence of that fee waiver along with the copy of your application that you submit to the USCIS Texas Service Center (see “Pre Order Instructions”). USCIS may then also waive your biometric fee based on the determination of the immigration judge that you have an inability to pay the application fee.



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If you fail to pay any fees that have not been waived, including the biometrics fee, DHS may inform the immigration judge of your failure to pay and you may be denied the benefit you seek. If you are granted the benefit, you may also have difficulty obtaining your documentation until you have paid all fees required. You will not be granted relief from removal or protection if you fail to provide biometrics, if required, without good cause. Biometrics for detained aliens will be collected under the direction of ICE because such aliens cannot attend ASC appointments.

Applicants must also serve ICE counsel with full copies of their relief or protection applications, including copies of all supporting documentation. All applicants should retain copies of all application and fee receipts, ASC scheduling, biometrics confirmation, and other notices they receive, because they may be required to provide them to the immigration court or to USCIS in connection with subsequent requests.

ICE will conduct any identity, background and security checks on the applicants for relief that may be deemed necessary. In accordance with the EOIR background check regulations, ICE counsel will inform the immigration judge when background and security checks have been completed on the alien.

- Appearing before, or filing with, USCIS for status and work authorization documentation (if relief granted by the court). Since April 1, 2005, immigration judges and ICE attorneys have been providing oral and written instructions on the process for obtaining immigration documentation to individuals who receive final EOIR orders granting them relief. These “Post-Order Instructions for Individuals Granted Relief or Protection from Removal by Immigration Court” can be obtained from USCIS’ website at <http://www.uscis.gov/files/article/PostOrderInstr.pdf>. These instructions clarify that in order to obtain appropriate documentation of permanent residence or asylum, the individual must make an appointment at the local USCIS office through the USCIS on-line InfoPass scheduling program. Aliens who received final grants of asylum or permanent residence before April 1, 2005, also should make InfoPass appointments if they have not received documentation of such status. In the case of an emergency or if the person cannot use or obtain assistance to use a computer, the local USCIS office will assist the person to make a future appointment for documentation. In any case, the individual must bring his or her final EOIR order and other appropriate identification documents to the USCIS appointment. Individuals who received grants of asylum based on resistance to coercive population control measures should bring both the conditional grant order and the EOIR letter notifying them of the final grant of asylum to their USCIS appointments. After verifying the person’s identity and the EOIR order, USCIS will process the person’s request for documentation. If new biometrics are required, USCIS will provide instructions. Additional instructions depend on the status granted by the court, as follows:



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- o Lawful Permanent Residents: Technology capability installed at the local USCIS offices now enables those offices to access necessary systems to order prompt production of a Permanent Resident Card (I-551 or “green card”). These cards will normally be mailed in approximately 7 to 15 business days following the collection of any necessary biometrics.
- o Asylum: At their USCIS appointments, asylees will also be processed for immediate delivery of an Employment Authorization Document (EAD), which will soon be issued directly from DHS’ secure card production facility.
- o Other Relief: Individuals granted withholding of removal or other forms of relief that permit them to obtain an EAD should submit the I-765 (Application for Employment Authorization) by mail. They do not need to make an InfoPass appointment to do so.

Individuals with pending applications for relief or protection before EOIR should continue to submit their I-765 application for an EAD in accordance with the instructions on the form.

For persons granted relief from removal by an immigration judge on or after April 1, 2005, local ICE Chief Counsel offices provide the local USCIS districts with written notice of the EOIR order within three days after it becomes final. This process not only gives USCIS advance notice that the individual will be making an appointment for his or her documents, but also provides USCIS with an independent means of authenticating the copy of the EOIR order that the person brings to USCIS when he or she requests documentation.

For additional information regarding processing for status or work authorization documentation after receipt of a final EOIR grant of relief or protection, please see the following [USCIS Web page](#). The website also contains information on contacting USCIS if a permanent resident has not received status documentation after attending all required appointments and providing biometrics and other required information. USCIS and ICE have also prepared a set of detailed Questions and Answers (Qs and As) on these DHS procedures related to implementing the EOIR background check regulation requirements, and those Qs and As may also be obtained on the USCIS website.

These procedures are designed to protect the homeland, avoid delays in removal proceedings, and speed delivery of status and work documentation to persons found eligible. DHS and EOIR look forward to further process refinements to achieve these goals.

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