



Chief Immigration Judge

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June 19, 1996

MEMORANDUM

TO: All Immigration Judges
All Immigration Court Personnel

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum No. 96-4: Processing of Motions and Appeals

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On July 1, 1996, the Executive Office for Immigration Review's new motions and appeals regulation will take effect. This new regulation will require changes in some of the current procedures for accepting and processing appeals and motions to reopen and reconsider. The changes are outlined as follows:

I. APPEALS

Beginning July 1, 1996, all notices of appeal of Immigration Judge decisions rendered on or after July 1, 1996, must be filed on the new, revised EOIR-26 (gray) by the alien or the alien's attorney or representative directly with the Board of Immigration Appeals (the Board) within 30 days of the Immigration Judge's decision. The appropriate fee or request for fee waiver must also be filed directly with the Board. The Board has established an Appeals Processing Unit (APU) to receive and process all appeals.

During a transition period, however, all appeals of decisions rendered between now and June 30 will continue to be filed with the Immigration Court under the current procedures on the old EOIR-26 (yellow). Thus, the filings on the old form will continue into July, and the Immigration Court should continue to distribute the old Form EOIR-26 for cases in which the Immigration Judge renders a decision before July 1, 1996.

Appeals will be processed in the following manner:

A. Appeals of Immigration Judge decisions rendered before July 1, 1996

In cases in which the Immigration Judge renders a decision prior to July 1, 1996, the alien will have 10 days from the date of the judge's decision (13 days if sent by mail) to file a notice of appeal with the Immigration Court on the old EOIR-26. Appeals of these cases initially will continue to be processed at the Immigration Court, but all of the appeals eventually will be forwarded to the APU at various intervals for completion of processing. The appropriate time for forwarding the appeal to the APU depends on what stage the processing of the appeal is in at the time the new regulation goes into effect. There are three different stages at which it will be appropriate for Immigration Court personnel to forward the appeals and corresponding

documents to the APU:

1. Cases in which only the Notice of Appeal has been filed with the Immigration Court and no other processing of the appeal has occurred

The Immigration Court will forward the notice of appeal and ROP with the tapes to the APU for complete processing of the appeal. The APU will request transcripts and set the briefing schedule. The Immigration Court will receive one copy of the transcript and Immigration Judge decision along with the tapes from the APU. The appropriate Immigration Judge should review the transcript and sign the decision. At that point, the Immigration Court personnel will forward the transcript and decision to the APU. The tapes will be kept by the Immigration Court.

2. Cases in which the Notice of Appeal has been filed with the Immigration Court, the transcript has been requested, but the briefing schedule has not yet been set

There are two situations applicable to this stage. If the notice of appeal has been filed with the Immigration Court, a transcript has been requested but not yet received, and a briefing schedule has not yet been set, the Immigration Court should hold the ROP until the Court receives the transcript and the Immigration Judge reviews it. In addition, if the transcript has been received and is being reviewed by the Immigration Judge and the briefing schedule has not yet been set, the Immigration Court should hold the ROP until the Immigration Judge has reviewed the transcript. In either situation, once the Immigration Judge has reviewed the transcript and signed his or her decision, the Immigration Court shall forward the entire ROP to the APU. The APU will then set a briefing schedule and handle the appeal processing from that point. The tapes will be

kept by the Immigration Court.

3. Cases in which the notice of appeal has been filed with the Immigration Court, the transcript has been requested and received, and the briefing schedule has been set

This processing stage only applies to those Immigration Courts not participating in the ongoing pilot project for processing appeals. In cases where the notice of appeal has already been filed with the Immigration Court, transcripts have been requested and reviewed by the Immigration Judge, and the briefing schedule has been set, the Immigration Court will continue to process the appeal under current procedures, forwarding the entire Record of Proceedings (ROP) to the APU upon receipt of the parties' briefs. If a motion for extension of time to file a brief is received from either party, the Immigration Courts shall forward the motion and the record to the APU for the Board's decision on the motion and completion of the appeal process.

B. Appeals of Immigration Judge decisions rendered on or after July 1, 1996

The Immigration Court shall not accept notices of appeal for cases decided by the Immigration Judge on or after July 1, 1996, and shall not date stamp them. Immigration Court personnel should refuse to accept all such filings and provide the alien or the alien's attorney or representative with a form letter explaining that the appeal must be filed directly with the APU (See Attachment A for sample form letter). The alien's time for filing the appeal will not be extended even though the notice of appeal is refused and returned for improper filing. The alien or the alien's attorney or representative should be encouraged to send their notice of appeal to the APU by overnight courier service so that the filing is received not merely postmarked by

the filing deadline. In the ROP, the Immigration Court must keep a copy of the form letter sent to the alien or the alien's attorney or representative.

The APU will notify the Immigration Courts electronically on a daily basis of the cases in which notices of appeal have been filed. The Immigration Courts will have five business days from the date of receipt of the notification to send the ROP by overnight mail to the APU. If that deadline cannot be met, an e-mail should be sent to the APU explaining the delay. The ROP should be sent to the APU arranged in reverse chronological order according to Board specification with a transmittal memorandum.

C. Interlocutory appeals

Interlocutory appeals must be filed directly with the Board at the APU on or after July 1, 1996. The Immigration Court should follow established procedures in the Uniform Docketing Manual on the filing of interlocutory appeals.

D. Bond appeals

The APU will notify the Immigration Courts electronically on a daily basis if a bond appeal has been filed. The Immigration Judge will have five business days from the date of receipt of the notification to prepare and submit a bond memorandum to the Board at the APU unless the Immigration Judge requests an extension of time. Immigration Court personnel should create a separate ROP with bond-related documents for forwarding to the APU in accordance with the instructions in the Uniform Docketing Manual. The bond memorandum should be included in the ROP.

E. Appeals of Motions to Reopen and Reconsider

Appeals of Immigration Judge denials of motions to reopen and reconsider will be filed

directly with the Board.

II. MOTIONS

On or after July 1, 1996, motions to reopen or reconsider a decision of the Board and any accompanying fees or fee waivers shall be filed directly with the Board at the APU. If the Board has jurisdiction over the motion, the Immigration Court shall return the motion and any accompanying fee or fee waiver to the alien or the alien's attorney or representative with a letter explaining that the alien must file the motion and accompanying fee or fee waiver directly with the Board at the APU (See Attachment B). Court personnel who are uncertain about who has jurisdiction should consult with an Immigration Judge.

The APU will notify the Immigration Courts electronically of motions filed, and the Immigration Court shall forward the corresponding ROP to the APU by overnight mail within five business days from the date of receipt of the notification.

If a motion for a stay of deportation is received by the Immigration Court for a case in which a motion to reopen or reconsider is pending at the Board, the Immigration Court should call the APU to determine how to proceed.

III. CHANGES TO ANSIR

New software will be introduced in July 1996 to accommodate the new motions and appeals regulations and procedures. You will be receiving an ANSIR Newsletter with more specific information about new screens and data processing changes. This software will include an electronic report which will come to the Immigration Courts automatically on a daily basis. This report will serve to notify the Immigration Court that the APU has received notices of appeal or motions in particular cases and that the Immigration Court should forward the ROP for the corresponding cases.

The transfer of the database from the old system to the new one will occur from July 3, 1996, at 7:30 p.m., Eastern Daylight Time, through July 7, 1996. During this time, access to ANSIR will be unavailable. If hearings are scheduled for July 5, 1996, please prepare ahead of time by printing "available dates" reports.

Once the database has been transferred to the new system, the Immigration Courts will no longer be able to access the old appeals database for the purpose of entering certain information on appeals. Further information about data entry will be sent to you by the ANSIR system staff. Since you will still be processing some old cases under the transition procedures outlined above, please be aware that you will have to be prepared to track cases awaiting transcripts or briefs manually for a short period of time. Also, be prepared to run appeals reports just prior to the system shutdown on July 3, 1996.

IV. FEES FOR APPEALS

The new regulations provide the Board with the authority to begin collecting fees on July 1, 1996, for appeals of Immigration Judge decisions rendered on or after July 1, 1996. The Board, however, will not receive fees for appeals of Immigration Judge decisions rendered before July 1, 1996, even if the notice of appeal is filed with the Immigration Court after July 1, 1996. Such fees must still be submitted to the INS, and a fee receipt must be obtained and filed along with the notice of appeal at the Immigration Court.

If you have any questions regarding the contents of this memorandum, please contact the Central Operations Unit at 703/305-1558.



Michael J. Creppy
Chief Immigration Judge