

OFFICIAL MINUTES
AILA/Chicago Chapter and Office of Chief Counsel Liaison meeting
December 10, 2014

Staffing

1. Have there been any recent staffing changes and/or does OCC anticipate any staffing changes?
Robin Roche is now an instructor for CBP at the Federal Law Enforcement Training Center in Georgia.
Karoline Calia has left the office for private practice.
Renata Parras has transferred to Chicago OCC from the NYC OCC (she had done a brief stint at OPLA HQ's Human Rights Law Division).

Quick Docket

2. AILA appreciates OCC's participation in the quick dockets and looks forward to resolving an ever greater number of appropriate cases through this docket. We are interested to learn about OCC's experiences with the program and how well the Offices believes it is working so far.
The most difficult part is identifying appropriate cases and we've found it requires a great amount of effort on the part of the attorneys. A core group of attorneys on the docket are meeting to try to improve efficiency. In addition, Judges Giambastiani and Guzman are also handling the juvenile and family docket cases, which receive priority per order of the administration.
3. As Respondents' attorneys necessarily have the most information about the Respondents' cases, information that would be useful in determining whether a case might be "non-contested," would OCC be open to receiving requests from attorneys to place cases on the quick dockets? If so, how would OCC like attorneys to prepare and submit those requests? There has been some mention of a worksheet for this purpose?
We are not ready to accept requests at this time. There is a questionnaire that is not currently being distributed; it is given only in cases where our attorney believes placement on the docket may be appropriate, and more information is required.
4. AILA members have reported that as recently as November, some OCC attorneys at Master Calendar Hearings appear either unaware of the quick docket or of the process by which cases are identified and then placed on the docket. Would OCC be willing to remind its attorneys of the docket and the appropriate processes, as they are modified?
EOIR has apparently expressed a preference to call the program the "non-contested docket." OCC disagrees with this characterization, as the cases may not necessarily be "non-contested." Our attorneys would not know of it by the name of "non-contested docket." Also, currently only Team C attorneys are involved with the pilot. As such, if an attorney who is filling in for that docket that day may not be as familiar with the program.

Expedited Adjudication of I-130 Petitions:

5. How would you prefer Respondents' attorneys to request that OCC request from USCIS expedited adjudication of an I-130 visa petition for a beneficiary/respondent in removal proceedings, pursuant to the August 20, 2010, Memorandum from John Morton? In general, how long after a Respondent's attorney makes such a request does it take for OCC to make the request with OCC? AILA members have reported that some Assistant Chief Counsel have advised the AILA members to submit the request for expedited treatment directly to USCIS themselves, which contradicts the Memorandum and is ineffective in actually receiving expedited treatment.

OCC has an agreement with Chicago USCIS, Milwaukee USCIS, and Indianapolis USCIS for expedited handling of I-130s. Respondents' attorneys should not make the request to USCIS. Usually a request to expedite is made in court to the ACC, and the file is thereafter sent to USCIS with a cover page requesting expedited adjudication. Please email the particular Team Inquiry Box for cases where you wish to have an I-130 adjudication expedited but there is no immediately impending court date.

If there is a delay in adjudication after the interview, and if the Respondent's attorney has tried to resolve it through USCIS, then the attorney may email the Team Inquiry Box with a list of dates, attempts made, and who they have dealt with at USCIS. OCC will then attempt to follow-up with USCIS.

Requests to expedite do not need to be based upon upcoming court dates, and can be made in detained and non-detained cases.

Requests to Join in Motion to Reopen and Terminate

6. What is the current response time for OCC to respond to requests to join in a motion to reopen and terminate (for example, for a respondent who is eligible for adjustment)?

Kim Kucik is now reviewing requests to join in motions to reopen, and is deciding these in consultation with Karen Lundgren. Please allow 90 days for response. If you have not heard from OCC within 90 days, then reach out to Kim. Please familiarize yourself with the FACT Sheet regarding JMTRs.

OCC would like to thank attorneys for using the e-filing address. It is very helpful for us. Please remember that you do not need to submit documents both on paper and electronically. As stated in the FACT Sheet, we will only consider JMTRs filed electronically with our office.

7. Does OCC regularly join motions to reopen and terminate for respondents with final orders of removal or *in absentia* orders of removal who are subsequently granted U visas? If yes, what

evidence does OCC require? Is a copy of the U visa approval sufficient or does OCC require similar documents as a prosecutorial discretion request?

Yes, OCC regularly receives and reviews such requests. OCC generally terminates proceedings once the U visa is approved. Only a copy of the approval notice need be attached; OCC does not require a copy of the application package.

8. Will OCC join in a motion to reopen and terminate (or administratively close or continue) for a respondent with a final order of removal who has a pending U visa petition?

For Respondents with outstanding removal orders, please wait for approval of the U visa application to request reopening and termination. OCC will not join a Motion to Reopen if a U visa application is still pending, just like OCC will not join a motion to reopen if an I-130 visa petition is still pending. OCC requires approval in both situations.

If the Respondent is currently in proceedings, whether on the active calendar or with an administratively-closed case, file a Motion to Terminate, or Motion to Re-Calendar and Terminate, directly with EOIR; there is no need for a joint motion in such a situation.

OCC determines on a case-by-case basis whether to terminate when an individual is placed on the waiting list.

9. Will OCC join in a motion to reopen and terminate for a respondent who has a law enforcement certification and will be filing for a U visa petition?

Please see the above answer. OCC requires an approved U visa.

Transfer of Files to USCIS for Adjudication for Adjustment

10. AILA members are experiencing significant increased waiting times for files that are transferred to USCIS for adjudication of the adjustment application. Is there a delay in transferring the files to USCIS?

OCC should not be the cause of delay. The files are usually shipped out immediately, and there are daily couriers to USCIS in Chicago. Termination is a final order, so there would be no reason to hold on to the file. Perhaps an A-file is misrouted after it leaves the OCC. If that's the case, USCIS has the ability to locate and request the file.

11. Is there a new procedure for transferring the files to USCIS? One Assistant Chief Counsel stated that the files are now being sent electronically to USCIS. Is this accurate?

OCC does not have the capability to transfer files electronically to USCIS. There is a daily courier to USCIS.

Administrative Closure for Provisional Waiver Cases

12. The Office of Chief Counsel previously advised that attorneys can email requests for administrative closure for respondents eligible for the provisional waiver. AILA members have reported emailing requests for administrative closure to OCC, but have not received a response. Instead, AILA members have waited until the master calendar and requested administrative closure with the Immigration Judge. What is the most effective manner of requesting that OCC join in a motion for administrative closure for a provisional waiver case?

If the request for Administrative Closure is submitted just a month or two prior to the Master Calendar hearing, the ACC will likely just wait until the hearing. If the request is made six months or more before the hearing, then the file should be pulled and reviewed. If an attorney does not receive a response to the request within 90 days, please contact John (Teams A & B) or Nelson (Team C). It is also in OCC's interest to remove cases from the docket, and save the office the corollary administrative work.

Prosecutorial Discretion:

13. Is there an OCC policy on prosecutorial discretion requests for unaccompanied immigrant children?

Juveniles are a priority for enforcement, per decision of the administration.

Notice to Appear Review:

14. Does OCC review all Notices to Appear before they are filed with the Immigration Court, including NTAs issued by USCIS and CBP?

OCC reviews all Notices to Appear issued by all agencies, except those issued by the Asylum Office, which are filed directly with EOIR by the Asylum Office.

15. How long does it take OCC to review a NTA before filing it with the Immigration Court?

NTAs for detained individuals are typically reviewed within 24 hours. Enforcement priorities and volume determine the time it takes to review NTAs for non-detained individuals. Typically, non-detained NTAs will be reviewed within 30 days of receipt, but recently it is taking longer due to increased volume of NTAs received. Last week alone, OCC received 1000 NTAs due to a backlog at ERO.

If practitioners are experiencing long delays between issuance and filing of NTAs with EOIR, then OCC recommends following up with ERO. NTAs from all agencies are first routed to ERO, and then ERO sends them to OCC. OCC does not know how long ERO will hold an NTA before forwarding it.

If an alien has been issued an NTA, but it has not been served on the court, the Asylum Office continues to have jurisdiction over the asylum application and the application can be filed with USCIS. If the Chicago Asylum Office is reluctant to adjudicate these, call John Gountanis and inform him and he will work to cancel the NTA to allow adjudication.

16. Does OCC cancel a NTA when it decides not to file the case with the Immigration Court? How does a respondent receive notice that the NTA is cancelled?

An NTA can only be cancelled by the agency that issued it. If OCC does not file the NTA, it will return it to the issuing agency. That agency may correct an NTA, disagree with OCC that its filing is appropriate, cancel it, etc.

If an application is pending with USCIS, OCC will typically not file the NTA, but return the file to the Service Center to afford USCIS the opportunity to adjudicate the petition and/or application. OCC files most NTAs it receives, because there is typically not enough information in the file to exercise prosecutorial discretion at that point. In addition, many who would qualify for P.D. also qualify for non-LPR cancellation of removal, and may therefore want to be in proceedings. Therefore, it is often most effective to file the NTA and then deal with PD.

17. What is the most effective method to request OCC to cancel a NTA or not file the NTA with EOIR because the NTA was improvidently issued, the charges cannot be sustained, or the case does not meet government enforcement priorities?

Please see above answer.

18. If ICE has issued an NTA, but not yet filed it with the Immigration Court, where and how should the respondent change his/her address with ICE? Is the filing of an online AR-11 sufficient? If the EOIR-33 is required, how can a respondent file it with the Immigration Court and OCC if the case is not yet filed with the Court?

Follow the instructions on the NTA. Though EOIR will not accept an EOIR-33, the Respondent will have complied with the requirements sufficiently to allow reopening if he does not get notice of the proceeding. As to DHS, file the AR-11 and notify the office that issued the NTA of the address change. If OCC sees a new address in the file, they will change it prior to filing the NTA with court.

Parole-In-Place and Agreeing to Termination of Removal Proceedings

19. On November 15, 2013, USCIS issued a policy memorandum indicating that Parole-in-Place “would generally be an appropriate exercise of discretion” for the spouses, children, and parents of members of the U.S. military, absent a criminal conviction or other serious adverse factors. (This program is also being expanded to encompass family member of US citizens and LPRs who seek to enlist in the Armed Forces, per the November 20, 2014 Memorandum on point.) This is a significant benefit for those eligible, because those who entered this country

without inspection and were subsequently granted parole would no longer face inadmissibility pursuant to INA section 212(a)(6)(A)(i) (present without having been admitted or paroled). A person who was previously ineligible for adjustment of status (assuming an approved visa petition filed by an immediate relative) would be eligible subsequent to the grant of parole. Even outside of adjustment eligibility, Parole-in-Place is a significant benefit, in that a person is granted the ability to remain in the United States and is eligible for employment authorization.

USCIS, relying on a 2008 Memorandum of Agreement between USCIS, ICE & CBP, refuses to issue Parole-in-Place to foreign nationals in removal proceedings. USCIS refers the prospective applicants to ICE, believing ICE has sole authority to issue parole to respondents in proceedings.

ICE has indicated that Parole-in-Place for the families of members of the military is a USCIS policy and not an ICE policy or benefit, and that it has no authority to issue it.

Where a Respondent in removal proceedings appears eligible for Parole-in-Place, would OCC consider moving to terminate removal proceedings without prejudice in order to allow the Respondent to submit such an application to USCIS, and USCIS to adjudicate it? The termination of proceedings in such a circumstance would be analogous to termination of proceedings in other situations, for example, where respondents wish to seek adjustment of status before USCIS.

Those in removal proceedings should file their Parole-in-Place application with HSI, at the following address, as instructed on the USCIS website. OCC has verified that this is correct location/department.

U.S. Immigration and Customs Enforcement
Homeland Security Investigations/Investigative Services Division
Parole and Law Enforcement Program Unit (PLEPU)
500 12th St SW, Mail Stop 5112
Washington, DC 20536

OCC will consider terminating in sympathetic cases, where the Respondent has strong equities. Approach the request similar to a request for prosecutorial discretion and send to chicagooccfilings@ice.dhs.gov.

Non-LPR Cancellation of Removal Cases

20. As OCC knows, due to the statutory limit on the number of approvals, the record in most non-LPR cancellation cases is simply closed after a final hearing. There is no new hearing date set. However, respondents must keep their fingerprints current until a decision is issued. Generally, the agreement reached by OCC and USCIS, where USCIS issues biometrics appointments for

respondents with upcoming individual hearing dates, works very well. However, our members continue to experience problems in obtaining new biometrics appointments for our clients when there is no hearing notice to provide to USCIS. AILA has raised this issue with USCIS, and USCIS has asked us to raise it with OCC.

- a. Office of Chief Counsel has in the past run prints for individuals with an IDENT hit. Does OCC run prints in cases where the prints expire after the Individual Hearing but before the decision is issued? Does a respondents' attorney need to request this action? If so, what would be the best way to do so?
- b. For those Respondents without an IDENT hit, would OCC be willing to provide respondents with some sort of documentation informing USCIS that they should be scheduled for a follow up fingerprint appointment, despite the lack of a future hearing notice?

This is an ongoing issue, which OCC is attempting to work out with EOIR. Though each judge follows procedures, each does it a little differently. For example, when a judge receives authorization from EOIR HQ that he or she can release a decision, one judge might do so immediately, and one judge might wait for a while. This difference in timing makes it hard to predict when new biometrics will be necessary. Though EOIR had handed out its own fingerprinting notice a few years ago, they were instructed by their HQ not to do so anymore. Therefore, OCC is trying to come up with a process/procedure.

Executive Action

On November 20, 2014, Secretary Johnson released several Memoranda outlining new priorities for removal and new policies for the use of Deferred Action. AILA understands that it will take time for OCC to implement these changes and develop appropriate procedures and processes to identify affected cases. AILA appreciates your openness and willing to communicate during times of change in the past and anticipates such communication in the future.

21. Of most immediate concern are those cases where a final removal order was entered on or after January 1, 2014 (Priority 3), or cases where such an order may be forthcoming. Some of these respondents may be eligible for DACA or DAPA, but for their classification as an "Enforcement Priority" because of that final order.
 - a. For those who would be DACA- or DAPA-eligible, but for the final order, would OCC be willing to join motions to reopen in certain cases, thereby removing the final order and enabling such individuals to apply for DACA or DAPA once the forms are available?
OCC's quick answer: No. OCC states that it can't go around the priorities, and those with removal orders entered in 2014 are priorities. Exceptional or compelling circumstances can be considered, as stated in the Memorandum. Aliens with final orders of removal are eligible to apply for DACA/DAPA. Please note that this response is subject to change should additional guidance from ICE HQ be issued.

- b. Many of these cases are time sensitive, as they have a limited number of days to reopen their case before the court or, should the individual wish to remain in the country to be eligible for DACA or DAPA, before their grant of voluntary departure expires and turns into a final order. Would OCC willing to establish a procedure for escalating time-sensitive requests?

There should be a small universe of cases that fall into this predicament. Without further guidance from HQ, OCC's position is that aliens with final orders of removal are eligible for DACA/DAPA, so there would not be a basis for OCC to join or not oppose a MTR filed during the VD period where the only argument for reopening is to apply for DACA/DAPA. Please note that this response is subject to change should additional guidance from ICE HQ be issued.

22. We recognize that new policies or procedures are likely still under development, including identifying potentially DACA- and DAPA-eligible respondents, identifying respondents that are no longer considered enforcement priorities, and accepting requests for prosecutorial discretion, including requests on behalf of respondents who may initially be viewed as enforcement priorities but may fall into the exceptions outlined in each category. However, as you develop these policies, we would like to note member interest in the following issues, and would ask you to comment to the extent that you are able:

- a. Please advise as to the guidelines for submission of requests to the "old" email address (chicagooccfilings@dhs.gov) and the "new" email address (OPLA-PD-CHI-OCC@ice.dhs.gov). The printed Guidelines that you previously released were very helpful to members and we would very much appreciate an updated version.
OCC prefers the Chicagooccfilings address, however, both inboxes are monitored.

- b. What information and documentation would you like in a request for prosecutorial discretion? Will there be a difference in procedure in requests for PD when it concerns a DACA- or DAPA-eligible person and when it concerns a person who simply not an enforcement priority, or who falls within an exception to an enforcement priority?
OCC is awaiting guidance from Headquarters, especially concerning cases that are not priorities, but where the Respondent may not have many equities or community ties.

- c. Are biometric clearances necessary as part of a request? How would respondents obtain biometric appointments if no application for relief is pending?
OCC is awaiting guidance from Headquarters. However, please note that OCC currently has a mechanism for obtaining biometrics for Respondents who have submitted PD requests without an application for relief pending. For aliens seeking DACA/DAPA with USCIS, OCC's current preference is to await the adjudication of that application, and if and when it is approved, OCC will most likely administratively close proceedings.

- d. After a request is submitted to OCC, how long should an attorney wait before following up?
If the request is submitted close to the court date, the ACC will typically wait for the Master Calendar hearing. If it is submitted far in advance of the court date,

please allow the ACC 90 days to review it. If a request is submitted near an Individual Hearing date, the ACC should not wait until that hearing date to respond. If this is a problem, please bring the specific cases to Nelson Perez (Team C) or John Gountanis (Teams A & B).

- e. Will there be a mechanism for review if an attorney thinks an ACC's decision to deny prosecutorial discretion is incorrect?

As in all cases, if an attorney believes that an OCC attorney is not following established policy or procedures, feel free to contact their immediate supervisor—John for Teams A & B and Nelson for Team C.

- f. Will an exercise of prosecutorial discretion also include termination under certain circumstances, instead of just administrative closure? We note that the Memorandum on "Exercising Prosecutorial Discretion" states that ICE is instructed to seek administrative closure or termination of cases of individuals who meet the criteria for DAPA or DACA.

OCC is awaiting guidance from Headquarters.

- g. We have appreciated ACC reaching out to counsel prior to filing a Motion to Administratively Close where a respondent is represented. Will OCC continue to do so? Some respondents will wish to continue on with their removal proceeding, as they may be eligible for relief.

OCC will reach out to counsel for discussion prior to administrative closure. Please note that this response is subject to change should additional guidance from ICE HQ be issued.