

Office of Chief Counsel Liaison Meeting
AILA Chicago, Indiana, and Wisconsin Chapters
Official Meeting Notes
April 10, 2014

Staffing and Contact Information:

- 1) Have there been any staffing changes at OCC?

Nelson Perez has returned to the OCC Chicago office as Deputy Chief Counsel.

Christine Young will be leaving for a 2 year detail to ICE HSI. Kim Kucik previously served this detail and she will be returning to OCC Chicago.

Minnie Yuen will be leaving for a 2 year detail with the U.S. Attorney's Office in August, 2014. Mirta Woodall previously served this detail and she will be returning to OCC Chicago.

Due to changes at EOIR, including OCC Chicago no longer covering the Omaha docket, and OCC staffing changes, the OCC teams are reconfiguring as of May 5, 2014. OCC will distribute a fact sheet regarding these changes. The new teams will be 7 attorneys per team and the three teams will be 1) Giambastiani, Perez-Guzman, and Cuevas; 2) Klein, McNulty; and 3) DiMarzio, Vinikoor. Judge Zerbe will continue to float among the teams. Because there will only be three teams, OCC will be eliminating the team D email address. If an attorney emails the team D email after May 5, 2014, the attorney will receive notice redirecting them to the current team email mailboxes.

- 2) What is the best way for AILA Chapter members to contact Deputy Chief Counsel John Gountanis and Chief Counsel Karen Lundgren? In past liaison meeting minutes, AILA Chapter members have commented that they were unable to reach either through the dial by name directory at OCC.

The best way is to call the front desk and ask to speak to John Gountanis, Nelson Perez, or Karen Lundgren. If there are any issues with the front desk not answering the call, please call the supervisory legal assistant, Roxanne Moss (reachable through the directory) to advise of these issues.

Notice to Appear Review Panel for N-400 Applicants:

- 3) In the November 7, 2011, USCIS Policy Memorandum, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*, local offices must create N-400 NTA Review Panels to review whether or not to issue a NTA to N-400 applicants who are eligible to naturalize but are also deportable under 237 or who were inadmissible at the time of adjustment and thus, are deportable under 237. The N-400 NTA Review Panel must include a local Supervisory Immigration Services Officer, a local USCIS Office

of Chief Counsel attorney, and a district representative. In addition, the memo states that an attorney from ICE's local Office of Chief Counsel will be invited to participate and will have an advisory role on the committee. Does OCC Chicago participate in the local N-400 NTA Review Panel?

OCC participates in NTA Review panels. Seth Fitter is the point of contact. The panels meet 1-2 times per month.

- 4) If so, are there common fact scenarios that result in NTA issuance?

There are no common fact scenarios. However, some examples of cases include N-400 applicants who obtained LPR status by fraud or N-400 applicants with criminal convictions that are removable offenses.

EOIR Pilot Quick Docket Program:

- 5) At the AILA Midwest Regional Conference, two EOIR pilot programs were discussed, including a quick docket and a prehearing docket. In addition, it was mentioned that Chicago may be a future city for implementation of one of these programs. Does OCC have any information about either of these pilot programs and whether one will be implemented in Chicago? Is OCC involved in the planning for one of these pilot programs in Chicago?

EOIR Response:

Assistant Chief Immigration Judge Jill Dufresne and Immigration Judge Giambastiani participated in the meeting to provide the following response regarding the pilot quick docket:

EOIR has piloted a quick docket in San Francisco and Seattle. The purpose of the quick docket is to identify non-detained cases that appear meritorious of some relief and there are either no issues or only a few issues that could be addressed by brief questioning. The pilot project places these cases on a quick docket for expeditious adjudication. To be successful, the project requires the cooperation of EOIR, OCC, and the private bar.

The Chicago Immigration Court will be participating in a quick docket pilot project. Immigration Judge Giambastiani and Immigration Judge Perez-Guzman will participate in the pilot and the pilot will be limited to cases scheduled with either judge. Each judge will schedule the quick docket for one afternoon per month on the last Thursday of the month. In months in which the judge has a conflict, the quick docket will move to the first Thursday of the next month. It is anticipated that the pilot will begin May 29 for Immigration Judge Perez-Guzman and June 5 for Immigration Judge Giambastiani due to a conflict on May 29.

OCC will be responsible for identifying cases appropriate for the quick docket and will file a motion to advance the case to the quick docket. To ensure that parties have

sufficient time to prepare the cases, EOIR will not schedule any cases for the quick docket if the case is already scheduled for individual hearing within the next 60 days.

EOIR does not have a timeline for how long the pilot will continue. Instead, EOIR will evaluate the pilot after a couple of months. EOIR looks forward to working with OCC and AILA to make the quick docket a successful program. If there are additional questions for EOIR, please submit the questions to Judge Giambastiani.

OCC Response:

OCC looks forward to the quick docket and is considering how best to implement the pilot. OCC does not regard the pilot to be uncontested; rather it regards this pilot as an ideal way to identify cases that can be completed within 1 hour. OCC will assess whether the issues are or can be narrowed in scope in order to merit placement on the pilot docket. Additionally, the OCC will work with AILA and the private bar towards establishing a method to mutually place cases on the docket. The goal will be to identify 5 cases per docket per judge. One of the most difficult questions is how to identify appropriate cases. Given the volume of pending cases, OCC does not have capacity to receive requests from the private bar at this time regarding what cases to move to the quick docket. Instead, OCC will attempt to identify cases internally and then reach out to the attorney of record for questions and to confirm interest in moving to the quick docket.

Even if a case moves to the quick docket, the respondent must be prepared present his/her case during the docket. OCC anticipates that testimony will be necessary for all cases.

OCC is considering what types of cases may be appropriate for the quick docket. For example, non-LPR cancellation cases may not be appropriate because it is unlikely the case would be resolved at the conclusion of the quick docket due to the statutory limit on non-lpr cancellation grants. OCC prefers to use the quick docket for cases that will reach a final resolution during the docket. However, OCC is open to suggestions and for this reason, seeks AILA input on what types of cases may be appropriate for the quick docket. Please send suggestions on what types of cases may be appropriate for inclusion in the quick docket to a designated AILA member who can compile the suggestions before sending to OCC.

OCC is still considering how best to implement the pilot. The first hurdle is identifying the cases. The 15 day call up date for the application and supporting documents is not conducive to the quick docket because OCC does not have the case information until very near the individual hearing. In addition, OCC does not have the file for cases scheduled more than one year in the future. Finally, OCC will need to have current fingerprints for cases on the quick docket. OCC looks forward to working through these issues and learning from the pilot quick docket. The quick docket will require professionalism on the part of all parties.

- 6) Does the possibility of a future pilot program affect how OCC is adjudicating prosecutorial discretion requests? If so, how?

The quick docket pilot will not affect the adjudication of prosecutorial discretion requests.

Prosecutorial Discretion:

Forms of Prosecutorial Discretion:

- 7) The June 17, 2011 Morton Memo, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens*, defines prosecutorial discretion to include a broad range of discretionary enforcement decisions, including “settling or dismissing a proceeding” and “agreeing to voluntary departure, the withdrawal of an application for admission, or other action in lieu of obtaining a formal order of removal.” When reviewing a case for prosecutorial discretion, does OCC also consider whether to settle, or concede to eligibility for immigration benefits, such as asylum, cancellation, adjustment, etc...? For example, a respondent may be a long term legal permanent resident with strong family ties to the United States, but who is also removable for two misdemeanor retail theft convictions from the early 1990s. In reviewing this case for prosecutorial discretion, would OCC consider conceding to eligibility in advance of the scheduled individual hearing?

In accordance with the memos, OCC issues prosecutorial discretion in a number of ways, including agreeing to relief and waiving appeal. In order for OCC to concede to relief, the respondent must be statutorily eligible. It is rare that OCC can concede to relief without hearing any testimony from the respondent. The pilot quick docket is an attempt to quickly conclude cases.

- 8) What is the best manner of requesting prosecutorial discretion to concede to eligibility for the requested immigration benefits?

OCC will be piloting the quick docket in conjunction with EOIR as mentioned above.

- 9) In what percentage of cases does OCC issue prosecutorial discretion to concede to relief verses to agree to administrative closure?

OCC does not have this information. EOIR determines whether a respondent is granted or denied relief. Even if OCC and the attorney agree to relief, the Immigration Judge makes the decision in the case.

- 10) Has OCC conceded to eligibility for relief for any of the individual hearings that were fully prepared for individual hearing for Immigration Judge Zerbe’s docket, but were later rescheduled to master calendar hearings?

In order for OCC to concede to relief, there must be some testimony on the record. For cases that have testimony on the record, OCC has conceded to relief and/or waived appeal.

Supporting Documents:

- 11) For requests for prosecutorial discretion in which supporting documents have previously been filed with EOIR and OCC, does OCC prefer citation to supporting documents previously filed (citing to the relevant exhibit and page number) or resubmitting new copies of all supporting documents for the prosecutorial discretion request?

OCC recommends that attorneys resend all supporting documents with the request for prosecutorial discretion. Although the attorney may have already sent the supporting documents as part of a filing with EOIR, the filing may not have been scanned into OCC's electronic system and OCC does not have the physical files for cases scheduled for more than one year in the future.

Please note that OCC does not have a size limit for electronic submissions. However, some attorneys may have limits on how large of a document they can send through their own systems. AILA attorneys with this issue have sent separate emails with attachment 1 of 4, attachment 2 of 4, etc... in order to send a large filing to OCC

- 12) For respondents with past convictions, does OCC have a policy on how recent a conviction must be in order to impact the prosecutorial discretion request? For example, OCC denied a recent request for prosecutorial discretion for a long-term LPR with two shoplifting convictions, the most recent being in 2008. The OCC attorney commented that the 2008 conviction was too recent.

OCC reviews cases on a case by case basis and does not have a policy for how recent a conviction must be to affect the prosecutorial discretion request. If an attorney feels that their request for prosecutorial discretion was not properly considered, the attorney should call John Gountanis or Nelson Perez.

- 13) Will OCC grant prosecutorial discretion to administratively close for a respondent who is undocumented, has a long residence in the United States, paid taxes, but does not have a U.S. citizen relative? An AILA attorney reported that OCC denied prosecutorial discretion for a respondent with long residence in the United States but without a U.S. citizen or legal permanent resident relative.

OCC applies the 2011 Vincent memo in responding to prosecutorial discretion requests. If an attorney believes that OCC erred in its prosecutorial discretion decision, the attorney should call John Gountanis or Nelson Perez to review the decision.

- 14) The November 17, 2011 Vincent Memo, *Case-by-Case Review of Incoming and Certain Pending Cases* identifies one factor for prosecutorial discretion as a respondent "who has very long-term presence in the United States, has an immediate family member who is a United States citizen,

and has established compelling ties and made compelling contributions to the United States.” The June 17, 2011 Morton memo also lists long residence in the United States as a factor to be considered but does not require an immediate family member who is a United States citizen. The November 17, 2011 Vincent Memo clarifies that “prosecutorial discretion should be made on a case-by-case basis and on the totality of the circumstances” and that the factors discussed in the Vincent memo “do not replace or supersede” the June 17, 2011 Morton memo. Please clarify whether OCC reviews both the Morton and Vincent factors when evaluating prosecutorial discretion?

The 2011 Morton memo is broader than the 2011 Vincent memo and applies more broadly to ICE. The 2011 Vincent memo provides specific guidance to OCC as to how to apply prosecutorial discretion for aliens in proceedings. OCC generally reviews cases under the factors in the 2011 Vincent memo.

Provisional Waivers:

- 15) What is the position of OCC regarding terminating removal proceedings for respondents who have approved provisional waivers? During the liaison meeting on May 15, 2013, OCC responded that "If the provisional waiver is approved, OCC recommends that the respondent file a motion to recalendar and terminate with the Immigration Court." Some AILA members are reporting that OCC is not agreeing to terminate, but instead has asked respondents to seek voluntary departure at the next master calendar hearing. This creates judicial inefficiencies in requiring the respondents to attend a further hearing. In addition, with the current backlogs, respondents would generally have to wait over one year for the master calendar hearing. Is OCC agreeable to terminating cases for respondents granted provisional waivers? If not, why not?

The OCC position has not changed since the liaison meeting on May 15, 2013. Once the provisional waiver has been granted, the attorney should file a motion to terminate directly with court. If OCC opposes the motion to terminate, please bring this to the attention of Nelson Perez or John Gountanis.

Fingerprints:

- 16) Does OCC still receive requests to re-run the fingerprints for respondents with an IDENT hit and are there any problems which AILA members should be aware? In one recent case, an attorney called the office asking OCC to re-run the fingerprints for a respondent with a felony conviction. She also confirmed by email and received a response from the ICE OCC clerk. At the merits hearing, the assistant chief counsel stated that the prints had not been updated.

The process has not changed. Please review the Fact Sheet for procedures for initial process for fingerprinting and for expired fingerprints. If there are issues with the process, please call John Gountarnis or Nelson Perez so that it may be resolved.

VAWA Cancellation

- 17) To qualify for cancellation under the special provisions for battered spouses/children, the respondent must demonstrate that the abuser was either a U.S. citizen or legal permanent resident. In some cases, the victim of domestic violence has no manner of obtaining this proof from the abuser. Pursuant to 8 C.F.R. 204.1(g)(3), if a victim of domestic violence is submitting a self-petition and “is unable to present primary or secondary evidence of an abuser’s citizenship or immigration status, the Service will attempt to electronically verify the abuser’s citizenship or immigration status from information contained in Service computerized records.” Will OCC similarly attempt to electronically verify the abuser’s citizenship or immigration status in the case of an applicant for cancellation of removal under INA § 240A(b)(2)?

It is in the best interest of OCC to assist with confirming the immigration status of an abusive family member for purposes of VAWA Cancellation; however, it is unclear whether OCC is in a position to do so. OCC does not have access to the same systems as USCIS. If the issue arises, OCC recommends that the attorney reach out to the OCC attorney assigned to the individual hearing or to the team mailbox with the request to confirm the status of the abuser. The attorney should provide as much information as possible regarding the abuser.

In addition, OCC recommends that AILA raise the issue with USCIS to determine if USCIS is able to confirm the status of an abuser in cases in which the applicant is applying for VAWA Cancellation of Removal.

- 18) If so, what is the process for requesting that OCC electronically verify the abuser’s citizenship or immigration status?

See above.

OCC Monthly Schedule:

- 19) Thank you for sending the monthly OCC schedule so that we have notice of which attorneys are assigned to the scheduled hearings and assigned as duty attorneys. Unfortunately, in recent months, the schedules have been more difficult to read. The may be attributed to the manner of scanning the schedule. Can the OCC produce the monthly schedule in a format that is printable and readable?

OCC has fixed the issue and sent a revised copy to AILA.

Case Completion Goals:

- 20) Do OCC attorneys have case completion goals similar to the Immigration Judges?

No, OCC attorneys do not have case completion goals.

- 21) Does performance review of OCC attorneys consider the following:
- Decisions to grant prosecutorial discretion to administratively close a case?
 - Concessions to eligibility to relief?
 - Non-opposition to motions?
 - Waiver of appeal?

- e. Appeals filed?
- f. Number of removal orders?

Performance evaluation of attorneys does not involve reviewing numbers for any of the above-mentioned items. All OCC attorneys have a performance work plan. Attorneys are evaluated on advocacy, client relationship, and legal research/writing. The above listed items fall within these three broader areas.

If there is an issue with an OCC attorney not following procedures and policies, please raise the issue to John Gountanis or Nelson Perez so that we can correct it. It is our impression that OCC attorneys are genuinely trying to follow all procedures and policies, but we also recognize that it can be challenging to keep up with the changes.