

**AILA Chicago, Indiana, and Wisconsin Chapters and ICE Office of Chief Counsel Chicago
Official Liaison Questions and Answers
June 30, 2016**

Attendees:

Chicago Office of Chicago Counsel:
Chief Counsel Karen Lundgren
Deputy Chief Counsel John Gountanis

AILA Chicago:
Erin Cobb
Karolyn Talbert
Stephen Berman
Elisabeth Carlson
Gretchen Ekerdt
Yllka Seseri
Marisol Gallegos

AILA Indiana:
Ali Finkelmeier
Jason Flora

1. Staffing

a. Have there been any staffing changes at OCC?

Karen Lundgren has been promoted to SES (Senior Executive Service).

Nelson Perez has left the Chicago OCC to become the Chief Counsel for the Miami Office of Chief Counsel. Nelson was also promoted to SES.

Former Deputy Chief Counsel Jayme Salinardi is a new Immigration Judge at the Kansas City Immigration Court. Similarly, Justin Howard, a former Assistant Chief Counsel, is a new Immigration Judge at the Kansas City Immigration Court.

ACC Renatta Parras has been selected as a Deputy Chief Counsel in the New York Office of Chief Counsel.

Kristin Linsley is on detail as the Special Assistant U.S. Attorney.

Patrick McKenna will begin a 2-year detail to Homeland Security Investigations beginning in September, replacing Christine Young who will return to the office.

b. Does OCC anticipate hiring any additional staff in response to the hiring of the new Immigration Judges?

Yes, OCC has hired 5 new attorneys for the Chicago office and 5 new attorneys for the Kansas City office. OCC is not hiring any additional support staff.

2. Fingerprints

We appreciate that OCC distributed the Agreement between USCIS and USICE regarding Fingerprint Check Refresh Requests. AILA members remain concerned about the current process to obtain fingerprints and to renew fingerprints. The regulations require that respondents obtain the necessary biometrics and comply “the applicable regulations, the instructions to the applications, the biometrics notice, and instructions provided by DHS, within the time allowed by the immigration judge’s order.” 8 C.F.R. § 1003.47. Failure to do so results in abandonment of an application for relief. *See id.*

Initial Fingerprints:

- a. **What is the current procedure to obtain an initial fingerprint appointment for a respondent seeking relief in removal proceedings?**

The new procedure only applies to refreshing fingerprints. The procedure for obtaining an initial fingerprint appointment has not changed.

- b. **What if the USCIS Texas Service Center (TSC) or Nebraska Service Center (NSC) fails to issue the initial fingerprint appointment?**

Same as above – the procedure for obtaining an initial fingerprint appointment has not changed. Respondents and their attorneys should follow the same procedures.

- c. **What if the respondent is seeking a form of relief that cannot be filed at the TSC or NSC? For example, what if a respondent is seeking a waiver under 237(a)(1)(H), or a waiver under 212(d)(3)?**

Same as above- the procedure for obtaining an initial fingerprint appointment has not changed.

The only printing that ICE OCC can do is for prosecutorial discretion requests for individuals who were not previously fingerprinted. The process for these fingerprints is different than what is required for an application for immigration relief.

Fingerprint Check Refresh:

- d. **What if the respondent is renewing an application for adjustment of status or temporary protected status previously filed with USCIS prior to removal proceedings. Can the previous fingerprints be refreshed?**

The respondent should follow the same procedures as before for the initial fingerprint appointments. Previous fingerprints from prior applications before removal proceedings cannot be refreshed.

- e. **If a respondent was previously printed at the border by CBP upon entry (not at an ASC), can those fingerprints be refreshed for the individual hearing?**

No, these prints by CBP cannot be refreshed for an individual hearing.

Sometimes for PD ICE can pull prints from CBP, but prints on file with CBP would not be sufficient for an application for immigration relief. USCIS needs prints to be taken in the ASC. What OCC does for PD is outside of formal fingerprinting.

- f. If a respondent was previously printed at an ASC for an unrelated application (for example, employment authorization), can these previous fingerprints be refreshed for the current individual hearing?**

No.

- g. How soon in advance of individual hearings will OCC request that USCIS refresh the fingerprints?**

OCC is requesting USCIS to refresh prints 4 weeks prior to the individual hearing. It is only suppose to take USCIS few days to refresh prints, though we have seen some delays during this initial roll out. If USCIS cannot refresh the prints, USCIS will mail an ASC appointment notice to the respondent and the respondent must attend this appointment. The number of cases in which fingerprints cannot be refreshed should be minimal.

- h. Will OCC provide the respondent confirmation that a previously expired fingerprint can be refreshed?**

No. The purpose of the refresh procedure is to create efficiencies.

- i. If previous fingerprints cannot be refreshed, how soon in advance of the merits hearing will the respondent receive the new fingerprint appointment?**

USCIS will mail the ASC appointment notice to the respondent if fingerprints cannot be refreshed.

- j. Is there a contact at OCC for cases that fall through the cracks? One member reported that her client was granted cancellation of removal and has an I-485 approval notice from USCIS dated January 4, 2016, however, USCIS has stated that she cannot receive her permanent resident card until biometrics are taken. Through email, dated April 7, 2016, USCIS has directed her to contact the local USCIS office to schedule the biometrics. However, USCIS refused because according to this new agreement, they will no longer issue fingerprints through Infopass. Is there a contact at OCC that AILA members can contact when there is a breakdown in the new fingerprint system?**

Please see post order instruction question and answer below.

3. Prosecutorial Discretion

- a. Are there any updates on the average timeframe for OCC to respond to a request for prosecutorial discretion?**

On average, OCC is responding to requests for prosecutorial discretion within 60 days or prior to the next hearing, whichever is earlier.

- b. Who is the point person at OCC to follow up on cases pending longer than mentioned above?**

Please call the attorney assigned to the case. If you do not know which attorney is assigned, please call the front desk and ask which attorney is assigned. If you leave a message with the assigned attorney, please leave a detailed message with your name, phone number, and the A number. If you do not receive a response within a reasonable time period (for example, two weeks), please call John Gountanis.

4. Increasing Court Efficiency

Members who submitted requests to advance merits proceedings for efficient docketing (AMPED requests) had a positive experience in advancing cases that were ultimately successful. The cases that advanced were completed in a brief hearing, allowing for greater judicial efficiency.

- a. With the new Immigration Judges coming on board this summer and fall, when will OCC reopen this program and accept new requests for the AMPED docket, or institute a similar program of requests to advance where there is likely non-opposition to the grant of relief? "**

OCC is open to reconsidering the program and other programs after the new immigration judges are on board at the Chicago Immigration Court and new attorneys trained at OCC. Once the new judges are in place, OCC will work with the Immigration Court to determine how best to proceed.

- b. Will OCC expand the parameters of cases eligible to request AMPED processing?**

Please see above.

- c. Does OCC have additional advice to the private bar for how we can work together to reduce the backlog of cases pending with the Immigration Court and to create greater efficiencies at the Immigration Court?**

OCC is consistently working on ways to make the immigration court process more efficient. There are many ideas that would improve court efficiency. For example, the Kansas City Immigration Court has written pleadings. This reduces the number of master calendar hearings and allows for more individual hearings. OCC is open to considering the AMPED program and other programs after the new immigration judges are on board.

5. Post Order Instructions

The DHS post order instructions state for that an applicant who has been granted permanent residence or asylum must schedule an Infopass appointment no earlier than 3 business days after the final order. However, even when applicants wait the necessary 3 business days, Information officers at Infopass are instructing applicants that USCIS must wait on a clearance code before a document can be processed. Infopass officer have stated that it may take 30 days for these "codes" to clear and to come back for a subsequent Infopass appointment. Attending multiple Infopass appointments and having to wait 30 days for proof of asylee status creates a significant hardship for respondents and prevents asylees for accessing a social security number and public benefits. Moreover, when attorneys have contacted ICE OCC about these additional clearances, ICE OCC has stated that all the necessary procedures have been followed.

a. What codes have to clear before an I-94 or permanent resident card can be processed?

First, there must be a final decision. The IJ decision is final on the day of decision only if both sides waive appeal. If either side reserves appeal, the decision becomes final 30 days after the date of decision, so long as neither party appeals. If there is an appeal, the decision is not final until the appeal is resolved.

After there is a final decision from the Immigration Judge, OCC confirms that the background check was completed and then sends USCIS a BCR (Background Check Registry), listing the completed background checks, category of admission, name, address, and relief granted. OCC typically sends the BCR to USCIS within 2 business days of a final decision.

b. Are these codes also required for minor respondents?

Yes, the BCR, which will include a category of admission code, is required for all respondents who are granted relief.

c. What is the purpose of the additional codes when the respondent already passed the necessary background check at the Immigration Court?

OCC must provide the BCR to USCIS to verify that all background checks are clear and to provide a code for the category of admission.

d. How long does it take for these codes to clear? Does it take 30 days? Or, is the current language requiring a 3 day wait between the final order and Infopass appointment sufficient?

OCC sends the BCR with these codes within 2 business days of a final decision. The current language requiring a 3 day wait between the final order and Infopass appointment is accurate. Sometimes there is a delay when OCC receives a written decision (for example, a written cancellation of removal decision, or a remand granting relief), but OCC tries to avoid these delays.

If a respondent attends Infopass and USCIS does not have the BCR, USCIS will reach out to OCC asking for the BCR, by emailing a designated staff member here, who will track down the BCR for USCIS. OCC is very responsive to requests from USCIS for the BCR.

If there is an error in the category of admission for a respondent approved for relief by the Immigration Judge, please contact Roxanne Moss at OCC to ask for a corrected BCR.

6. Requests to Join in Motion to Reopen

- a. **Has there been any change to the review of requests to join in motion to reopen? Previously, Senior Attorney Seth Fitter and ACC Jessica Galassi, in consultation with Deputy Chief Counsel and Chief Counsel reviewed the requests.**

The staffing remains the same.

- b. **Is 90 days the average time frame for OCC to respond to requests to join in a Motion to Reopen?**

Yes. If there is a request pending longer than 90 days, please contact Jessica Galassi or Seth Fitter.

- c. **During the last meeting, OCC mentioned creating a cover sheet for use with requests to join in motions to reopen to provide clearer guidance to the private bar and to allow OCC to more efficiently respond to requests. Is this cover sheet finalized?**

Attached please find the instructions and cover sheet for requests to join in motions to reopen. Also included is a fillable JMTR Cover Sheet.

7. **Special Immigrant Juvenile Status**

- a. **Can you state OCC's position regarding respondents with approved Special Immigrant Juvenile Status (SIJS) I-360 petition but who are waiting for the priority date to become current?**

Generally, OCC will not agree to terminate or admin close cases for individuals with approved SIJS petitions. However, OCC is not opposed to continuances until the visa numbers are available.