

**AILA Chicago, Indiana, and Wisconsin Chapters and ICE Office of Chief Counsel Chicago
Official Liaison Questions and Answers
December 8, 2016**

Attendees:

OCC:

Deputy Chief Counsel John Gountanis
Deputy Chief Counsel Daniel Rah
Deputy Chief Counsel Melissa Castillo (Kansas City OCC)

AILA Chicago OCC Committee Members:

Erin Cobb, Marta Delgado, Marisol Gallegos, Aneesha Gandhi, Helen Harnett, Aaron Lawee,
Amina Najib, Karolyn Talbert

AILA Indiana and Wisconsin Members: Stephen Berman (WI); Ali Finkelmeier (IN)

1. Staffing and Contacting OCC

- a. Have there been any recent staffing changes at OCC?
 - **Chief Counsel Karen Lundgren is on special assignment and will return in March, 2017**
 - **Daniel Rah is a new Deputy Chief Counsel in Chicago.**
 - **Melissa Castillo is the new Deputy Chief Counsel for Kansas City sub-office**
 - **There are five new ACCs and Karoline Calia, who was previously at OCC, has returned to OCC**
- b. Do you anticipate any further staffing changes in the near future?
 - **Senior Attorney Seth Fitter retired at the end of December 2016**
 - **OCC is hoping to hire more ACCs in 2017.**
 - **OCC has hired 1 additional mail and file clerk, and hopes to hire one more in 2017.**
- c. Is there an updated Chicago E-Inquiry Fact Sheet so that AILA members know where to direct inquiries for cases in front of the new Immigration Judges?

The Chicago E-Inquiry Fact Sheet has been updated as of 12/7/2016
- d. Is it still the best practice to use the team email addresses to submit inquiries? AILA members have been told that it is better to use the general OCC email address due to

the shifts in staffing and teams. Please clarify the proper use of the team email addresses.

- **Yes, it is still the best practice to use the team email addresses to submit inquiries. Inquiries to the team emails should be based on the IJ assigned to the case**

- **Please use the general OCC eservice box (OPLA-CHI-eService@ice.dhs.gov) only to serve our office documents filed with EOIR, or to file PD and JMTR requests. It is anticipated that a national OCC e-service program will roll out in late Spring for electronic filing with all OCC offices.**

e. Will OCC provide list of which trial attorneys are assigned to each OCC team?

OCC is in the process of assigning trial attorneys to OCC teams. There is a duty attorney assigned to an OCC team each day of the business week and that attorney will respond to all inquiries or refer the inquiry to the trial attorney assigned to the case. If you do not receive a response to your inquiry within a reasonable time (generally 3 business days), call one of the Deputy Chief Counsels.

f. When there is a staffing change at the Office of Chief Counsel, what is the best manner of determining which trial attorney is assigned to the case?

- **Check the monthly OCC schedule, distributed monthly to AILA**

- **If the OCC monthly schedule is not yet available, call the OCC front desk**

2. Fingerprinting for Respondents

Practitioners have reported ongoing issues in obtaining initial fingerprints and obtaining confirmation that fingerprints have been refreshed.

- a. How are fingerprint appointments scheduled for Respondents who do not have an application for relief that is filed with the Nebraska Service Center or Texas Service Center (i.e. a 237(a)(1)(H) waiver)?
 - i. Previously, USCIS Chicago scheduled these fingerprints through Infopass but USCIS Chicago Infopass will no longer schedule any fingerprints. During the June 30, 2016, OCC responded that the process for obtaining initial fingerprints has not changed. USCIS does not seem to have this same understanding. Has OCC discussed with USCIS how to respond to initial fingerprinting for applications not filed with NSC or TSC?

The initial process for fingerprinting (i.e., making the request to USCIS in Texas) has not changed.

- b. Is OCC affirmatively requesting that USCIS refresh prints 4 weeks prior to the individual hearing?

OCC reviews cases four weeks in advance of an individual hearing to determine if a refresh by USCIS of fingerprints is needed. If the fingerprints were taken in the last 15 months or if the respondent has an IDENT hit, then OCC does not need fingerprints to be refreshed by USCIS.

If the fingerprints have expired (were taken more than 15 months in the past) and there is no IDENT hit, then OCC notifies USCIS for a refresh of fingerprints. USCIS then responds to OCC within approximately 10 days stating whether the fingerprints can be refreshed. Most fingerprints can be refreshed. If fingerprints cannot be refreshed, USCIS will send a fingerprint notice to the respondent. USCIS does not notify OCC of this appointment date.

- c. Does USCIS communicate to OCC when a refresh is not possible?

Yes, see above.

- d. Does USCIS advise OCC of the new fingerprint appointment to confirm that it will be completed in time for the individual hearing?

No, see above

- e. If an attorney has questions about fingerprinting, should the attorney call or email the relevant OCC team? Or, is it better to contact the Paralegal Specialist?

- Attorneys may call the OCC front desk to ask whether fingerprints are refreshed and background checks have been completed. It is recommended that attorneys call the OCC front desk at least 10 days in advance of the hearing. If there is no response, please contact Supervisory Legal Assistant Roxanne Moss.

3. Special Immigrant Juveniles

For many Special Immigrant Juvenile (SIJS) petitioners, filing for adjustment provides a critical benefit because it allows the petitioners to file for employment authorization (EAD) while their SIJS and adjustment cases are pending. For immigration children and youth, the EAD gives them access to a social security number, which allows them to more easily enroll in school, and also allows them to obtain a driver's license or state identification.

OCC attorneys have consistently opposed motions to terminate based on pending SIJS petitions, citing a national instruction to do so. OCC has agreed to motions to terminate only when the SIJS petition is approved and the priority date is current based on the final action date visa bulletin.

By opposing motions to terminate for pending SIJS petitions and for approved SIJS petition waiting for their priority date to be current based on the final action date visa bulletin, OCC is preventing immigrant children and youth from accessing an EAD.

For example, USCIS has announced that for December, 2016, individuals seeking adjustment under the EB4 category (the category under which SIJS petitioners are allocated visas) may use the date for filing visa bulletin (which is current), rather than the final action date visa bulletin, to determine when they can file for adjustment of status. Therefore, an immigrant youth who is not in removal proceedings can simultaneously file a SIJS petition, adjustment and EAD application with USCIS. However, an immigrant youth in removal proceedings would have to file their SIJS petition with USCIS, wait for approval of the SIJS, then wait for the priority date to become current based on the final action date visa bulletin, then file a motion to terminate, and only after removal proceedings are terminated, file for adjustment and EAD with USCIS. This results in significant delays for immigrant children and youth to obtain an EAD.

- a. Will OCC reconsider and join in motions to terminate for pending SIJS petitions?

No, OCC is following national policy in declining to join in motions to terminate for pending SIJS petitions.

- b. Will OCC reconsider and join in motions to terminate for approved SIJS petitions when the priority date is current based on the filing date visa bulletin.

Yes, OCC will consider joining in motions to terminate for approved SIJS petitions with priority dates that are current based on the relevant USCIS visa bulletin (filing date or final action date). OCC will follow USCIS lead on which bulletin to use each month.

- c. If not, will OCC share the national instruction which requires OCC to oppose motions to terminate for pending SIJS petitions and/or for approved SIJS petitions with a priority date only current based on the filing date and not the final action date visa bulletin?
- d. If OCC is unwilling to share this instruction, can OCC share the reasoning behind the opposition?

4. Joint Motions to Reopen

- a. Thank you for distributing the JMTR Cover Sheet, dated August 30, 2016. It is our understanding that this cover sheet is only used for joint motions to reopen. According to the instructions, OCC endeavored to respond to requests to join in

motions to reopen within 60 days. What is the current time frame for responding to requests to join in motions to reopen?

- b. For requests to join in motions to reopen that have been pending longer than 60 days, is it still the best practice to contact the Paralegal Specialist for a status update?

Yes, please contact Richard Blake (paralegal) if the request to join in a motion to reopen has been pending for more than 60 days. Jessica Galassi is currently reviewing joint motions to reopen.

5. Prosecutorial Discretion

- a. Is there a similar cover sheet as the JMTR requests that should be used for requests for prosecutorial discretion, including requests to join in motions to terminate or administratively close?

OCC will consider whether a separate cover sheet is needed for prosecutorial discretion requests. If attorneys have questions about what to submit with the request, it may be useful to include documents similar to those listed on the AMPED Request cover sheet.

- b. Have there been any recent changes to OCC's adjudication of prosecutorial discretion requests?

No

- c. Do any types of cases receive priority for adjudication? For example, does an approved I-601A receive priority over a more general prosecutorial discretion request? Is there a tier system for PD requests?

OCC encourages attorneys to file prosecutorial discretion requests as soon as possible in order to help move cases off the docket and free up court space for other cases. When OCC receives a prosecutorial discretion request, it is assigned to a trial attorney within days of receipt.

6. Pink Sheet Program

EOIR has begun a program to identify non-priority cases for termination or administrative closure. This will be based on the Secretary Johnson memo.

- a. What is OCC Chicago's position on the Pink Sheet Program?
 - **OCC encourages the court to consider any program that will increase the court efficiency.**

7. AMPED Docket

- a. In consideration of the continuing backlog at the Chicago Immigration Court, will OCC revisit and reopen the AMPED docket to promote docket efficiency?
 - **OCC plans to have a meeting with EOIR to discuss the AMPED docket, which has been temporarily suspended with the arrival of the new judges at the Chicago Immigration Court.**

8. Appeal, Waiving Appeal, and Removal During Appeal

- a. What is OCC's policy regarding reserving appeal in cases where the immigration judge grants relief? In particular, when must trial attorneys reserve appeal to check with supervisors, and when do they have the authority to waive appeal on the government's behalf?
 - **Trial attorneys have discretion on whether to reserve or waive appeal. Many times, newer attorneys will reserve to as to discuss with senior attorney or deputy.**
- b. Detained respondents are not released until after OCC waives appeal. What is OCC's policy regarding notifying attorneys when they have waived appeal post-hearing in a detained case? Should attorneys check with OCC to find out if appeal has been waived, and if so when?
 - **For detained respondents, the discussion at OCC as to whether to appeal or waive appeal happens within a few days of the hearing. If OCC is not appealing the decision, OCC will immediately notify ERO.**
 - **If there is a question about whether OCC will be appealing a decision in a detained case, please call the trial attorney from the hearing.**
- c. Does ICE ERO consult with OCC when effectuating the removal of a respondent who has a pending appeal?
 - **Generally, ERO does not consult with OCC before removing a respondent. ERO does, however, check the relevant databases to ensure that no stay of removal is in place. ERO does call OCC if it is unclear if there is a pending appeal or if there is an automatic stay of removal.**

9. Locating Files

At times AILA members have reported being unable to discover which office has a Respondent's file. This has been a problem specifically in the context of a detained Respondent who is attempting to retrieve their original documents:

- a. What is the best way for a practitioner to determine the location of a Respondent's file?
 - **The best practice is to call ERO to request return of an original document. They will order the file from its present location, if it isn't already with them .**
 - **OCC does not provide original documents to respondents because there is a procedure in place to request these documents from ERO.**

- b. If OCC does not have a file, are there any tips for how the practitioner can find out where the file is located?