U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: MaryBeth Keller
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 18-01: *Change of Venue*

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I. Introduction

Changes of Venue (COV) create problems in caseload management and operational inefficiencies in our courts. This Operating Policies and Procedures Memorandum (OPPM) sets forth guidance to mitigate these challenges. These policies and procedures, however, require that every Immigration Judge, in fairness to the receiving Immigration Court, ensures that "good cause has been shown" before granting a motion for COV. This OPPM replaces OPPM 01-02.

II. Immigration Judge Authority to Change Venue

Venue for Immigration Court proceedings lies with the Immigration Court where the charging document is filed by the Department of Homeland Security (DHS). 8 C.F.R. §§ 1003.14(a) & 1003.20(a). Immigration Judges may, upon a proper motion, change venue in those proceedings pursuant to the authority contained in 8 C.F.R. § 1003.20. The standard for granting a motion for COV is "good cause." 8 C.F.R. § 1003.20(b). The regulation provides authority to grant a change of venue only when one of the parties has filed a motion for COV and the other party has been given notice and an opportunity to respond. *See* 8 C.F.R. § 1003.20(b). Immigration Judges may not *sua sponte* change venue.

In limited circumstances, a case can be moved between detained and non-detained courts without the necessity of a motion for COV. Such "clerical transfers" are only authorized when allowed under the administrative control list for paired courts. In all other cases, a motion for COV is required before a case can be moved from one Immigration Court to another. Because changes of venue necessarily delay case adjudications and create caseload management difficulties, more than two motions to change venue by the same party are disfavored. Further, motions to change venue solely for dilatory purposes should not be condoned by Immigration Judges. Motions to change venue after a merits hearing has begun are strongly disfavored.

III. Requirement to Follow the Law of the Case Doctrine in Change of Venue Cases

Once an Immigration Judge issues an order changing venue to another court, the receiving Judge is not free to hear the case *de novo* and ignore any orders prior to the venue change, unless exceptional circumstances, described in this OPPM, permit departure from this policy. The law of the case doctrine, while non-statutory, is a well-established legal doctrine with a long-standing foundation in the federal courts. In essence, this rule requires that once a court finally decides any issue of law, the ruling should not be altered by the receiving court. Adherence to this doctrine is so critical in COV situations that even the Supreme Court has declared that "the policies supporting the doctrine apply *with even greater force to transfer decisions* than to decisions of substantive law; transferee courts that feel entirely free to revisit transfer decisions of a coordinate court threaten to send litigants into a vicious circle of litigation." *Christianson v. Colt Industries Operating Corp*., 486 U.S. 800, 816 (1988) (emphasis added).

Following the law of the case doctrine is crucial "to preserve the ordered functioning of the judicial process." *United States v. Baynes*, 400 F. Supp. 285, 310 n.3 (E.D. Penn.), *aff'd*, 517 F.2d 1399 (3d Cir. 1975). It is also used "to prevent 'delay, harassment, inconsistency, and in some instances judge-shopping.'" *General Electric Co. v. Westinghouse Electric Corp*., 297 F. Supp. 84,

86 (D. Mass. 1969). Moreover, it "promotes the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.'" *Christianson*, 486 U.S. at 816.

Immigration Judges are not expected to follow this rule blindly, however. The law of the case doctrine is not absolute; rather, there are certain delineated circumstances where departure from the doctrine may be permitted. As one court indicated, the "rule was not absolute and all-embracing and there are exceptional circumstances which will permit one judge of a district court to overrule a decision by another judge of the same court in the same case." *United States v. Wheeler*, 256 F.2d 745,747 (3d Cir.), cert. denied, 383 U.S. 873 (1958). Circumstances which may warrant a deviation from this policy include: 1) a supervening rule of law; 2) compelling or unusual circumstances; 3) new evidence available to the second judge; and 4) such clear error in the previous decision that its result would be manifestly unjust. *Hayman Cash Register Co. v. Sarokin*, 669 F.2d 162, 169 (3d Cir.1982). *See also Christianson*, 486 U.S. at 816; *Arizona v. California*, 460 U.S. 605, 617 (1983).

In maintaining this requirement from OPPM 01-02, this OPPM continues to emphasize that the law of the case doctrine is consistent with all existing immigration laws and regulations, and its application can be inferred from 8 C.F.R. § 1240.1(b). Moreover, one coherent record is necessary to comply with the requirements for review once an appeal is filed. *See* 8 C.F.R. § 1003.5. Lastly, because the law of the case doctrine has been categorized "only as a rule of policy and not as one of law," *Wilson v. Ohio River Co*., 236 F. Supp. 96, 98 (S.D. W.V.A. 1964), pursuant to the authority under 8 C.F.R. § 1003.9, the law of the case doctrine, as stated in this section, shall apply in COV circumstances.

The law of the case doctrine includes the recognition of another Immigration Judge's COV order. Absent one of the circumstances discussed above, Immigration Judges cannot return a case to the sending court on the ground that the change of venue was improper.

IV. Specific Requirements for Oral and Written Motions for Change of Venue

A. Oral Motions

If either party makes an oral motion for COV, the Immigration Judge must record the motion, as well as his or her decision on the motion, on the Digital Audio Recording (DAR) system.

The Immigration Judge must issue a written order (either a long-form order or a standardized order generated by the case management system) on the oral motion for COV. Notations in the ROP or on the Immigration Judge worksheet are insufficient to grant a motion for COV. The court administrator at the receiving court will return to the sending court any ROP that does not contain a written order.

B. Written Motions

The Immigration Judge must issue a written order (either a long-form order or a standardized order generated by the case management system) on the motion for COV. Notations

in the ROP or on the Immigration Judge worksheet are insufficient to grant a motion for COV. The court administrator at the receiving court will return to the sending court any ROP that does not contain a written order.

V. Administrative Requirements for Valid Venue Changes

A. Mandatory Forwarding Address for Non-Detained Cases

A motion for COV should not be granted without identification of a fixed street address, including city, state and ZIP code, where the movant can be reached for further hearing notification. 8 C.F.R. § 1003.20(c). This requirement was instituted to avoid a court receiving an ROP through a motion for COV and having no way to notify the party of a hearing date at the new location. It also allows the sending court to determine the correct receiving court to which the case should be transferred.

B. Pleadings, Issue Resolution, and Scheduling

Prior to granting a motion for COV, the assigned Immigration Judge should make every effort, consistent with procedural due process requirements, to complete as much of the case as possible in the time available. Specifically, the Immigration Judge should attempt to obtain pleadings; resolve the issue of deportability, removability, or inadmissibility; determine what form(s) of relief will be sought; set a date certain by which the relief application(s), if any, must be filed with the court; and state on the record that failure to comply with the filing deadline will constitute abandonment of the relief application(s) and may result in the Judge rendering a decision on the record as constituted. In cases where the Immigration Judge has completed these actions but not yet scheduled the case for an individual merits hearing, the Immigration Judge should also determine, when granting a change of venue, whether the case should be scheduled for a master calendar hearing or an individual merits hearing at the new court. If the latter, the Immigration Judge should indicate on the worksheet that a case involving a change of venue should be scheduled for an individual merits hearing, and Immigration Court staff will identify the record of proceeding for the receiving court to schedule upon receipt. In situations where a non-detained case is already scheduled for an individual merits hearing and a change of venue is subsequently granted, the case should be scheduled for an individual merits hearing at the new venue without an intervening master calendar hearing, and Immigration Court staff will identify the record of proceeding for the receiving court to schedule accordingly.

When it is anticipated based on the guidance above that the case will proceed immediately to an individual merits hearing at the new venue, the Immigration Judge granting the change of venue must advise the respondent that any arrangements to retain existing counsel or obtain new counsel should be made sufficiently in advance of the hearing in the new venue to enable that hearing to proceed on the date scheduled. When deciding on motions to continue in the receiving court, the Immigration Judge is encouraged to consider, among all the relevant facts and circumstances, the respondent's efforts to resolve any representation issues before the subsequent hearing and the amount of time the respondent has had to do so.

For cases to be scheduled on a master calendar after a change of venue has been granted, the master calendar hearing at the new court should occur as soon as practicable and no later than 14 days (for a detained case) or 60 days (for a non-detained case) after the date the change of venue was granted.

Note, however, that in the case of a defensive asylum application, a copy of the asylum application, Form I-589, submitted to support a motion for COV is not considered filed. In this situation, if the motion for COV is granted, the Form I-589 must be separately filed with the court, either at the window or by mail. *See* OPPM 16-01, *Filing Applications for Asylum*.

C. Venue in Detained Cases

For various reasons, DHS sometimes relocates detained aliens after charging documents have been filed. The Immigration Court does not automatically change venue, however, when DHS moves an alien to a location outside the administrative control of the court where the case is pending. Further, the DHS filing a Form I-830, by itself, does not constitute a motion for COV. If DHS fails to produce a detainee because that alien has been moved to another location, the Immigration Court retains venue and administrative control over the case. If DHS produces the alien at a court in another location, absent a valid order changing venue or a new charging document, venue and administrative control does not reside at that location, except for bond redetermination requests, if any. Nothing in this paragraph precludes an alien from filing a motion to change venue if he or she is moved to a detention location outside the administrative control of the court where the case is otherwise pending.

D. Venue in Cases Involving Asylum Applications

Judges should be mindful that COV orders or clerical transfers in cases involving asylum applications may have asylum-clock implications. *See* OPPM 13-02, *The Asylum Clock*. Judges should also be mindful of the one-year asylum filing deadline.

Nothing in this OPPM is intended to limit the discretion of an Immigration Judge, and nothing herein should be construed as mandating a particular outcome in any specific case. If you have any questions regarding this OPPM, please contact your Assistant Chief Immigration Judge.