U. S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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Falls Church, Virginia 22041

August 4, 2000

MEMORANDUM

TO: Immigration Judges
Court Administrators
Support Staff

FROM: Michael J. Creppy
Chief Immigration Judge

SUBJECT: Revised Operating Policy and Procedures Memorandum No. 00-01 , Asylum Request Processing

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This document is intended to provide guidance on the Court's policy regarding asylum processing. Thus, OPPM 96-1 dated March 15, 1996, and draft OPPM 97-4 are hereby superseded. This version of the OPPM, 00-01 amend the version dated March 22, 2000, by modifying section VII relating to "Motions to Reopen".

This Operating Policies and Procedure Memorandum (OPPM) addresses many important changes in the law imposed by passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter, IIRIRA). These changes include mandatory checks of records and databases prior to a grant of asylum, the processing of "Asylum-Only" claims, grants of asylum based upon coercive population controls, new requirements for accepting and scheduling asylum cases, and the consequences of knowingly filing a frivolous asylum application. IIRIRA also imposes statutory bars to applying for asylum as well as bars against granting asylum. In addition, the law mandates (in the absence of exceptional circumstances)the completion, within 180 days, of all asylum claims filed on or after April 1,1997. Immigration and Nationality Act(hereinafter, INA)§ 208(d)(5)(A). These and other issues are addressed in this OPPM.

Therefore, it is imperative that all Judges and Court Administrators thoroughly review this OPPM, paying particular attention to changes in the areas delineated above.

I. BACKGROUND

In 1996 Congress enacted IIRIRA. IIRIRA retains nearly all of the major asylum reforms promulgated as regulations which became effective on January 4, 1995. This includes the provision that asylum applicants may not file for work authorization until 150 days after filing their application for asylum (Form I-589) and that the Immigration & Naturalization Service (hereinafter, INS) or the Immigration Court will have an additional 30 days within which to complete the adjudicative process if the asylum claim is still pending at that time. The 180-day clock applicable to employment authorization and the adjudication of asylum claims is tolled (stopped) for any alien-caused delay. The clock remains stopped for the total number of days during which the delay continues. 8 C.F.R. § 208.7(a)(2).

Please note: In addition to the 180-day clock for employment authorization, IIRIRA also requires that all asylum applications filed on or after April 1, 1997 (in the absence of exceptional circumstances) be adjudicated within 180 days.

II. DUE PROCESS CONCERNS

In striving to meet our processing goals we must ensure the due process rights of the asylum applicant. With this in mind, Immigration Judges must continue to give due consideration to requests from all parties for adequate time to prepare and to present their cases at the individual calendar asylum hearing. Accordingly, all judges should exercise judicial discretion in allocating individual calendar asylum hearing time.

III. ASYLUM APPLICATION (FORM I-589)

A. Required Forms: 8 C.F.R. § 208.3(a) requires that all asylum applicants must file Form I-589 (Application for Asylum or Withholding of Removal). This form is available in each Immigration Court. The revised Form I-589 dated 5/1/98 or revisions issued subsequent to this date are the only asylum applications that will be accepted for filing.

B. Court Administrators' Responsibility: Each Court Administrator shall ensure that an ample supply of the new Immigration Court Warning Notice for Knowingly Filing a Frivolous Asylum Application and the List of Free Legal Service Providers, which shall contain a list of pro bono representatives, are maintained at the Court, and made available upon request.

IV. RECORD AND DATABASE CHECKS

A. Applications Filed on or after April 1,1997: The INA mandates that asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, to determine any grounds on which the alien may be inadmissible to or deportable from the United States or ineligible to apply for or be granted asylum. INA § 208 (d)(5)(A)(i).

B. Applications Filed Prior to April 1, 1997: The INA provision, § 208 (d)(5)(A)(i), requiring mandatory records and database checks, is not applicable to applications for asylum filed prior to April 1, 1997. Therefore, the failure to receive a response to record and database checks will not prevent an Immigration Judge from granting asylum based on applications filed prior to April 1, 1997.

V. COERCIVE POPULATION CONTROL-BASED ASYLUM(See Also OPPM 99-1)

Section 601 of IIRIRA amended INA § 101(a)(42) by expanding the definition of "refugee" to include a person who has been persecuted for or who has a well-founded fear that he or she will be persecuted for failure or refusal to abort a pregnancy, undergo involuntary sterilization or for other resistance to a coercive population control program. Persons establishing such claims are deemed to have a well-founded fear of persecution based on political opinion. Such persons may be granted asylum under INA § 208. However, INA § 207(a)(5) provides that not more than 1,000 coercive population control based refugees can be admitted or granted asylum in any fiscal year.

Applications for asylum based on coercive population control may be raised either affirmatively, with the Service, or defensively, with the Immigration Court. Following a determination by the Immigration Judge that the application for asylum involves a claim of coercive population control, the judge must note such a claim on the IJ worksheet, and support staff must enter into the ANSIR system the code "CPC" under "Other Applications."

The Court may adjudicate such asylum claims subject to the record and database checks applicable to all asylum claims filed on or after April 1, 1997. However, because not more than 1,000 coercive population control-based grants of asylum can be made for any fiscal year, if after a full adjudication on the merits, the Immigration Judge believes that a grant of asylum is warranted, the Judge can only make a conditional grant of asylum. The asylum grant must be conditioned upon a subsequent administrative determination by the INS that a number is available in that fiscal year under INA § 207(a)(5). In re X-P-T, 21 I&N Dec. 634 (BIA 1996). The judge must clearly note on the minute (summary) order that the grant is conditional.

VI. CONFIDENTIALITY OF APPLICATIONS FOR ASYLUM

A. Records of Proceeding (ROP): 8 C.F.R. § 208.6(a) prohibits the disclosure of an application for asylum, except as permitted by 8 C.F.R. § 208.6(c) or at the discretion of the Attorney General, to third parties without the written consent of the applicant. It is Immigration Court policy that the prohibition on disclosure of the application for asylum is extended to the entire ROP if it contains an application for asylum. Accordingly, the Court Administrator must ensure that all ROPs containing applications for asylum are stamped "WARNING: DO NOT DISCLOSE THE CONTENTS OF THIS FILE. PLEASE SEE YOUR COURT ADMINISTRATOR."

B. Alien Attorney/Representative: An attorney or other representative for an alien

who has filed an application for asylum with an Immigration Court may view the ROP with the application provided the attorney/representative has a current EOIR-28 filed with the Immigration Court having administrative control over the ROP.

C. Applicant's Written Consent: The alien/asylum applicant may submit a written, signed request to the Immigration Court having administrative control of the ROP to permit any person(s) named in the request to view an ROP with an application for asylum.

VII. MOTIONS TO REOPEN

A. Filing a Motion to Reopen: 8 C.F.R. § 103.7 states that: "No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable." Therefore, no fee will be charged for a motion to reopen or reconsider a decision on an application for asylum.

B. Granting a Motion to Reopen: If an Immigration Judge grants a motion to reopen in a case in which an (expedited) asylum application was pending at the time of the Immigration Judge's final order, the processing is handled the same way as any other motion to reopen with one important exception. The Immigration Judge must select one of three options, which determines the impact of the granted motion on the asylum clock. In determining which option to select, Immigration Judges should be guided by the principle that only alien-caused delays prevent the asylum clock from running. See 8 C.F.R. 208.7(a)(2). The three options are as follows:

1. Do Not Restart: The asylum clock does not restart at the time the motion to reopen is granted. This does not preclude the clock from restarting at the first master calendar.

   For example, an Immigration Judge may select this option when granting a motion to reopen to consider a document which was previously unavailable. The clock would remain stopped until the first master calendar hearing, at which time the adjournment code entered at that hearing would determine if the clock restarts.

2. Restart from IJ Completion: Under this option, the clock will roll back and "run" from the date of the Immigration Judge's final order until the date of the granting of the motion to reopen. In this situation, the Immigration Judge must determine that this period was not the result of "alien-caused" delay.

For example, an Immigration Judge may select this option where the motion to reopen was granted after an in absentia order, when such motion was granted due to a finding of improper notice (e.g., the Court sent the notice to the wrong address).

3. Restart from motion completion: The clock will begin to run from the date the motion to reopen was granted.

For example, if the Immigration Judge reopened proceedings based on changed country conditions, he or she may select this option.

VIII. DIFFERENTIAL CASE MANAGEMENT

The Office of the Chief Immigration Judge (OCIJ) has established a modified version of differential case management for use in the Immigration Court. This method calls for designating certain cases as "expedited" cases which will be calendared to an expedited hearing track. For our purpose, all asylum cases filed or referred on or after January 4, 1995, will be designated for expedited hearings consistent with the statutory time limits imposed under INA § 208(d)(5)(A)(iii).

IX. SCHEDULING ASYLUM CASES ON THE COURT CALENDAR

The following are the policies and procedures for scheduling master and individual calendars.

A. Failure to Prosecute: In the event the Asylum Office files the charging document with the court less than seven (7) days prior to the scheduled Master Calendar hearing, the Court will deem the case a Failure to Prosecute (FTP). If this should occur, the case may not go forward as originally scheduled even if the applicant appears, unless the Court Administrator determines that there is sufficient time to create the Record of Proceedings (ROP).

If the charging document is filed less than seven (7) days prior to the hearing and the case does not go forward at that time, the Court should deliver personal notice to the applicant of any rescheduled hearing whenever possible. When this cannot be done, notice of future hearings may be made by routine service. 8 C.F.R. § 103.5a (a)(1). If the charging document is not filed with the Court at all, the applicant should be advised of the reason why the case cannot proceed.

B. Charging Documents: Court personnel shall ensure that all charging documents satisfy the filing requirements set forth in the Uniform Docketing System Manual. Documents should not be rejected because of minor typographical errors. Substantive deficiencies must be decided by the Master Calendar Judge. It is

imperative that Court Administrators ensure that the ROPs are created within three business days from the date of receipt of the charging document.

C. Change of Venue: Where an alien who has expressed an intent to apply for asylum seeks a change of venue, the Immigration Judge may, on a case-by-case basis, require that a copy of the Form I-589 be submitted with the motion for change of venue in appropriate circumstances. The alien should also be instructed that the original Form I-589 can only be filed with the court to which venue is changed.

D. Scheduling the Master Calendar: Each Asylum Office can obtain Master Calendar hearing dates for Affirmative Asylum Applications by using ANSIR's Interactive Scheduling System (ISS). The ISS provides the place, date and time of Master Calendar hearings to the Asylum Officer, who will include this information on or with the charging document.

Those applicants receiving personal service of the charging document will be calendared for Master Calendar hearing no earlier than 17 days from the date of service of the charging document. Applicants receiving their charging documents by regular mail will be scheduled for Master Calendar hearings no earlier than 45 days from the date of accessing the Interactive Scheduling System.

E. Scheduling the Individual Calendar: Generally, when setting a case from the Master Calendar to the Individual Calendar, a minimum of 14 days should be allowed before the case is set for the Individual Calendar. The time period may be shortened if requested by the applicant or, in the absence of exceptional circumstances, where the two-week delay would prevent the court from completing the case within 180 days.

F. The clock: The ANSIR System reports the number of days that have passed since the filing of the asylum application. This information is available to Immigration Court staff during the scheduling process to assist with calendaring cases. The toll-free number for the public to access case status information is 1-800-898-7180. Information is provided regarding future hearing date, status of the clock for asylum cases, completion information, appeals information, filing information and the name of the Immigration Judge to whom the case has been assigned. The toll-free number will now be listed at the bottom of all hearing notices.

G. Adjournment Codes: All continuances granted in asylum cases must be accurately assigned to the appropriate requesting party, (Applicant, INS, or EOIR). This is critical information since the automatic tolling mechanism in ANSIR is directly linked to the reason for adjournment. Immigration Judges must ensure that they

have accurately indicated on the IJ Worksheet the specific reason for adjournment. Clerks or interpreters entering information into the ANSIR system must also ensure that adjournment codes are accurately entered. This information may also be used for management reports in the future should the need arise.

If the applicant rejects the first available date for an individual calendar hearing (not less than 14 days from the date of the Master Calendar), the proper adjournment code is 22. Entering this code will stop the clock. The clock will remain stopped until the applicant returns to Court on the date selected by him/her for the next hearing. Thus, if on August 1 the Court offers the date of August 15 and the applicant rejects that date but accepts September 1, the adjournment code will be 22 and the clock will be stopped for the entire period of time from August 1 to September 1.

If the date accepted by the alien is less than 24 hours from the first date generated by ANSIR the proper adjournment code will be 17. Code 23 is the proper adjournment code to be entered whenever an applicant withdraws the asylum application.

H. Manual Back-up Method of Calendaring: While we do not anticipate ANSIR System downtime we should always be prepared for any unexpected automated system failure or scheduled system-wide downtime for maintenance. Court Administrators must continue to have a plan of action to be used in the event the ANSIR system goes down.

I. Asylum Case Receipts and Calendar Monitoring: To comply with asylum regulations and the specific statutory requirements under INA § 208(d)(5)(A), we must constantly monitor the status of asylum cases. Court Administrators will be expected to review this data on a daily basis in order to adjust calendars as needed.

In the event the system becomes so full that Master Calendar hearings are being set at or beyond day 107, the Court Administrator, in consultation with the Assistant Chief Immigration Judge, must take appropriate corrective action. Such action may include, but is not limited to: 1) increasing Master Calendar slots; 2) requesting additional Immigration Judge/support staff resources through details; 3) conversion of administrative time to asylum calendar time; or 4) the rescheduling of non-priority cases.

J. Pre-Reform Asylum Cases: Cases for which the asylum received date is prior to January 4, 1995, will be categorized as "pre-reform" cases. Pre-reform cases are eligible for employment authorization within 90 days from the date of receipt of the application by INS. The INS will either grant asylum in such cases or refer the case to the Immigration Court for adjudication. However, charging documents

cannot be based on information contained in a pre-reform asylum application.

Pre-reform asylum cases will fall into one of two categories. One category is that in which the INS has adjudicated the cases. In this category the Immigration Court will only see those cases where the asylum claim was denied and a charging document was issued. When this type of case reaches the Immigration Court there is no affirmative duty for the Court to take any action regarding the old asylum claim because that application will have been previously decided by the INS and the old Form I-589 should not accompany the charging document. The alien may choose to file a new application for asylum. This will be a defensive asylum application and should be processed in the same manner as all other defensive claims. This defensive claim will be subject to the 180-day clock.

The other category of pre-reform asylum cases is that in which the INS did not conduct an interview and render a decision prior to January 4, 1995. Because these cases were pending adjudication on January 4, 1995, such cases will be referred to the Immigration Court and the old Form I-589 will be included. The 180-day clock is not applicable to these asylum cases. With leave of Court, the respondent may be permitted to supplement the existing asylum application. However, regardless of the extent to which the pending asylum application is supplemented (including the substitution of a new Form I-589 for the original Form I-589), the asylum received date will remain the date on which the original asylum application was filed with the INS. For this reason, no new asylum received date will be entered into the ANSIR system.

X. DEPARTMENT OF STATE(DOS) REQUESTS/COMMENTS

A. Immigration Judges' Special Requests to DOS

Immigration Judges who feel they need more information than is provided in the Country Reports on Human Rights Practices or Profiles of Asylum Claims may make specific requests on an individual case basis. In those instances, requests should be made through the Central Operations Unit, Office of the Chief Immigration Judge. Such requests should list specific questions or concerns the Immigration Judge would like the advisory opinion to address.

B. Department of State Advisory Opinions/Responses: At its option, DOS will respond to our requests for advisory opinions as follows:

1. Advisory Opinion Letters. DOS will review and prepare written advisory opinions on asylum applications selected by DOS that require information they feel is not routinely available to Immigration Judges in the State Department's current Country Reports on Human Rights Practices.

2. No Specific DOS Response. Asylum applications not selected for review by DOS will be returned to EOIR with a label or "sticker" placed onto the EOIR standard transmittal letter stating:

"This office has no factual material about this specific applicant. Information on human rights practices in the country of the applicant's nationality may be found in the State Department's current Country Reports on Human Rights Practices."

This will be the only response we will receive from the DOS on these asylum applications. However, if no response is received by the time of the hearing, the Immigration Judge should proceed and not continue the case to await a DOS response. In addition, Immigration Judges will NOT re-submit to DOS an asylum application returned by DOS to EOIR without an advisory opinion letter. Therefore, Individual Calendar hearings for asylum cases will NOT be continued on the calendar for the purpose of re-submitting an asylum application responded to in this manner.

3. "Generic" Response. In some cases, DOS will provide EOIR with "generic" information which will be useful in understanding the human rights situation in the applicant's country. This information will be in addition to that found in the Country Reports on Human Rights Practices but will NOT be tailored to any specific asylum application.

C. Sending Department of State Advisory Opinions/Response to the Immigration Courts: In order to ensure that DOS advisory opinions/responses are received by Immigration Courts, DOS will forward all advisory opinions/responses by messenger directly to the OCIJ once each week. OCIJ will send these advisory opinions/responses by overnight mail to the appropriate Immigration Court.

D. Transmittal of DOS Advisory Opinions/Responses to Parties: Immigration Court personnel will process the standard transmittal letter with the DOS label (sticker) attached or the "generic" responses in the same manner as an advisory opinion letter is processed in the Court. This will include updating the ANSIR system to show that a response has been received from the DOS, properly filing the standard transmittal letter with sticker response or the "generic" response in the ROP and forwarding copies to both parties in the case.

E. DOS "Country Reports on Human Rights Practices": Each Court Administrator should ensure that at least one copy of the current State Department Country Reports on Human Rights Practices and the Profiles of Asylum Claims and

Country Conditions are available in each Immigration Court. Many of these reports are available on the Internet.

F. Problems with Requests for Advisory Opinions: Returned requests for advisory opinions: The DOS will return to OCIJ any Immigration Court request for an advisory opinion that lacks sufficient information for the DOS to render an advisory opinion or forward the responses to the proper Immigration Court. Some of the common problems are as follows:

1. *No attachment to the Form I-589*: The Form I-589 refers the reader to "additional information" contained in an attachment but the attachment was not included with the Form I-589 sent to DOS by the Immigration Court.

2. *No asylum application*: The standard transmittal letter was sent with an attachment of "additional information", but the Form I-589 is not included.

3. *Information on the standard transmittal letter is different from attached Form I-589*: The A-number and/or the alien name on the standard transmittal letter is different from that on the Form I-589.

4. *Form I-589 missing information*: The Form I-589 is missing a page and/or the application has parts that are illegible (copy too light).

5. *Hearing date is too close to date received at DOS*. The standard transmittal letter indicates a Master Calendar hearing date instead of an Individual Calendar hearing date.

6. *No standard transmittal letter*: The Form I-589 is sent without a standard transmittal letter and DOS does not know where to send the response.

7. *Standard transmittal letter has no return address*: The letterhead with the address is missing.

OCIJ will send to the Court Administrators for correction and re-submission to DOS all requests for advisory opinions that are returned to OCIJ by DOS. Court Administrators will ensure that Court personnel receiving and/or processing asylum applications are instructed to review them for completeness and legibility before they are sent to DOS. Also, Court Administrators will ensure that Court personnel processing and/or tracking the requests for advisory opinions know the proper procedure for submitting the requests for an advisory opinion and are instructed to check their work before mailing out the request.

XI. DESIGNATION OF PERSONNEL FOR ASYLUM CASE MONITORING

Each Court Administrator should have at least one member of the Court's personnel under their supervision designated to be responsible for tracking and monitoring asylum cases with the Court to ensure the timely completion of all appropriate asylum cases within 180 days.

Asylum Opinion Tracking - Since DOS opinions are no longer required to be received, the asylum opinion tracking system will be limited solely to requests for case specific information. Court Administrators must monitor all requests for case specific information and contact the Central Operations Unit for assistance in obtaining a response if one is not received one week prior to the scheduled Individual Calendar Hearing.

XII. PROCESSING THE AFFIRMATIVE ASYLUM APPLICATION

Only those asylum applications initially filed with the INS will be classified as affirmative applications. All affirmative asylum applications referred to the Immigration Court by the INS must contain all supporting documentation. The Court Administrator will not accept any affirmative asylum applications that do not contain all of the documents referred to in the Uniform Docketing System Manual.

A. Warning for Knowingly Filing A Frivolous Asylum Application: INA § 208(d)(4) states that the warning for knowingly filing a frivolous asylum application shall be given at the time the application is filed. For all applications for asylum filed with the INS on or after April 1, 1997, the INS has responsibility for providing the warning of consequences for knowingly filing a frivolous asylum application.

B. Record and Database Checks: For all affirmative asylum applications referred to the Court on or after April 1, 1997, the Service should have conducted checks of all appropriate records and databases maintained by the Attorney General and the Secretary of State. At the time of the Master Calendar, the Immigration Judge should inquire of the Service as to whether the record and database checks have been initiated and, if so, whether a response has been received. Although an asylum claim may be denied prior to completion of the records check, asylum cannot be granted until the required record check results have been provided to the Court by the INS. The Court is not authorized to make a conditional grant of asylum pending receipt of record and database check results.

C. Referring the Affirmative Application: If an affirmative asylum application is not granted by the Asylum Office and the alien is not in a legal status, the application, along with any supporting documents, will be referred to the Immigration Court by the INS Asylum Office at the time the charging document is filed. The copy of the

application and supporting documents referred to the Court may not contain any annotation or other information of a deliberative nature regarding the application (other than administrative corrections to the application, as affirmed by the applicant's signature in Part H of the application). Aside from the application and supporting documents, only the ANSIR-generated INS Referral Sheet should be filed with the Court. Under no circumstances should any document containing reference to INS credibility findings be filed with the Court. If this does occur, the Court Administrator should promptly notify the INS to discontinue any such filings and return those documents to INS prior to filing the application in the ROP.

D. Procedure for Requesting a Department of State Advisory Opinion for Affirmative Asylum Applications: Affirmative asylum applications will not be forwarded to the Department of State (DOS) by the Immigration Court, absent special circumstances. There is no requirement for the Court to do so because the INS Asylum Office will already have done this prior to adjudicating the application which was ultimately referred to the Immigration Court.

XIII. PROCESSING THE DEFENSIVE ASYLUM APPLICATION

Asylum applications initially filed with the Immigration Court shall be designated as defensive applications. Asylum-Only cases pursuant to 8 C.F.R. § 208.2(b)(1) and § 252.2(b) filed on or after April 1, 1997 are to be calendared in the same manner as defensive claims.

A. Warning for Knowingly Filing A Frivolous Asylum Application: At the Master Calendar or Master Calendar reset hearing during which an applicant states his or her intent to file an asylum application, the Immigration Judge must give the INA § 208(d)(4) warning and inquire as to whether the applicant understands the warning. This warning must be conveyed in a language which the applicant understands. In all appropriate circumstances the Court will provide an interpreter.

B. Record and Database Checks: For all defensive asylum applications filed with the Court on or after April 1, 1997, the Service will conduct appropriate records and database checks of information maintained by the Attorney General and the Secretary of State. INA § 208(d)(5)(A)(i). If, at the Master Calendar hearing an alien indicates an intention to file for asylum the Immigration Judge will schedule the case for a Master reset for the filing of the Form I-589. The Immigration Judge shall inform the alien that he or she must make arrangements with an INS Application Support Center to initiate the required record checks.

Prior to starting the Individual Hearing the Immigration Judge will inquire as to whether the Service has received results from the records and database checks.

Although an asylum claim may be denied prior to completion of the records check, asylum cannot be granted until the required record check results have been provided to the Court by the INS. The Court is not authorized to make a conditional grant of asylum pending receipt of record and database check results.

C. Filing the Defensive Application: Local Court rules notwithstanding, including any such rules related to the filing of Motions for a Change of Venue, defensive asylum applications can only be filed with the Immigration Court at a Master Calendar or a Master Calendar Reset Hearing. This is true even where the defensive asylum application is filed in conjunction with other applications for relief. However, the Chief Immigration Judge may, from time to time as circumstances require, expressly permit an exception to this general rule. The filing of the asylum application at the Master Calendar or Master Calendar reset hearing shall constitute the initial asylum hearing. The Immigration Judge must ensure that pleadings have been taken and that all other matters have been resolved prior to scheduling an asylum case for an individual calendar hearing. This might require additional master calendar appearances prior to setting the case for an individual calendar hearing.

Individual Calendar hearing time for asylum cases can only be entered into the ANSIR System after an asylum application received date has been entered. The received date for defensive claims will be the date the application is accepted for filing at the Master Calendar or Master Calendar reset hearing. The filing party will be required to submit an original completed Form I-589, along with a copy of the completed asylum application. The Immigration Judge shall verify service upon the Government. Pursuant to 8 C.F.R. § 208.3(a), one additional copy of the principal applicant's Form I-589 must be submitted for each dependent listed on the principal's application.

D. Filing in Detail Cities: In appropriate circumstances the Immigration Judge has the discretion to permit the filing of the Form I-589, along with supporting documents, and other documentary evidence during telephonic or televideo Master Calendar hearings or Master Calendar reset hearings.

E. Procedures for Requesting a Department of State Advisory Opinion on Defensive Asylum Applications:

1. When to send the request for a defensive asylum application advisory opinion to DOS: A defensive asylum application must be forwarded to the DOS for an advisory opinion as soon as possible after an Immigration Judge accepts it for filing at a Master Calendar or Master Calendar Reset hearing and sets an individual hearing date. A defensive asylum application included as part of an ROP received on a Motion to Change Venue, should

not be sent to DOS upon receipt of the ROP, but forwarded only after the party has filed the original of the Form I-589 with the Court at a Master Calendar or a Master Calendar reset hearing and an Individual Calendar hearing date has been set.

2. Transmittal letter: A properly created transmittal letter attached to a complete and legible asylum application (Form I-589 and any attachments) is the appropriate EOIR "request for an advisory opinion". Immigration Court personnel will only prepare the standard transmittal letter to the DOS requesting an advisory opinion for defensive asylum applications. Immigration Court personnel will ensure that the future hearing date that must appear on the transmittal letter is the Individual Calendar hearing date set by the Immigration Judge. The standard transmittal letter must also indicate if the alien is detained or non-detained, or if attachments mentioned in the application were not submitted.

3. Where to send the request for an advisory opinion: Immigration Court personnel will send the standard transmittal letter, Form I-589 and attachments to the DOS at the following address using overnight mail:

U.S. Department of State
Bureau of Democracy, Human Rights, and
Labor Office of Country Reports and
Asylum Affairs
2401 E Street, N.W.,Room H 242
Washington, DC 20037

XIV. REQUESTING WITHHOLDING OF REMOVAL

The Form I-589 can be used by the alien when requesting withholding of removal under INA § 241(b)(3)or under the Convention Against Torture.

A. Filing the Application: Claims for withholding of removal based on the Form I-589 (Application for Asylum or Withholding of Removal)can only be filed with the Immigration Court at a Master Calendar or a Master Calendar Reset hearing. Such claims cannot be filed by mail or at the clerk's window without specific authorization from the Chief Immigration Judge.

B. The 180-Day Clock: In cases where the Form I-589 has been filed for other than asylum relief, the 180-day clock does not apply. However, when ANSIR receives an entry that a Form I-589 has been accepted for filing, the 180-day clock will automatically begin to run. Until further notice, the clerk must stop the clock by entering a "w" under the asylum application. This will inform ANSIR that the

asylum application has been withdrawn and will immediately stop the clock.

C. Effect of Filing A Frivolous Asylum Application: A finding by the Court that an alien filed a frivolous application for asylum does not prevent the alien from being granted withholding of removal under INA § 241(b)(3),or the Convention Against Torture. 8 C.F.R. § 208.19.

XV. CONCLUSION

To date, the Immigration Court has been very successful in implementing asylum reform. Through your efforts we have met and overcome the numerous challenges presented by asylum reform. Please direct any questions you may have to your Assistant Chief Immigration Judge, Assistant Chief Immigration Judge Robert P. Owens, or Tony Padden, Chief Clerk of the Immigration Court.

XVI. SUPPLEMENTARY DOCUMENTS

1. 8 C.F.R., Part 208, Asylum Procedures

2. Rules of Procedures of Immigration Judge Proceedings:

   § 3.18 Scheduling of Cases

   § 3.32 Service and Size of Documents

   § 3.33 Translation of Documents

   § 3.31 Filing Documents and Applications

3. Immigration Judges Bench book, Asylum and Withholding of Deportation

4. Uniform Docketing System Manual, Processing Applications and Motions

5. Court Administrators ANSIR Handbook, Management Reports

6. ANSIR Field Users Manual, Chapter 2, Functions of ANSIR

7. DOS Country Reports (available on the Intranet-Virtual Law Library or on the Internet at: www.state.gov/www/global/human_rights/hrp_reports_mainhp.html

8. Annual Report on International Religious Freedom
   (Available on the Intranet-Virtual Law Library or on the Internet at: www.state.gov/www/global/human_rights/irf/irf_rpt/index.html

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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August 4, 2000

MEMORANDUM

TO: All Immigration Judges
All Judicial Law Clerks
All Court Administrators

FROM: The Office of the Chief Immigration Judge

SUBJECT: **Revision to Operating Policy and Procedures Memorandum 00-01, Asylum Request Processing**

Please discard the March 22, 2000, version of OPPM 00-01 and replace it with the attached version. The primary change to this OPPM is that section VII has been modified to cover how the asylum clock should be handled when a motion to reopen has been granted and the alien has a pending asylum application.

If there are any questions, please contact Michael Straus, Counsel to the Chief Immigration Judge, at (703)305-1247.

Michael J. Creppy
Chief Immigration Judge