



U.S. Department of Justice
Executive Office for Immigration Review

Chief Immigration Judge

5201 Leesburg Pike
Falls Church, Virginia 22041
March 7, 1984

MEMORANDUM TO: All Immigration Judges

FROM: William R. Robie *WRR*
Chief Immigration Judge

SUBJECT: Operating Policy and Procedure 84-2: Cases in
Which Respondents/Applicants Fail to Appear for Hearing

1. Policy Background. Failures to appear are a serious recurring problem and have been handled differently across the country. The following is an attempt to set out a uniform nationwide approach to the handling of cases in which aliens fail to appear. In keeping with the Uniform Docketing System, cases may not go off the calendar until they are closed.

2. Options Available to the Immigration Judge. In a hearing before an Immigration Judge, if, after notice, a respondent/applicant fails to appear, the Immigration Judge may, in appropriate circumstances:

- A. hold an in absentia hearing; or
- B. dismiss the case; or
- C. continue the case to a date certain for good cause shown; or
- D. order that the case be administratively closed with no further action to be taken, unless the respondent/applicant is located and there is a motion made to recalendar the matter.

In each case in which the respondent/applicant fails to appear, the Immigration Judge shall request that the Trial Attorney state the INS position for the record (i.e., whether the Service wishes to proceed immediately to an in absentia hearing, move to dismiss the matter, withdraw the OSC or I-122 1/ and consider the case administratively closed, etc.). After hearing the Service's views and taking into account all facts and circumstances of the case, the Immigration Judge will decide how to handle the matter.

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INS may wish to withdraw an OSC or I-122 from active consideration before the Immigration Judge. If they make such a request and the Immigration Judge agrees, INS takes possession of the original charging document. It remains in effect to the extent that proceedings may be commenced again with the same charging document at some future date. There is no need to reissue the document.

3. Sample Situations. The following situations are set forth as suggested circumstances when the various options may be considered in the case of a failure to appear:

- A. In absentia Hearings - Respondent/applicant has been properly notified of the hearing and fails to appear without explanation. Perhaps it is the second or third such unexplained absence. The Service is prepared to proceed with the case in absentia and can establish that the alien has been given a reasonable opportunity to be present (See Section 242 (b), Immigration and Nationality Act).
- B. Dismissal - Service moves to dismiss OSC or I-122 as improvidently begun (See 8 CFR 242.7).
- C. Continuances to a date certain - Counsel for the respondent/applicant comes to hearing and reports that respondent/applicant is not present because of a serious incapacitating illness. Counsel presents adequate proof of the illness from a doctor and requests that the matter be continued.
- D. Administratively Closed - Matters to be considered include, but are not limited to, the following: adequacy of notice, likelihood that deportation order, if entered in absentia, would be enforced by INS, nature of charges and need for parties to be present.

It should be stressed that the guidance in this paragraph should be construed as suggested approaches to typical situations. This guidance is not meant to diminish your authority as Immigration Judges in any way or impinge upon your independent determinations in specific cases.

4. Procedure for Administratively Closed Cases - If the Immigration Judge decides to rule that the case be administratively closed, he/she shall issue an order and serve a copy on the Service and on the respondent/applicant (normally at the last known address). The following language may be included in the Immigration Judge's order:

As the respondent/applicant has failed to appear at the proceeding, it is hereby ordered that the case be administratively closed and is to be considered no longer pending before the Immigration Judge. No further action will be taken in this matter until such time as the respondent/applicant is located and the case is presented for recalendaring and further proceedings.

When such an order is entered, the original OSC or I-122 shall be removed from the Record of Proceeding and returned to the Service. A copy of the charging document and the original of the Immigration Judge's order shall be retained in the Record of Proceeding. Once an Immigration Judge orders a case administratively closed in accordance with these procedures, it is considered to be a closed matter for purposes of the Uniform Docketing System and the Management Information System. The ROP file shall be sent

to the record center pursuant to OCIJ file retirement policies. If and when the respondent/applicant is located, the Service would then resubmit the original charging document to the Office of the Immigration Judge with a motion to recalendar the matter. A new Record of Proceeding and a new Docket Card will be prepared at that time.

5. Conclusion - The options discussed throughout this memorandum represent a codification of and slight variances from past practices by Immigration Judges when dealing with the difficult problem of failures to appear. These measures insure that cases proceed through the Immigration Judge system in a consistent, fair and expeditious manner, and that all parties receive adequate opportunity to pursue their claims during these proceedings.

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cc: Management Officers, Miami, New York, Chicago, Los Angeles, San Francisco
EOIR lead clerks, all other Immigration Judge Offices