AILA – EOIR AGENDA

November 18, 2010

I. Regulations/Rulemaking

A. Ineffective Assistance of Counsel

In October, 2009, EOIR indicated that regulations were being drafted/worked on regarding ineffective assistance of counsel –

1. What is the status of those regulations?

RESPONSE: With input from other Departmental components and the Department of Homeland Security (DHS), EOIR drafted a proposed regulation in response to *Matter of Compean, Bangaly & J-E-C-*, 25 I&N Dec. 1 (A.G. 2009). The rule is currently under review at the Department. Upon publication of the proposed regulation in the Federal Register, all stakeholders will have an opportunity to provide comments on the proposed regulation during the notice and comment period.

2. Do you anticipate that regulations on this issue will be considered in the future?

RESPONSE: Yes. Please see the above response to question I.A.1.

B. Rulemaking on regulatory bars

At our March 2010 meeting, we inquired about whether EOIR would consider initiating a rulemaking process to revoke the regulatory bars to filing a motion to reopen after departure from the United States (8 C.F.R. §§ 1003.2(d) and 1003.23(b)(1)). EOIR responded that it welcomes written suggestions regarding potential revisions to the departure regulations. See AILA-EOIR Liaison Meeting Agenda (March 25, 2010) at 9-10 (question #8) available at http://www.justice.gov/eoir/statspub/eoiraila032510.pdf. Since this time, the American Immigration Council and the National Immigration Project of the National Lawyers Guild, et al., submitted a petition for rulemaking suggesting amended regulatory language and detailing the reasons for amending the regulations. AILA supports this petition.

1. What is the status of this petition and has EOIR taken steps to evaluate current regulations and/or initiate a rulemaking process?

RESPONSE: On August 25, 2010, EOIR acknowledged receipt of the petition for rulemaking submitted by the American Immigration Council and the National

Immigration Project of the National Lawyers Guild, et al.. The petition seeks to initiate rulemaking pursuant to the Administrative Procedures Act, 5 U.S.C. § 553, to amend 8 C.F.R. §§ 1003.2(d) and 1003.23(b)(1) (commonly referred to as the "departure bar" regulations). The petition is currently under review at EOIR and the Department.

C. Incompetency Assessments

The BIA recently invited AILA and FAIR to file amicus briefs addressing when and how the INA § 240(b)(3) incompetency provision is triggered, whether the IJ can order DHS to conduct a competency evaluation, and defining which "safeguards" the IJ can proscribe [sic] for an incompetent respondent. This follows a July 2009 letter (see 10/28/2009 liaison meeting minutes) from numerous NGO's, law professors, and experts to the Attorney General, urging the clarification of existing regulation and the adoption of new regulation and immigration court procedures. Last year, EOIR reiterated its commitment to providing "due process and fair treatment for all individuals in removal proceedings" specifically "vulnerable individuals, including respondents with mental disabilities." However, many members of our Association continue to express significant concern and puzzlement regarding the procedural protections in place for potentially incompetent respondents. Our Association provided its thoughts to the BIA earlier this fall. Shortly after our brief was submitted, we learned that DHS had withdrawn its appeal in the case a few weeks before the briefing deadline.

1. Why did the BIA not notify AILA of this development?

RESPONSE: When AILA's proposed agenda for this meeting was submitted to EOIR, the Board of Immigration Appeals (Board) had not yet adjudicated DHS's motion to withdraw the appeal. The Board did not notify AILA of DHS's motion as it is not appropriate for the Board to notify a non-party of a pre-decisional development in a case.

2. What is the status of your Office's overall effort to ensure due process for the mentally challenged?

RESPONSE: EOIR is committed to ensuring due process and fair treatment for all individuals in proceedings before EOIR, including individuals who may have mental health issues. As a part of this effort, EOIR will continue to provide training to all appropriate EOIR legal staff on mental health issues in EOIR proceedings. Training on handling such cases was provided at the 2010 and 2009 EOIR Legal Training Conferences for Immigration Judges and others, as well as at the 2010 EOIR Advanced New Immigration Judge Training.

As a complement to these training initiatives, EOIR has expanded its Immigration Judge Benchbook to include a section on mental health issues in removal proceedings. The new section of the Immigration Judge Benchbook provides an overview of competency issues in removal proceedings, sample orders and scripts

for immigration judges, and links to resources that are available online. This new section of the Immigration Judge Benchbook is available online at http://www.justice.gov/eoir/vll/benchbook/index.html. As an additional training resource for immigration judges dealing with mental health issues in removal proceedings, EOIR is hiring an Assistant Chief Immigration Judge (ACIJ) for Vulnerable Populations, whose portfolio will include mental competency issues.

In addition, EOIR is currently piloting a Legal Orientation Program (LOP) at the Miami Immigration Court for non-detained individuals in proceedings who are unable to find legal assistance and may be mentally incompetent. Through the local LOP provider, EOIR provides such individuals with access to individual orientations and pro bono referral services. *See* Press Release, "Recent Initiatives for EOIR's Legal Orientation and Pro Bono Program," October 4, 2010, available online at http://www.justice.gov/eoir/press/2010/RecentInitiativesforLOP10042010.htm. This pilot adds to the special efforts that the LOP has been making since 2006 to ensure that detained individuals with mental health issues have access to LOP services. Contract staff at all 27 LOP sites receive ongoing training in identifying and working with this vulnerable population. In Fiscal Year 2010, the LOP served over 62,000 individuals in ICE detention.

Together with its federal partners, including DHS, EOIR is committed to exploring how to improve the removal process to take into consideration the special circumstances presented by individuals with mental health issues. On September 24, 2010, EOIR attended a Roundtable on Mental Health and Immigration Enforcement hosted by the DHS Office for Civil Rights and Civil Liberties (CRCL), the U.S. Immigration and Customs Enforcement (ICE) Office of Detention Policy and Planning (ODPP), and the ICE Office of State, Local, and Tribal Coordination (OSLTC) Public Engagement team. The roundtable brought together prominent experts, academics, and practitioners from diverse fields to discuss with DHS leadership the challenges and possible solutions for caring for ICE detainees with mental health issues. Over 30 non-governmental organization (NGO) representatives, academics, and correctional and mental health practitioners attended and presented at the event.

EOIR welcomes input from all stakeholders regarding measures to ensure due process for individuals with mental health issues in EOIR proceedings.

3. Is the Department considering an amendment to existing regulation?

RESPONSE: Yes. EOIR is in the preliminary stages of drafting a regulation to implement procedures addressing the appearance of mentally incompetent aliens in proceedings before EOIR. EOIR welcomes input from all stakeholders regarding promulgating regulations to address this issue.

D. Access to Counsel

What is EOIR doing to improve access to counsel for individuals in proceedings?

RESPONSE: EOIR is committed to ensuring that all individuals in proceedings before the immigration courts and the Board have meaningful access to legal counsel. In furtherance of this commitment and the Department of Justice's (Department) Access to Justice Initiative, EOIR has worked with the Department to improve access to counsel in proceedings before EOIR and to expand support for EOIR's LOP.

Through the LOP, representatives from nonprofit organizations provide group orientations (also known as "group rights presentations"), individual orientations, self-help workshops, and pro bono attorney referral services. The LOP is currently operating at 27 sites across the country. In Fiscal Year 2010, the LOP served over 62,000 individuals in ICE detention.

As noted in the above response to question I.C.2., EOIR has recently expanded and improved its LOP. As a part of this expansion, EOIR is extending the LOP to serve DHS detainees in the four county jails which house individuals in proceedings before the Varick Street Immigration Court in New York City.

EOIR has also created a LOP for custodians of unaccompanied alien children (UAC). EOIR is working with the Department of Health and Human Services, Office of Refugee Resettlement, and non-government partners to implement this program nationally. Program implementation has begun in four of the largest program sites: Los Angeles, New York City, Houston, and the South Texas Rio Grande Valley. By the end of the first year, the program will have a total of 13 sites that will serve roughly 75 percent of all UAC custodians.

EOIR is also currently piloting an LOP program at the Miami Immigration Court for non-detained respondents who are unable to find legal assistance and may be mentally incompetent. As discussed earlier, Immigration Judges also receive training and guidance on mental competency issues to assist them in identifying individuals in immigration court proceedings who appear to be mentally incompetent and would benefit from referral to pro bono counsel.

In addition, EOIR is hiring an ACIJ for Vulnerable Populations. This ACIJ will work with local immigration court pro bono committees and pro bono liaison judges as appropriate to facilitate pro bono representation.

The BIA Pro Bono Project also facilitates access to counsel by assisting non-governmental organizations (NGO) in their efforts to link pro bono resources nationwide with indigent aliens whose cases are on appeal to the Board. The NGO participants include the Catholic Legal Immigration Network, Inc., the American Immigration

Council, the American Immigration Lawyers Association, the Capital Area Immigrants' Rights Coalition, and the National Immigration Project of the National Lawyers Guild. Since January of 2001, over 650 cases have been matched with pro bono counsel through the Project.

EOIR welcomes input from all stakeholders regarding improving access to counsel for individuals in proceedings before EOIR.

II. Immigration Judges-Selection Process

On September 20, 2010, and on several occasions prior to that date, EOIR announced the hiring of new Immigration Judges in various courts. AILA commends EOIR for its work in hiring qualified individuals and filling Judge positions where necessary throughout the United States.

A. Please provide us with the criteria for new hires in Immigration Judge positions?

RESPONSE: The criteria for an Immigration Judge position are found in the vacancy announcement for that position.

B. Is EOIR seeking to diversify the bench throughout the United States and if so, how is that objective being addressed in the hiring process?

RESPONSE: EOIR endeavors to achieve widespread distribution of Immigration Judge vacancy announcements to increase the size and diversity of the applicant pool. The vacancies are advertised on the DOJ website, the Office of Personnel Mangement's Federal jobs website (http://www.usajobs.gov), and via notification to various legal organizations.

C. Could you provide us with the current statistics on the following?

i. Current racial and ethnic background of the bench

RESPONSE: To ensure the completeness of EOIR's response, a request for this type of data should be made pursuant to the Freedom of Information Act (FOIA). The procedures for making a FOIA request from EOIR are available online at http://www.justice.gov/eoir/mainfoia.html.

ii. Gender makeup

RESPONSE: To ensure the completeness of EOIR's response, a request for this type of data should be made pursuant to the Freedom of Information Act (FOIA). The procedures for making a FOIA request from EOIR are available online at http://www.justice.gov/eoir/mainfoia.html.

iii. Past work experience – Government or private sector

RESPONSE: EOIR does not collect nor report this data except through biographical sketches. Biographical sketches of the recently hired Immigration Judges are available online at http://www.justice.gov/eoir/press/2010/IJInvestitureBiographies11052010.pdf and http://www.justice.gov/eoir/press/2010/IJInvestiture09172010.pdf.

iv. How many new positions are expected to be filled in the next year and which courts are targeted to have openings for Immigration Judges?

RESPONSE: EOIR has advertised vacancies in 15 locations for FY 2011. These locations include:

Imperial, California; Los Angeles, California; Denver, Colorado; Boston, Massachusetts; Kansas City, Missouri; Omaha, Nebraska; Newark, New Jersey; New York, New York; Philadelphia, Pennsylvania; Memphis, Tennessee; Dallas, Texas; the El Paso Service Processing Center, Texas; Pearsall, Texas; Port Isabel, Texas; and, Arlington, Virginia.

III. Motions to Reopen

A. Reviewing files

At our March 2010 and October 2009 meetings, we voiced concerns regarding attorney access to ROP's in the preparation of Motions to Reopen. 8 C.F.R. § 103.10 prescribes the processes for reviewing ROP's, however it does not address time constraints faced by attorneys when their client is detained. It is currently taking 4-6 months to receive EOIR FOIA's responses, while detained aliens are removed from the U.S. in a matter of days. The inability of counsel to timely review ROP's prevents counsel from evaluating an alien's right to file a Motion to Reopen and violates an alien's due process right by preventing them from filing a Motion to Reopen. Holding the files for the prescribed period of 90 days does not protect the due processes [sic] rights of aliens ordered removed in absentia who do not learn of their removal order until years later. The Immigration Courts are currently able to burn CD's for attorneys of audio proceedings.

1. Would EOIR consider having all ROP's scanned and electronically stored at the Immigration Court in which the removal order was issued before the ROP's are sent to the National Record Center for storage?

RESPONSE: While EOIR has long-term plans for creating electronic ROPs, the timing and specifications of this initiative are currently being determined. Creating a secondary unscheduled repository of scanned ROPs is not feasible and would detract from EOIR's current initiatives designed to create electronic ROPs in a systematic fashion.

B. Stays

At our March 2010 meeting, we voiced concerns regarding the timely adjudication of Emergency Motions for Stays of Removal filed in conjunction with Motions to Reopen. 8 C.F.R. §§ 1003.2(f), 1003.6, 1003.23(b)(1)(v) state that a stay of removal takes effect upon the granting of a motion for a stay, not at the time of filing a motion for a stay. Detained aliens with a final order of removal are being removed from the U.S. within days of their apprehension. 8 CFR § 1003.2(d) mandates that a Motion to Reopen is deemed withdrawn upon the departure of the alien. The due process rights of aliens with pending Motions to Reopen are being violated when aliens are removed before an Emergency Motion for Stay of Removal is adjudicated. When an alien is detained in a different state from which the Immigration Judge deciding the stay is located, aliens have been removed, despite the fact that the stay was granted, because the decision was in the mail to the attorney and ICE was not notified.

1. Would EOIR consider a procedure for expediting requests for stays pending in the Immigration Courts for detained case and notifying ICE directly when there is a decision?

    a. If you would, what would be the procedure, similar to how the BIA handles requests for stays?

    b. If not, why not?

RESPONSE: EOIR is not planning to create a special procedure for handling requests for a stay at the present time. If a motion is filed with a request for a discretionary stay, the motion and the request for a stay is immediately given to the Immigration Judge presiding over the case and, if he or she is not available, to the first available Immigration Judge at the court. If no Immigration Judge is available, the situation is resolved by the Court Administrator in coordination

with the ACIJ. Regarding service of the Immigration Judge's decision on the parties, this issue is best addressed to the appropriate Court Administrator. Specific cases, with "A" numbers, should be presented to the Court Administrator.

2. Will EOIR consider allowing attorneys to fax or email Motions to Reopen/ Emergency Motions for Stays of Removal, in cases where an alien is detained and the adjudicating Court is being filed [sic] in another state?

RESPONSE: The Immigration Court does not accept faxes or other electronic submissions unless the transmission has been specifically requested by Immigration Court staff or the Immigration Judge. *See* Chapter 3.1(a)(viii) of the Immigration Court Practice Manual.

IV. Court Procedures

A. Telephonic Hearings

The practice manual allows for attorneys to appear by telephone if a motion for the same is granted by an immigration judge. However, there is great disparity in judicial practice regarding telephonic appearances. There are a number of judges throughout the US that will not allow an attorney to appear by telephone in any circumstance – even in a routine Master Calendar when the Respondent will be physically present in court. In many areas of the US travel to the Court can mean an incredible expense. For example, the Atlanta court has a broad geographic jurisdiction including areas that are six or seven hours travel by car. Likewise, the Orlando Court's jurisdiction extends to the Florida panhandle – eight to ten hours of travel by car**.** AILA believes that telephonic hearings should be routinely permitted.

1. Given the disparity in the practice, when will the Board incorporate into the immigration bench book or in a memorandum that telephonic hearings should be conducted?

RESPONSE: Requests for a telephonic appearance at a master calendar or bond hearing are adjudicated on a case-by-case basis. EOIR has issued guidance to the Immigration Judges regarding such requests. *See* OPPM 08-04, "Guidelines for Telephonic Appearances by Attorneys and Representatives at Master Calendar and Bond Redetermination Hearings," available online at http://www.justice.gov/eoir/efoia/ocij/OPPMLG2.htm. If a party does not agree with the Immigration Judge's decision regarding a motion for a telephonic appearance, the party may appeal the decision to the Board. If a party believes that an Immigration Judge has adopted an inappropriate policy regarding

telephonic hearings, the party is welcome to raise that issue with the appropriate ACIJ.

B. Motions to Change Venue

Under Matter of Rahman, 20 I&N Dec. 480 (BIA 1992), a court considers the following factors for a motion for change in venue: administrative convenience, expeditious treatment of the case, location of witnesses etc . . . . However, some courts require that the respondent admit all of the allegations in the Notice to Appear and concede removability as a prerequisite to applying the balancing test in Rahman. This prerequisite is often rigidly applied, without regard to factual or legal errors in the NTA which can be corrected without effecting [sic] eligibility for relief or requiring additional witnesses or cost to the government. The practice manual states that the motion must admit or deny all the factual allegations and charges in the Notice to Appear. See Practice Manual 5.10(c)

We recognize that an immigration judge has the authority to change venue on a case by case basis; however in many jurisdictions, such as Atlanta and Buffalo, the judges do not abide by this rule. As DHS has become more aggressive in detaining individuals, moving individuals, or a Notice to Appear is often sent to an old address, the requirement by immigration judges that removability be conceded may have detrimental affects [sic] on an individual and may compromise their ability to properly litigate their case. It often gives the appearance that the court is working with DHS, rather than being a neutral arbiter.

Because the issue is a change of venue, it is unlikely that this will be raised in the form of an appeal. When can we see EOIR promulgate guidance to the immigration judges on this issue?

RESPONSE: Motions to change venue are decided on a case-by-case basis in accordance with 8 C.F.R. § 1003.20 and Board case law. *See, e.g.*, *Matter of Rivera*, 19 I&N Dec. 688 (BIA 1988). EOIR has already issued guidance to the Immigration Judges regarding such motions. *See* OPPM 01-02, "Changes of Venue," available online at http://www.justice.gov/eoir/efoia/ocij/OPPMLG2.htm. If a party does not agree with the Immigration Judge's decision regarding a motion to change venue, the party may appeal the decision to the Board. If a party believes that an Immigration Judge has adopted an inappropriate policy regarding such motions, the party is welcome to raise the issue with the appropriate ACIJ.

V. Detention/Bonds

A. Because of the limited availability of long-term bed space, DHS frequently will take a respondent into custody in one city and then move the respondent to another. In places like the Southern US, this can mean, for example, that a respondent is first detained in Tennessee for a few days, moved to Alabama for a few days, and then eventually moved to Oakdale, Louisiana. The transit time can vary from a day or two to a week. In New York, individuals are moved from NY, to Pennsylvania and then Texas, delaying a bond for almost two weeks, [sic]

A recurring issue is jurisdiction over the bond. If counsel tries to file for bond in Oakdale or York, PA before the Respondent is in the jurisdiction, the motion may be rejected if the Respondent is not yet in the area. According to the regulations at 8 CFR § 1003.19(c), the filing of a bond hearing [sic] in one of three places:

> (c) Applications for the exercise of authority to review bond determinations shall be made to one of the following offices, in the designated order:
>
> (1) If the respondent is detained, to the Immigration Court having jurisdiction over the place of detention;
> (2) To the Immigration Court having administrative control over the case; or
> (3) To the Office of the Chief Immigration Judge for designation of an appropriate Immigration Court.

The regulation was enacted to shorten the waiting period for a bond hearing and to distribute these hearings among the judges. See preamble 52 Fed. Reg. 2931, 2936 (Jan. 29, 1987). Therefore, immigration judges and DHS should not delay bond proceedings by forcing the person to re-file.

1. Given the significant due process concerns and your own guidance on this matter, we respectfully suggest that further regulations be promulgated or the Board issue a published decision on bond jurisdiction.

RESPONSE: The Board is aware of this issue and will consider any issue related to this in a bond appeal filed before it. The Board is unable to provide an advisory opinion on this issue outside the context of a specific case. EOIR thanks AILA for this suggestion and welcomes input from all stakeholders regarding promulgating regulations to address this issue.

2. Why is it permissible for Immigration Judges to ignore the purpose of the regulations?

RESPONSE: Immigration Judges interpret regulations within the context of specific cases.

VI. Continuances/Termination

A. Padilla v. Kentucky Issue

In Padilla v. Kentucky, 130 S.Ct. 1473 (U.S. 2010) the Supreme Court held that criminal defense attorneys are required under the Sixth Amendment to advise noncitizen clients of the immigration consequences of their guilty pleas. The decision is particularly important for aliens with criminal convictions since the Supreme Court acknowledged that the right to effective counsel in criminal cases includes advice regarding immigration consequences associated with a criminal offense. Thus, it is now arguable that deportation is not a collateral consequence of a criminal conviction. Rather, deportation can be viewed as a direct consequence of a conviction which requires attorneys to advise non-citizens of immigration consequences associated with decisions made in a criminal plea bargain.

1. In light of this decision, will Immigration Judges' [sic] be instructed to grant continuances of removal proceedings pending the outcome of a motion to vacate a criminal conviction where a Padilla issue regarding the advice provided by a criminal attorney is involved?

RESPONSE: As motions for continuances are adjudicated on a case-by-case basis in accordance with 8 C.F.R. § 1003.29 and Board case law, a blanket instruction to the Immigration Judges, as suggested, is not appropriate. The decision to grant or deny a motion for a continuance will depend upon the particulars of the case. If a party does not agree with the Immigration Judge's decision regarding a motion to continue, the party may appeal the decision to the Board.

2. If so, under what circumstances would Judge's [sic] be required to grant the continuance and what evidence would be required to grant the motion?

RESPONSE: Please see the above response to question VI.A.1.

AILA suggests that if EOIR decides to set standards for Judges' [sic] to determine whether to grant continuances when presented with a Padilla scenario, it should utilize the criteria set forth in Matter of Hashmi, 24 I&N Dec. 785 (BIA 2009) regarding motions for continuances as the standard to determine whether "good cause" exists for

the continuance. This would allow Immigration Judges' [sic] to review Padilla type motions in a proper context to determine whether a continuance is warranted to allow a criminal court time to rule on the motion to vacate the underlying conviction.

3. Does the BIA have any cases pending where this issue has been raised? If so, would you provide the status of these cases so AILA can consider filing amicus briefs?

RESPONSE: The Board issues its decisions on a case-by-case basis. It is very difficult for the Board to identify a case with a specific issue on appeal. If AILA is aware of a case with this issue, the Board will entertain the motion to file an amicus brief.

B. Approved Petitions

As you are aware, on August 20, 2010, the Assistant Secretary, John Morton issued a memorandum on guidance regarding the handling of removal proceedings of aliens with pending or approved applications or petitions. The memo instructs that where that [sic] is an underlying application or petition and ICE determines in the exercise of discretion that an individuals [sic] appears eligible for relief from removal, the OCC should promptly move to dismiss proceedings without prejudice before EOIR. In a recent meeting with ICE headquarters and AILA liaison, ICE estimated that in approximately ten percent of cases, judges were not agreeing to termination despite DHS's position to terminate the proceedings.

1. Has EOIR had any conversations with DHS on this memorandum?

RESPONSE: Yes. EOIR has been participating in an inter-agency working group with ICE and the U.S. Citizenship and Immigration Services (USCIS) focusing on identifying the most efficient and expeditious procedures for handling the removal proceedings of individuals with pending or approved USCIS applications or petitions.

2. Was EOIR consulted on the issue prior to the release of the memo?

RESPONSE: Yes. Please see the above response to question VI.B.1.

C. U Visas

At our October 2008 meeting, we voiced concerns regarding the slow adjudication of U Visa applications as it pertains to aliens in removal proceedings. The IJ's at the Denver Immigration Court will consider continuances in cases once the U Visa has been filed

with the VSC and in detained cases, DHS is agreeing to terminate and release aliens if they have a prima facie determination from the VSC.

Will EOIR consider issuing recommendations to the Immigration Courts nationwide with regards to the granting of continuances in removal proceedings when a U Visa is pending with the VSC?

RESPONSE: EOIR does not plan on issuing guidance to the Immigration Courts regarding motions to continue that are based on a pending U visa. Such motions are adjudicated on a case-by-case basis in accordance with 8 C.F.R. § 1003.29 and Board case law. If a party does not agree with the Immigration Judge's decision regarding a motion to continue, the party may appeal the decision to the Board.

VII. Asylum clock

On June 16, 2005, EOIR published Operating Policies and Procedures Memorandum (OPPM) 05-07: Definitions and Use of Adjournment, Call-up and Case Identification Codes. The memorandum makes it clear that certain actions stop the "EAD" clock until the next hearing. Members are reporting that in some jurisdictions, specific IJ's do not like granting EAD's to asylum applicants and make it very difficult to start this "EAD" clock, or refuse to even start the clock for particular classes of cases. Members are reporting in other jurisdictions, that the IJ's are far more amenable to considering "motions" regarding clock issues and work with the Court's Administrator to fix clock issues so that asylum applicants can obtain an EAD while case is pending. We realize this issue has been raised routinely in past meetings, however the suggestions offered have not had any positive solution as we are still receiving numerous reports of widespread problems. These problems are exacerbated now that merits hearings on asylum cases tend to be adjourned for up to one and a half to two years.

Will EOIR consider issuing additional memorandum to direct the Immigration Courts nationwide to adhere to the (OPPM) 05-07?

RESPONSE: EOIR is currently reviewing additional guidance regarding the asylum clock.

As noted in previous National AILA-EOIR Liaison Meeting Questions and Answers, the "asylum clock" is premised on INA § 208(d)(5)(A)(iii), which describes the timeline for adjudication of the asylum application, not employment authorization. The asylum clock stops once the asylum application has been adjudicated by the Immigration Judge. DHS, rather than EOIR, is responsible for adjudicating applications for employment authorization.

If a party feels that there is a problem with the asylum clock in an individual case and that case is pending before an Immigration Judge, the first step is to try to resolve the issue locally. If the concern arises during a hearing, it should be addressed to the Immigration Judge. If the concern arises after a hearing, it should be addressed to the Court Administrator. If necessary, the question may also be raised with the ACIJ having jurisdiction over the particular court. For cases that are pending before the Board, asylum clock questions should be directed to the attention of the Office of the General Counsel (OGC), which works with OCIJ to respond appropriately to the clock inquiry. EOIR has described the process for bringing asylum clock issues to EOIR's attention in previous National AILA-EOIR Liaison Meeting Questions and Answers. *See* Responses to Questions 27 and 28 in the October 28, 2009, National AILA-EOIR Liaison Questions and Answers, available online at http://www.justice.gov/eoir/statspub/eoiraila102809.pdf.