

SUPPORTING STATEMENT

OMB No. 1125-0008

Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case Form EOIR-45

Part A. Justification

1. Necessity of Information Collection - Any individual may file a complaint against an immigration practitioner authorized to practice before the Board of Immigration Appeals (Board) and the immigration courts of the Executive Office for Immigration Review (EOIR), or the U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS). Complaints may be made regarding an immigration practitioner=s criminal, unethical, or unprofessional conduct, or frivolous behavior. See 8 C.F.R. ' 1003.104(a)(2). Complaints are directed to the agency where the alleged misconduct occurred; each office then conducts a preliminary inquiry. While some preliminary inquiries may end with a resolution such as a warning letter or admonition, others will result in a Notice of Intent to Discipline and may proceed to a hearing before an adjudicating official. Once the adjudicating official issues a practitioner disciplinary decision, either party or both parties may appeal the decision to the Board for *de novo* review of the record, pursuant to 8 C.F.R. ' 1003.106(c). The appeal must be taken with a Form EOIR-45, which captures such information as the practitioner=s name and address, the basis for appeal, and the name and address of the practitioner=s attorney or representative.

2. Needs and Uses - The Form EOIR-45 is filed and considered in the context of a practitioner disciplinary proceeding pursuant to 8 C.F.R. ' 1003.106. Accordingly, the Board considers the information contained in the form to the extent necessary to process the disciplinary complaint and determine appropriate future action. The Board reviews the form in order to determine the sufficiency and merit of a party=s appeal.

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-45 is available on EOIR=s website for printing. Information can be typed into the online form which is then printed out for submission to EOIR. In addition, an applicant may print the form in its entirety to complete by typing or printing legibly. Currently, EOIR does not have the automated capability in place to accept electronic submission of forms. However, EOIR continues to explore the implementation of a number of electronic document initiatives, including electronic submission of EOIR forms.

4. Efforts to Identify Duplication - The only method for appealing an adjudicating official=s practitioner disciplinary decision to the Board is to file a Form EOIR-45. A review of EOIR=s existing forms revealed no duplication of effort, and there is no similar information currently available which can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities.

6. Consequences of Less Frequent Collection - Failure to collect and present the information regarding a party's reasons for appeal would deprive the party of a mechanism through which to preserve and exercise the regulatory right to appeal an adjudicating official's decision to the Board in a practitioner disciplinary case.

7. Special Circumstances Influencing Collection - A party affected by an adjudicating officer's decision in a practitioner disciplinary case who wishes to appeal the decision to the Board must file the Form EOIR-45 within 30 days of the service of the decision being appealed. See 8 C.F.R. " 1003.3(a)(2), 1003.106(c). None of the other eight special circumstances identified in OMB instruction number 7 apply to this collection.

8. Federal Register Publication and Consultation- A 60-day notice covering this collection was published in the Federal Register, Volume 73, Number 215 on November 5, 2008. A 30-day notice covering this collection was published in the Federal Register, volume 74, Number 5 on January 8, 2009. No public comments were received.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to individuals in exchange for the information provided in Form-45.

10. Assurance of Confidentiality - The Board maintains the original appeal in the record of proceedings for the disciplinary case. Those EOIR staff members processing the appeal may access the Form EOIR-45. To the extent law permits, EOIR protects the

confidentiality of the contents of the Form EOIR-45 and its attachments. EOIR would release information in accordance with the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions - There are no questions of a sensitive nature in the Form EOIR-45.

12. Estimate of Hour Burden

a. Number of Respondents	50
b. Number of Responses per Respondent	1
c. Total Annual responses	50
d. Hours per response	1 hour
e. Total annual hourly reporting burden	50

The total annual reporting burden is derived by multiplying the number of respondents (50) by the frequency of response (1) by the number of hours per response (1 hour):

50 respondents x 1 response per respondent x 1 hour per respondent = 50 burden hours.

EOIR notes that the total burden hours is an estimate and may vary depending on the complexity of the underlying complaint, including, among other things, the level of

detail that the respondent provides and any obstacles to obtaining any supporting documentation.

13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection. The estimated public cost is \$15,500. This estimate is derived by multiplying the burden hours of 50 by the estimated attorney or representative fee of \$200/hr., plus a filing fee of \$110 per respondent.

50 burden hours x \$200/hr. (estimated attorney or representative fee) = \$10,000

\$110 filing fee x 50 respondents = \$5,500

\$10,000 + \$5,500 = \$15,500

EOIR recognizes that a certain portion of the respondents may not retain an attorney to assist them in filling out the form. Moreover, EOIR has no way to accurately determine either the number of respondents who choose to retain representation or the total fee charged by those practitioners employed by the respondents. The number is not quantifiable. However, the total cost burden resulting from filing fees is quantifiable. Accordingly, EOIR presents in item number 14 on the 83-I worksheet the quantifiable filing fee figure (\$5,500).

These same figures were used in the 2006 OMB 83-I Information Collection Request supporting statement. EOIR calculates that the number of appeals will be similar. Accordingly, the same \$5,500 calculation will continue to be EOIR=s presentation of the cost burden.

14. Estimated Cost to Federal Government - It is estimated that the annual government cost for printing, distributing, stocking, processing and maintaining the Form EOIR-45 is \$20.00 (derived by multiplying the 4 pages of the form by an estimated \$.10 per copy by the estimated 50 respondents per year).

15. Reason for Change in Burden - The hour burden did not change in this information collection request (ICR).

16. Plans for Publication - The EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

17. Approval to Not Display the Expiration Date - EOIR is seeking OMB approval to not display the expiration date for this collection instrument. The display of the expiration date would require EOIR to pull and destroy current forms in its inventory (e.g., headquarters, field offices throughout the country), which otherwise could still be used by the public except for the outdated expiration date. EOIR forms are in wide distribution. Parties in proceedings before EOIR, attorneys and practitioners, organizations who assist individuals in proceedings before EOIR, and other government agencies all would be similarly required to replace forms otherwise acceptable except for the outdated expiration date. It is also costly to destroy useable forms and then reprint and restock them. Therefore, EOIR requests that the display of the expiration date be

waived. The EOIR has in place a forms calendar to ensure that all forms remain active and future applications for OMB approval are planned.

18. Exceptions to Certification Statement - The EOIR does not request an exception to the certification of this information collection.

Section B. Collection of Information Employing Statistical Methods

This collection does not employ statistical methods.

PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with, including paperwork regulations, any applicable statistical standards or directives, and any other information policy directives promulgated under 5 C.F.R. ' 1320.

John N. Blum

Acting General Counsel
Executive Office for Immigration Review

Date