

SUPPORTING STATEMENT

Notice of Appeal from a Decision of an Immigration Judge Form EOIR- 26

Revision of a Currently Approved Collection OMB No. 1125-0002

Part A. Justification

1. Necessity of Information Collection - A party (either the U.S. Immigration and Customs Enforcement of the Department of Homeland Security or the respondent/applicant) affected by a decision of an Immigration Judge may appeal that decision to the Board of Immigration Appeals (Board), provided the Board has jurisdiction pursuant to 8 C.F.R. ' 1003.1(b). An appeal from an Immigration Judge=s decision is taken by completing the Form EOIR-26 and submitting it to the Board. The form requests information, such as name, alien identification (or AA@) number, mailing addresses for respondent/applicant and attorney or representative, and basis of appeal, necessary for the Board to process the appeal of the decision of the Immigration Judge. The form has been updated to provide clarification to respondents, to revise dates and addresses and to include a Privacy Act Notice.

Six substantive changes were made to the form. First, a Privacy Act Notice was added to the General Instructions in order to comply with that Act's provisions. The other five substantive changes were made in order to provide additional clarification for aliens. Section F of the second page of the general instructions sets forth scenarios in which a respondent's appeal may be reviewed by a three-Board Member panel; EOIR added an explanatory parenthetical to clarify one of these scenarios. The final page of the general

instructions refers to “the appellant.” As this is a legal term that may be unfamiliar to a layperson, EOIR chose to define that term. The definitional sentence (“You are also the “Appellant” if you are filing an appeal of a decision by an Immigration Judge”) was added to Section C of the General Instructions in a section that provides other definitions. Additionally, the phrase “Immigration Judge” was added at part 5 of the form to clarify that this form is to be used to appeal an Immigration Judge’s decision. The second grey “Warning” box on page 2 of the form was changed by adding clarification to respondents on how to request oral argument. Finally, the first “note” on page 3 of the form was revised in two ways. The phrase “or change your telephone number” was added at the end of the first sentence because aliens are also obligated to inform the Board of Immigration Appeals if they change their telephone number. The second sentence was revised to use the formal name of the change of address form.

The remaining changes to this form are not substantive and are necessary revisions. The revision date at the bottom right-hand corner of each page has been updated from 2008 to 2011. Two other changes were made to part J of the General Instructions: the insertion of EOIR’s new website address, as well as deletion of reference to the document “Questions and Answers,” as that document has been removed from EOIR’s website.

2. Needs and Uses - The form is filed and considered in the context of an immigration proceeding. Accordingly, information contained in the form is considered only to the extent necessary to process the appeal. The form is inserted into the official file for the respondent/applicant and certain information on the form is entered into EOIR’s

internal-use only database. The form is reviewed by the Board 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-26 is available on EOIR=s website for printing. Information can be typed into the online form which is then printed out for submission to the agency, or the individual has the option of printing 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 Immigration Judge=s decision to the Board is to file a Form EOIR-26. 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 from a decision of an Immigration Judge to the Board.

7. Special Circumstances Influencing Collection - A party affected by an Immigration Judge's decision who wishes to appeal the decision must file the Form EOIR-26 within 30 calendar days of the Immigration Judge's oral decision or the mailing of the Immigration Judge's written decision. 8 C.F.R. ' 1003.38(b). 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 will be published in the Federal Register. A 30-day notice covering this collection will be published in the Federal Register. Copies of these notices are attached. If comments are received, they will be considered and incorporated where appropriate.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to parties in immigration proceedings.

10. Assurance of Confidentiality - The original Notice of Appeal from a Decision of an Immigration Judge is maintained by EOIR in the official court record of proceeding (ROP) and is accessed by those EOIR employees processing the ROP. The confidentiality of the contents of a party's Notice of Appeal from a Decision of an Immigration Judge is protected by EOIR, as are all the documents in the ROP, to the

extent permitted by the law, including 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-26.

12. Estimate of Hour Burden

a. Number of Respondents	19,201
b. Number of Responses per Respondent	1
c. Total Annual responses	19,201
d. Hours per response	.5
e. Total annual hourly reporting burden	9,600.5

The total annual reporting burden is derived by multiplying the number of respondents (19,201) by the frequency of response (1) by the number of hours per response (.5):
 $19,201 \text{ respondents} \times 1 \text{ response per respondent} \times .5 \text{ hour per respondent} = 9,600.5$
burden hours. As noted above, the form E-26 is filed by both parties in proceedings before an Immigration Judge: the alien in removal proceedings and the attorney for the Department of Homeland Security. Of the 19,201 number of annual responses, 17,607 were filed by aliens.

13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection. The estimated public cost is zero.

For informational purposes, there may be additional costs to respondents. As noted above, this form is used by both individuals in removal proceedings and attorneys for the Department of Homeland Security. The costs referenced in this paragraph apply only to respondents in removal proceedings, and not to DHS attorneys. Respondents may incur a cost if they hire a private practitioner to assist them with completing the Form EOIR-26. The Bureau of Labor Statistics reports that the median hourly wage for lawyers is \$54.21. For those respondents who proceed without a practitioner, there is an estimated cost of \$10 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. Respondents may also incur a cost of \$110, which is the amount of the filing fee for this, although they may seek to have the filing fee waived by requesting a waiver from an Immigration Judge or by submitting Form EOIR 26-A.

14. Estimated Cost to Federal Government - It is estimated that the annual government cost for printing, distributing, stocking, processing and maintaining the Form EOIR-26 is \$82,050.48. This amount includes the printing costs of \$11,520.60, which was derived by multiplying the 6 pages of the form by an estimated \$.10 per copy by the estimated 19,201 respondents per year. This amount also includes \$70,529.88, the cost for stocking, processing and maintaining the form. This amount was derived by calculating the personnel and overhead costs to EOIR for processing the form.

15. Reason for Change in Burden - There is a decrease in the burden hours. It appears that the analysis in 2008 did not account for the fact that not every appeal filed with the

Board requires the use of form EOIR-26. For purposes of this submission, EOIR averaged the number of E-26 forms filed in the past three fiscal years to reach a total of 19,201. Further, it appears that the analysis in 2008 did not account for the fact that form E-26 is filed by both alien respondents and DHS attorneys, who do not pay the filing fees. EOIR averaged the number of E-26 forms filed by aliens in the past three fiscal years and multiplied that amount by the cost of the filing fee. There are no adjustments or program changes at this time.

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. 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

Not applicable.

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.

Robin M. Stutman
General Counsel
Executive Office for Immigration Review

Date