

SUPPORTING STATEMENT

1125-0006 Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28)

Part A. Justification

1. Necessity of Information – The Department has detailed regulations regarding the representation of private parties before the Board of Immigration Appeals (Board) and the Immigration Courts. An alien in removal proceedings may be represented, at no expense to the Government, by counsel who is authorized to practice before the Board and the Immigration Courts. *See* Immigration and Nationality Act (INA) §§ 240(b)(4)(A), 292, 8 U.S.C. §§ 1229a(b)(4)(A), 1362 (2006); 8 C.F.R. §§ 1003.16(b), 1003.38(g) (2009). If an alien desires to be represented before the Immigration Court by an attorney or representative, the attorney or representative must inform the Immigration Court that s/he is entering an appearance on behalf of that alien. If an individual is appearing as a representative in a practitioner disciplinary proceeding, the representative must inform the Immigration Court that s/he is entering an appearance. An attorney or representative must file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) to notify the Immigration Court of the representation. *See* 8 C.F.R. §§ 1003.17(a). The Form EOIR-28 is also served on the U.S. Immigration and Customs Enforcement of the Department of Homeland Security (DHS) to inform it of the representation.

The Form EOIR-28 collects basic information about the represented party and the attorney or representative. With respect to the represented party, the party's name,

address, and identifying alien (A) number, where relevant, must be provided. The attorney or representative must also enter the docket number for disciplinary cases. With respect to the attorney or representative, the form asks for details about the type of representative and representation status. If the individual submitting the form is an attorney, the Form EOIR-28 collects information about bar membership and standing in the bar. For instance, the Form EOIR-28 requires the attorney to indicate whether s/he is subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting him or her in the practice of law. If the individual submitting the form is a non-attorney, that individual must indicate the grounds that allow him or her to act as a representative. *See* 8 C.F.R. §§ 1001.1(j), 1292.1(a) (defining who may qualify as a “representative”). If the individual is an accredited representative, as defined in 8 C.F.R. § 1292.1(a)(4), s/he must provide the name of the recognized organization with which s/he is accredited. Finally, the EOIR-28 collects information about representation status. A practitioner must indicate whether s/he is the primary or non-primary attorney and must also denote whether s/he is providing pro bono representation.

EOIR made substantial modifications to the EOIR-28, such that the format is completely different. Other than these format changes, EOIR also made some substantive changes. First, EOIR now requests the practitioner’s email address. Second, the EOIR-28 now asks for docket information if the representation is for a practitioner disciplinary proceeding. Third, the earlier version of the Form EOIR-28 asked for the practitioner’s representation status by providing three check-box answers: one check-box pertained to

attorneys, one check-box pertained to accredited representatives, and the final check-box was a catch-all for the remaining kinds of representatives who may appear before EOIR. In order to capture more accurate data about practitioners, EOIR expanded the number of check-boxes from three to six. Fourth, EOIR clarified that an attorney or representative may not enter a limited appearance. Fifth, EOIR changed the wording of the current question that collects information about pro bono representation. Sixth, EOIR added a Privacy Act Notice in order to comply with Privacy Act requirements. Finally, EOIR made some minor changes, such as updating a URL address and including an additional telephone number to contact EOIR.

2. Needs and Uses - The Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) allows attorneys and representatives to notify the Immigration Court that they are representing an alien in immigration proceedings before the Immigration Court. Upon receipt of a form that establishes an individual is an attorney in good standing or is otherwise able to represent an alien before the Immigration Court, the Immigration Court begins to treat the individual as the alien's legal representative during the proceedings before the Immigration Court. The Form EOIR-28 also allows the Immigration Court to ensure that only individuals authorized by regulation are entering appearances on behalf of aliens facing removal from the United States.

3. Use of Technology - The use of this form provides the most efficient means for

collecting and processing the required data. The Form EOIR-28 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 an individual to enter his or her appearance on behalf of an alien in proceedings before the Immigration Court is to complete and file the Form EOIR-28. A review of EOIR's forms revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.

5. Impact on Small Businesses - This collection has a minor impact on small businesses or other small entities to the extent they employ attorneys or accredited representatives who represent aliens in immigration proceedings before the Immigration Court. However, this collection does not impose undue burden on the small businesses or other entities. EOIR estimates that the form takes six minutes to complete and requires no filing fee. In addition, the requested information is needed to ensure that only attorneys in good standing or other qualified individuals are entering appearances and representing aliens facing removal from the United States.

6. Consequences of Less Frequent Collection - Failure to collect this information would frustrate attempts by individuals to enter an appearance on behalf of aliens in proceedings before the Immigration Court.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection.

8. Federal Register Publication and Consultation - The 60-day and 30-day notices covering this collection will be published in the Federal Register to solicit comments from the public. If comments are received, they will be considered and incorporated, as appropriate.

9. Payment or Gifts to Claimants - EOIR does not provide any payment or gifts to parties in immigration proceedings or their attorneys or representatives.

10. Assurance of Confidentiality - The Immigration Court retains the original form and places the form in the record of proceedings, along with all other documents filed in the alien's proceeding. EOIR staff members and Immigration Judges who process, review, and adjudicate the case may access the Form EOIR-28. To the extent law permits, EOIR protects the confidentiality of the contents of the Form EOIR-28. EOIR would release information in accordance with the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions - To the extent that the Form EOIR-28 asks sensitive questions of an attorney when it asks whether the attorney is in good standing in the bar or subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting him or her in the practice of law, such questions are necessary for EOIR to determine whether counsel is duly authorized to represent aliens before the Immigration Court. The information is used only to the extent necessary in order to make that determination. To the extent that the Form EOIR-28 asks sensitive questions of practitioners when it asks whether the representation is provided on a pro bono basis, such question is necessary for EOIR to facilitate its pro bono program. Under Operating Policies and Procedures Memorandum 08-01, the particular needs of pro bono representatives who appear before the immigration courts should be taken into consideration. OPPM 08-01: "Facilitating Pro Bono Legal Services" (March 10, 2008), *available at* <http://www.justice.gov/eoir/efoia/ocij/oppm08/08-01.pdf>.

12. Estimate of Hour Burden

a. Number of Respondents	165,614
b. Number of Responses per Respondent	1
c. Total Annual responses	165,614
d. Hours per response	6 minutes or 0.1 hour
e. Total annual hourly reporting burden	16,561

165,614 attorneys or representatives x 1 response per respondent x 0.1 hour per response
= 16,561 burden hours. It is estimated that the total time to read and complete the form
and gather all materials is no more than 6 minutes.

13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection. There
are also no fees associated with filing this information collection, the Form EOIR-28.

The estimated public cost is a maximum of \$897,772. This amount is reached by
multiplying the burden hours (16,561) by \$54.21, which represents the current median
hourly wage for attorneys, as set by the Bureau of Labor Statistics. \$897,772 represents
the maximum estimate of cost burden. EOIR notes that this form is submitted by an
immigration practitioner, who is either an attorney or other form of representative; as
such, respondents are not likely to retain a practitioner to assist them in filling out the
form.

For those individuals 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. This amount to the individual is not included as it is less than the
estimated practitioner cost and would not add to the maximum estimate of \$897,772.

14. Estimated Cost to the Federal Government - The estimated annual cost for printing,
distributing, stocking, processing, and maintaining the Form EOIR-28 is \$33,123 (derived

by multiplying the 2 pages of the form by an estimated \$0.10 per copy by the estimated 165,614 applicants per year).

15. Reasons for Change in Burden - The difference in burden is due to an agency adjustment, specifically an increase in the number of respondents. Previously, EOIR estimated 100,870 respondents annually. At present, there are approximately 165,614 respondents annually. As the number of hours per response remained the same (6 minutes), the total burden hours increased from 10,087 to 16,561 burden hours, for a difference of 6,474 burden hours. Because of the higher number of respondents, the cost burden similarly increased to reflect the adjustment for the number of applicants.

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 the Certification Statement - 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.