

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 –

Background. 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 relevant agency of the Department of Homeland Security (DHS) – U.S. Immigration and Customs Enforcement.

Information Collection. 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 applicable, must be provided.

With respect to the attorney or representative, the form requires information – in the form of check boxes – about the type of representation, i.e., attorney, accredited representative, law student or law graduate, reputable individual, accredited foreign government official, or individual authorized to practice on December 23, 1952.

If the individual submitting the form is an attorney, the Form EOIR-28 collects information about bar membership and standing with the bar. For example, 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 attorney is subject to such an order, s/he is instructed, per the attached revisions, to not check the box indicating that s/he is an attorney and, instead, to explain the details of such order on the reverse of the form.

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. The language for the accredited representatives has been revised to clarify that the representative must be accredited to appear before EOIR.

If the individual is an accredited foreign government official, the individual must indicate, per the attached revisions, which country s/he is from.

For all representatives, whether attorney or non-attorney, the Form EOIR-28 also

collects information about representation status. Specifically, a practitioner must indicate whether s/he is the primary or non-primary attorney/representative and must also denote whether s/he is providing pro bono representation.

For clarity and ease of the practitioner completing the form, EOIR has made a number of additional modifications to the current Form EOIR-28:

On the first page of the form, EOIR has reorganized the layout such that the practitioner's contact information now appears at the bottom of the form for ease of reference. Title descriptions for each information field have been added (i.e. "Name:", "Address:", "Telephone:"). Previously these were free fields that could be completed in no particular order and without identifying the specific information being provided, such as which contact number was for the telephone or the facsimile. Similarly, the free field for the alien registration number has been revised to clarify that an attorney or representative must submit one Form EOIR-28 for each client. Because the Form EOIR-28 is no longer used in disciplinary cases, associated information has been removed.¹

The attorney attestation section has also been revised to accommodate qualified representatives ordered by EOIR to appear on an alien's behalf. Pursuant to its April 22, 2013 nationwide policy, EOIR will be providing qualified representatives to unrepresented immigration detainees with serious mental disorders who are deemed by an immigration judge to be mentally incompetent to represent themselves in immigration proceedings. The new Form EOIR-28 will permit representatives to indicate if they are appearing at the alien's request or pursuant to an EOIR order for the provision of a

¹ Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals is the appropriate form for practitioners to enter an appearance for a disciplinary case.

qualified representative.

On the second page of the form, additional information about eRegistry requirements for attorneys and accredited representatives has been added to the “Appearances” section. Practitioners appearing “on behalf of” an attorney must provide the date of the hearing for the appearance. Font and justification formatting changes were made to the “Type of Appearance” and “Proof of Service” sections. The signatory has been changed from “Attorney or Representative” to “Person Serving” to clarify that service of the form may be accomplished by an individual other than the attorney or representative entering his or her appearance. Lastly, EOIR’s zip code and the revision date of the form have been updated.

Corresponding Changes to Electronic Form EOIR-28. As part of EOIR’s eRegistry, which is part of a long-term agency initiative to create an electronic case access and filing system for the Immigration Court and the Board, attorneys and accredited representatives may electronically file the Form EOIR-28. The changes to the Form EOIR-28 proposed herein will need to be implemented in eRegistry before the revised form – both hard copy and electronic versions – can be made available for use. The development and implementation of these changes in eRegistry will take several months to complete. In the event that the proposed changes are not ready in eRegistry upon OMB approval of the revisions proposed herein, EOIR will continue to use the current Form EOIR-28 until those changes are finalized. This is necessary to prevent the use of two versions of the same form (i.e., a hard copy form different from an electronic form), avoid confusion as to which form may be used, and to avoid any conflicts the two

versions may present.² For these reasons, EOIR seeks OMB approval of both the new Form EOIR-28 (with the revisions proposed herein) and the old form until both the hard copy and electronic versions of the new form are ready for use.

2. Needs and Uses - The 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 designates 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. A practitioner can type information directly into the online form and then print it for submission to EOIR, or s/he may print the blank form in its entirety and complete it by typing or printing legibly. Attorneys and accredited representatives with full accreditation may also electronically submit forms and update existing forms through eRegistry; individuals who are not licensed attorneys or accredited

² For example, the revised form requests information not captured on the current form, including the designation of a qualified representative and country for foreign accredited representatives.

representatives with full accreditation do not have this option.

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 parties in proceedings before the Immigration Courts. However, this collection does not impose undue burden on the small businesses or other entities. The form requires no filing fee, and EOIR estimates that the form takes six minutes to complete. In addition, the requested information is needed to ensure that only attorneys in good standing or otherwise qualified individuals are permitted to enter appearances and represent aliens in proceedings before EOIR.

6. Consequences of Less Frequent Collection - Failure to collect this information would preclude individuals from entering appearances on behalf of parties 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 it 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 includes a sensitive question by asking whether an 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 question is necessary for EOIR to determine whether the individual is duly authorized to

represent aliens before the Immigration Courts. The information is used only to the extent necessary in order to make that determination. To the extent that the Form EOIR-28 includes a sensitive question by asking whether the representation is being 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 EOIR 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

179,856

b. Number of Responses per Respondent

1

c. Total Annual responses

179,

856

d. Hours per response

6 minutes or

0.1 hour

e. Total annual hourly reporting burden

17,985

179,856 attorneys or representatives x 1 response per respondent x 0.1 hour per response

= 17,985 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 estimated public cost is a maximum of \$1,118,846. This amount is reached by multiplying the burden hours (17,985) by \$62.21, which represents the current median hourly wage for attorneys, as set by the Bureau of Labor Statistics. \$1,118,846 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 \$1,118,846.

14. Estimated Cost to the Federal Government - The estimated annual cost for printing, distributing, stocking, processing, and maintaining the Form EOIR-28 is \$357,540.

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 174,609 respondents annually. At present, there are approximately 179,856 respondents annually. As the number of hours per response remained the same (6 minutes), the total burden hours increased from 17,460 to 17,985 burden hours, for a difference of 525 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 - 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.

PAPERWORK CERTIFICATION

In submitting this request for Office of Management and Budget (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.

Helaine Perlman

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Executive Office for Immigration Review

Date