

## SUPPORTING STATEMENT

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

### Extension Without Change of a Currently Approved Collection OMB No. 1125-0002

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#### Part A. Justification

1. Necessity of Information Collection - A party (either the U.S. Immigration and Customs Enforcement (ICE) 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 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 Executive Office for Immigration Review (EOIR) seeks to make the following changes to the form's instructions; EOIR has no proposed changes to the information collected.

The Board continues to receive appeals for Immigration Judge determinations related to reasonable fear, credible fear and claimed status review. These types of determinations are not appealable to the Board. As such, the Board has included information in the instructions informing applicants not to use the Form EOIR-26 for appeals of those decision types.

The Board intends to use Treasury's OTCnet scanners to process checks for payment of fees for forms and applications submitted before the Board. Notice to the public is required by the Treasury Department. As such, the Board intends to post a notice of this change at the filing window and on the Board's website, in addition to making changes to its Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge. The following language in **red font** will be added to the form to notify the public of this change:

**A. Paying for the Appeal:**

Attach a check or money order to the Notice of Appeal for exactly one hundred and ten dollars (U.S. \$110) made payable to "United States Department of Justice." All checks **or money orders** must be drawn on a bank located in the United States **and must be payable in U.S. currency**. If there are not sufficient funds in your account, your appeal may be dismissed.

- **Notice to Those Making Payment by Check. If you send us a check, the Board will convert it into an electronic funds transfer (EFT). This means we will photocopy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account usually occurs within 24 hours of the deposit and your bank will show it on your regular account statement. You will not receive your original check back. We will destroy your original check, but will keep a copy of it. If the Board cannot process the EFT for technical reasons, you authorize us to process the copy in place of your original check. If your check is returned as unpayable, the appeal will be dismissed as improperly filed.**

**L. Privacy Act Notice:**

- **The information on this form is authorized by 8 C.F.R. §§ 1003.3, 1003.38 in order to appeal a decision of an Immigration Judge to the Board of Immigration Appeals. The information you provide is required to appeal the decision and failure to provide the requested information may result in denial of your request. EOIR may share this information with others in accordance with approved routine uses described in EOIR systems of records notice (SORN) Department of Justice/EOIR-001, Records and Management Information System, 69 FR 26179 (May 11, 2004) and 82 FR 24147 (May 25, 2017).**

- If you are paying by check, our authority to collect such information is authorized by 5 U.S.C. § 552a(e)(3). EOIR and OTCNet may share this information with others in accordance with approved routine uses described in OTCNet systems of records notices.
- ~~The information on this form is authorized by 8 C.F.R. §§ 1003.3, 1003.38 in order to appeal a decision of an Immigration Judge to the Board of Immigration Appeals. The information you provide is required to appeal the decision and failure to provide the requested information may result in denial of your request. EOIR may share this information with others in accordance with approved routine uses described in EOIR systems of records notices.~~

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. An individual may either type the requested information into the fillable form online and then print the completed form for submission to the agency, or print the blank form in its entirety and complete it by typing or printing legibly. Currently, EOIR only has limited automated capabilities in place to accept the electronic submission of certain forms. However, EOIR is exploring a number of electronic document initiatives, including electronic submission of additional EOIR forms. Electronic submission of the Form EOIR-26 through EOIR's eRegistry system, 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 of Immigration Appeals, is part EOIR's long-term electronic filing initiative.

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 date 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 has been published in the Federal Register. *See* 84 FR 18586 (May 1, 2019). A 30-day notice has gone out for publication in the Federal Register. No comments have been received.

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	26,536
b. Number of Responses per Respondent	1
c. Total Annual responses	26,536

d. Hours per response	.5
e. Total annual hourly reporting burden	13,268

The total annual reporting burden is derived by multiplying the number of respondents (26,536) by the frequency of response (1) by the number of hours per response (.5):

$$26,536 \text{ respondents} \times 1 \text{ response per respondent} \times .5 \text{ hour per respondent} = 13,268$$

burden hours. It is estimated that the total time to read and complete the form and gather all materials is no more than 30 minutes.

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 respondents in immigration proceedings and attorneys who represent ICE in those proceedings. The costs referenced in this paragraph apply only to respondents in immigration proceedings, and not to the attorneys who represent ICE. 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 \$58.13. For 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 form. However, they may seek to have the filing fee waived by requesting a waiver by submitting Form EOIR 26-A.

14. Estimated Cost to Federal Government – EOIR estimates that the annual government cost for printing, distributing, stocking, processing and maintaining the Form EOIR-26 is \$100,973.02. This amount includes printing costs of \$15,921.60, which was derived by multiplying the 6 pages of the form by an estimated \$.10 per copy by the estimated 26,536 respondents per year. This amount also includes stocking, processing and maintenance costs of \$85,051.42, which was derived by calculating the personnel and overhead costs to EOIR for processing the form.

15. Reason 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 17,627 respondents annually. At present, there are approximately 26,536 respondents annually. As the number of hours per response remained the same (30 minutes), the total burden hours increased from 8,813.5 to 13,268 burden hours, for a difference of 4,454.5 additional burden hours. Because of the higher number of respondents, the cost burden similarly increased.

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 Certification Statement - 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.

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Christina Baptista  
Senior Counsel for Immigration  
Executive Office for Immigration Review

7/16/19  
Date