

SUPPORTING STATEMENT

Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals (EOIR-60)

Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court (EOIR-61)

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. A noncitizen 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 a noncitizen desires to be represented before the Board or the Immigration Court by an attorney or representative, the attorney or representative must inform EOIR that s/he is entering an appearance on behalf of that individual. An attorney or representative must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) to notify the Board of the representation, or 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 Forms EOIR-27 and EOIR-28 are also served on the relevant agency of the Department of Homeland Security (DHS) – U.S. Immigration and Customs Enforcement.

While EOIR permits entry of separate appearances for custody and non-custody

related proceedings, historically the agency has not permitted the entry of limited appearances. *See Matter of Velasquez*, 19 I&N Dec. 377, 384 (BIA 1986). On September 30, 2020, EOIR published a Notice of Proposed Rulemaking (NPRM) at 85 FR 61640 (Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances), seeking to amend 8 CFR parts 1001 and 1003, to allow the entry of a limited appearance for document assistance. The regulatory changes propose to clarify the definitions of practice and preparation before EOIR, to define when an entry of appearance is required, and in such circumstances when a limited appearance is required versus a full appearance.

The NPRM proposed to amend the current appearance forms EOIR-27 and EOIR-28 to add an option for a limited appearance. However, after further consideration, including public comments received related to this proposed change, EOIR has elected to create two stand-alone entry of appearance forms specifically for the entry of a limited appearance – Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals (EOIR-60) and Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court (EOIR-61). As such, EOIR published a 60-day Federal Register Notice on August 30, 2021, to give the public the opportunity to inspect the newly proposed forms and provide comment. No comments were received. The proposed forms are estimated to take the same amount of time to complete (six minutes) as the current entry of appearance forms EOIR-27 and EOIR-28. The forms will be available on EOIR’s website along with all of EOIR’s other forms, and will be available as a fillable pdf.

that may be electronically fillable once EOIR expands its electronic filing case system to noncitizens.

Currently, there is no EOIR form for the entry of a *limited* appearance. While there are forms for the entry of a full appearance to represent an individual in proceedings before the Board and the Immigration Courts, EOIR agrees with the public commenters that it would be better to create separate forms for the entry of a limited appearance. Unlike the entry of appearance pursuant to an EOIR-27 or EOIR-28, the entry of a limited appearance for document assistance does not change the noncitizen's status as a pro se respondent before EOIR. The entry of a limited appearance does not create any continuing obligation on the part of the practitioner entering their appearance, and does not entitle the practitioner to any future correspondence from EOIR regarding the case or access to the case file as would the entry of an appearance pursuant to an EOIR-27 or EOIR-28. As the public commenters suggested, expanding the use of the EOIR-27 and EOIR-28 has the potential to cause confusion for the practitioners and the government employees processing the forms. Moreover, the separate limited appearance forms have the added benefit of expressly clarifying the scope of the practitioner's services to the noncitizen. As such, EOIR decided to pursue approval of two new forms EOIR-60 and EOIR-61 for the entry of a limited appearance, as opposed to expanding the current entry of appearance forms used for the entry of an appearance to represent a noncitizen in proceedings before the Board and Immigration Courts.

2. Needs and Uses - The Forms EOIR-60 and EOIR-61 allow practitioners to notify the Board or the Immigration Court that they are entering a limited appearance for document assistance only. The forms permit the practitioner to identify the document they have assisted with and attest that they have explained the limited scope of the services they have provided to the noncitizen. These forms will allow EOIR to track and easily identify the practitioners who have assisted a noncitizen with documents filed with EOIR, as a measure for detecting fraud, deterring ghost-writing and holding practitioners accountable for their work. The forms further provide that practitioners who enter a limited appearance are bound by EOIR's Rules of Professional Behavior similar to those entering a full appearance. The forms allow EOIR to ensure that only individuals authorized by regulation are entering limited appearances on behalf of noncitizens facing removal from the United States.

3. Use of Technology - The use of this form will provide the most efficient means for collecting and processing the required data. The forms will be available on EOIR's website along with all of EOIR's other forms, and will be available as a fillable pdf. that may be filed electronically once EOIR expands its electronic filing case system to noncitizens. Alternatively, the forms may be printed for physical submission to EOIR. In addition, the form may be printed in its entirety and completed by typing or printing legibly.

4. Efforts to Identify Duplication - Currently, there is no EOIR form for the entry of a

limited appearance for document assistance. While EOIR does have forms for the entry of appearance before EOIR for custody and non-custody proceedings, those forms result in the entry of an appearance as the representative of record, binding the practitioner to full representation before the Board or the Immigration Court for the life of the proceeding, including appearing at all scheduled hearings, unless and until the practitioner is permitted to withdraw. As the current entry of appearance forms are for a complete different use and purpose, the creation of new entry of limited appearance forms for document assistance only does not create a duplication of effort, and the information currently collected cannot 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 practitioners who provide document assistance to respondents in proceedings before EOIR. However, this collection does not impose undue burden on the small businesses or other entities. The forms require 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 practitioners in good standing or otherwise qualified individuals are permitted to enter a limited appearance before EOIR.

6. Consequences of Less Frequent Collection - Failure to collect this information would preclude practitioners from entering a limited appearance on behalf of respondents in proceedings before EOIR.

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 – EOIR has published a Notice of Proposed Rulemaking covering this collection in the Federal Register. *See* 85 FR 61640 (Sept. 30, 2020). A copy of this notice is attached. EOIR further published a separate 60-day Federal Register notice on August 30, 2021, (86 FR 48443), soliciting comments from the public on this information collection. Public comments were received pursuant to the NPRM recommending that EOIR create separate appearance forms for entering a limited appearance. No public comments were received pursuant to the 60-day FR notice. If any additional comments are received following publication of the final rule, those comments 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 or their attorneys or representatives.

10. Assurance of Confidentiality – The Board of Immigration Appeals and the Immigration Courts retain the original form and places it in the record of proceedings, along with all other documents filed in the proceeding. EOIR staff members and adjudicators who process, review and adjudicate the case may access the Forms EOIR-60 and EOIR-61. 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 Forms EOIR-60 and EOIR-61 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 practice before EOIR. The information is used only to the extent necessary in order to make that determination.

12. Estimate of Hour Burden

EOIR-60

a. Number of Respondents	53,816
b. Number of Responses per Respondent	1 each
c. Total Annual Responses	53,816
d. Hours per Response	.1 hours
e. Total Annual Hourly Reporting Burden	5,381.6 hours

53,816 respondents x 1 response per respondent x 6 minutes per response = 5,381.6 burden hours.

EOIR-61

a. Number of Respondents	787,213
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b. Number of Responses per Respondent	1 each
c. Total Annual Responses	787,213
d. Hours per Response	.1 hours
e. Total Annual Hourly Reporting Burden	78,721.3 hours

787,213 respondents x 1 response per respondent x 6 minutes per response = 78,721.3 burden hours.

Total burden hours for both the EOIR-60 (5,381) and the EOIR-61 (78,721) is expected to be 84,102.

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 \$5,132,763. This amount is reached by multiplying the burden hours (84,102) by \$61.03, which represents the current median hourly wage for attorneys, as set by the Bureau of Labor Statistics. \$5,132,763 represents the maximum estimate of cost burden. EOIR notes that these forms are submitted by an immigration practitioner, who is generally 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 \$5,132,763.

14. Estimated Cost to the Federal Government - The estimated annual cost for printing, distributing, stocking, processing, and maintaining the Forms EOIR-60 and EOIR-61 is \$5,358,439.

15. Reasons for Change in Burden – This is a new collection.

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.

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11/17/2021

Date