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ICE LIAISON MINUTES FOR JUNE 24, 2009 MEETING

Question 1

Regarding the June 9, 2009 press release by DHS Secretary Janet Napolitano on deferred action for widows of U.S. Citizens, how does ICE intend to deal with removal proceedings against these widows and their eligible children currently pending before EOIR?

Answer

Office of Chief Counsel (OCC) is awaiting instructions from headquarters as to how they will handle such cases. The question will be carried forward to the next meeting.

Question 2

What is ICE's current policy on returning documents taken during primary or secondary inspection at a port of entry? If the matter is referred to EOIR, will ICE consider returning the documents to allow some respondents who may be LPRs to have some proof of lawful status while they are in proceedings or perhaps travel prior to the initiation of removal proceedings?

Answer

CBP maintains a separate work folder that does not necessarily get transferred to ICE upon initiation of removal proceedings. This folder can occasionally contain the passport of the Respondent. If counsel requests the return of the Respondent's passport, it is policy of ICE to refer these inquiries to DRO. Counsel can speak with Norma Bonaes-Garibay (DRO Deputy FOD, (213) 830-7912) on this issue.

The ICE policy – if the passport is in the TA's file – is to keep the passport. However, if there is an emergency situation, ICE could take a look at the issue and decide whether/ not to return the passport to Respondent.

Note: If the Respondent is a lawful permanent resident, and wishes to return home and effectively abandon lawful permanent residency, then proceedings can be terminated before the IJ. Counsel must be present at the hearing on a motion to terminate proceedings, as ICE will not want to proceed with a Form I-407, abandonment of lawful permanent residency, without counsel if there is an attorney of record. ICE wants to

ensure that there is a knowing and voluntary abandonment of LPR status prior to signing the Form I-407 and prior to agreement to termination of court proceedings.

Question 3

When a matter is terminated or administratively closed by an IJ pursuant to an agreement by the Government and the Respondent so that the matter can be pursued before USCIS, what is the process by which the file is transferred to USICS? How long does the file transfer usually take? If a transfer is outside of the expected time frame, with whom can Respondent's counsel follow up at the OCC to get the file transferred?

Answer

The procedure to transfer the file is immediate. The trial attorneys will usually update the system the same day, or if it is a late hearing, first thing the next day. The OCC support staff processes file out of 606 S. Olive Street and transfers it to 300 N. Los Angeles Street.

The transfer time should be between 3 days and 1 week. If through Infopass find that file is not at 300 N. Los Angeles after 1 week, contact the duty attorney or go to the 8th floor window to follow up with OCC.

Question 4

Could the OCC provide us with an updated number series attorney list?

Answer

OCC supplied a Number Series List updated as of May 28, 2009. Said list will be posted on the AILA and LACBA web sites shortly.

Question 5

During the last few months there has been an increase in the number of respondents being arrested inside of immigration courtrooms in Los Angeles to be processed for reinstatement and deportation/removal. What are the criteria ICE employs to determine whether or not to arrest someone at their removal hearing? Does ICE intend to also pursue reinstatement against respondents who are currently pursuing asylum, withholding, and protection under the Convention Against Torture where the respondent has expressed a fear of returning to the home country, which could result in persecution or torture?

Answer

ICE will not comment on the criteria for detaining respondents. ICE will continue to enforce the immigration laws.

If respondent has a fear of returning to their country, they can express that to the DRO personnel with whom they come into contact. Respondent's attorney can also raise these issues with DRO.

Question 6

Is there a procedure in place whereby private counsel can contact ICE to discuss a hold placed on an LPR who is nearing the end of a criminal sentence to ascertain what ICE's position is in regards to the individual (i.e. whether ICE believes the individual is subject to mandatory detention, intends to grant bond, or is willing to discuss setting a bond)? If such a procedure is not in place, would ICE consider instituting such a program?

Answer

DRO requests that inquiries regarding a particular Respondent's case be held off until the individual is in ICE custody. After the Respondent is detained, then DRO officers will be willing/ able to discuss the reason a particular individual had an immigration hold placed on them, and what the position of DRO will be with respect to that individual on the issue of bond.

Question 7

What criteria does ICE use to determine whether or not to keep a Respondent's passport after an interview with Deferred Inspection? CBP Deferred Inspections has asked that ICE Chief Counsel inform Deferred Inspections that when they refer an LPR for removal proceedings, they must issue a temporary I-551, but they cannot retain the individual's passport. There have been recurring instances when an I-551 has been issued, Respondent needs to travel and Deferred refuses to return his/her passport.

Answer

Please see response to question number 2.

Question 8

With regard to biometrics and fingerprints, when an asylum, NACARA, or adjustment case is referred to Immigration Court, the individual has already appeared for biometrics at an ASC. Do biometrics need to be requested again through NSC or TSC?

Answer

This is a USCIS issue.

ICE Liaison are including herein a response to this question that was taken from notes of the DD Meeting for May 2009:

The TSC reported technical difficulties with the automated scheduling of EOIR cases last year. This technical problem was fixed as of February 2009. If you did not receive an appointment, you may either schedule an InfoPass appointment or fax your request directly to the TSC at (214) 489-4357. Please indicate the applicant's name, A#, address and receipt number or schedule an InfoPass appointment. Our staff will be happy to send the fax to the TSC for you. Additionally, it is possible to have both the fingerprint and biometric appointments in the same request with a referral to an ASC, however, those referrals will continue to be made on a case-by-case basis.

Question 9

Joint Motions to Reopen - Who is the Deputy in charge of requests for joint Motions to Reopen since Mr. Martinez' retirement? In what types of cases does the OCC ask for evidence beyond prima facie evidence of underlying relief in considering a joint MTR?

Answer

Monica Little is the new Deputy Chief Counsel with respect to joint motions to reopen. No policy changes have been effectuated with the change in staff from Charles Martinez. Requests for joint motions are prioritized by the date they are received, not by the type of case/underlying relief. Counsel should receive a decision approximately thirty (30) days after submission. ICE does not necessarily request the file in all cases for review. Whether or not a file is digitized should not cause delays. If counsel has waited more than sixty (60) days, and there is still no response, then counsel should give a follow-up call to Monica Little regarding status.

Joint motions that are agreed to by ICE, despite agreement to reopen and then terminate, are still being put on the calendar by EOIR. So even though both parties have agreed to terminate, counsel needs to address the calendaring issue with EOIR directly.

Question 10

How does the OCC plan to respond to Motions for Continuance based on the Board's decision in *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009)? Is it possible for the Office of the Chief Counsel to designate a liaison between USCIS and USICE? The courts are overwhelmed with cases where I-130's or I-140's or I-751's or other petitions are pending.

Answer

OCC is following the guidelines set forth by the BIA in *Matter of Hashmi* and are making decisions on a "case-by-case basis." OCC is reviewing cases to ensure that all the criteria the BIA set out in *Hashmi* are present. If you want to speak with the number series trial attorney regarding your case, telephone communication is acceptable. If the particular number series attorney requests correspondence in writing, then submit your inquiry in writing. If no response is received at least three days after correspondence is received,

you could follow up with a telephone call. If you still have problems reaching the attorney, you can contact a Deputy with your concerns.

Question 11

What are ICE's standards for deferred action cases? Deferred action is entirely discretionary, but recently requests for relief have been denied when extremely compelling and extenuating circumstances were present. What sort of proof does ICE require to approve such requests, and what are the standardized criteria that officers use?

Answer

ICE does not have standardized criteria regarding Deferred Action cases or requests for Deferred Action. DRO reviews requests for Deferred Action and stays on a case by case basis. All denied requests are referred to the Field Office Directors Office for their review. You only have one opportunity to present your request so you must provide all the evidence and supporting documentation you want considered with the original request to persuade the Director to grant the request.

Question 12

Our members find that that the phone list of the OCC Los Angeles attorneys is an excellent resource for their practice. Can the OCC provide a complete list of all Chief Counsels' Offices in the U.S.?

Answer

OCC supplied a list of Nationwide ICE Chief Counsel Telephone Numbers updated as of June 2009. Said list will be posted on the AILA and LACBA web sites shortly.

Question 13

Have there been any significant procedural or staffing changes at ICE since the last meeting?

Answer

The new ICE DRO Field Office Director for Los Angeles will be Trey Lund who will begin the position on July 19, 2009

No changes at OCC.

No changes at OI.