



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

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June 17, 2008

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: Mark Pasierb
Chief Clerk of the Immigration Court

SUBJECT: Processing Defective Filings at the Immigration Courts Beginning on July 1, 2008

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I. Introduction

In August 2006, the Attorney General instructed the Executive Office for Immigration Review (EOIR) to publish a Practice Manual to provide guidance to the public on immigration court practice and to establish uniform procedures nationwide. On February 28, 2008, the Immigration Court Practice Manual was officially launched when it became publicly available on the EOIR internet homepage. **The Practice Manual goes into effect on July 1, 2008.**

This memorandum provides guidance to court staff on how to process defective filings beginning on July 1, 2008. This guidance covers: (1) filings by an attorney or representative, including Department of Homeland Security attorneys; (2) filings by a non-detained *pro se* respondent; (3) filings by a detained *pro se* respondent; (4) submissions directly to the court by third parties or represented respondents; (5) failure to file an EOIR-33/IC when a respondent changes his or her address; and (6) entry of an EOIR-28 when another attorney has already entered an appearance. Citations to the Practice Manual have been included for you to refer to as you review this memorandum.

Please note that the public will need time to become familiar with the Practice Manual. While the parties who appear before the courts are becoming familiar with the Practice Manual, **court staff should be flexible in applying the provisions of this memorandum and the Practice Manual.** During this initial period, staff are also encouraged to be especially helpful to the public on how to comply with the Practice Manual.

II. Filings by an attorney, representative, or DHS

This section provides guidance on **how to process filings that do not comply with the provisions of the Practice Manual if the filing was submitted by an attorney or representative** (including Department of Homeland Security attorneys).

A. Reject upon receipt

In the following situations, court staff should reject filings upon receipt and return the filings to the party. To return a filing to an attorney, representative, or DHS, please use the new uniform rejection notice entitled *Rejected Filing: Notice to Attorney or Representative*.

- ***No proof of service*** – the filing does not contain a proof of service. See Chapter 3.2.
- ***Improper proof of service*** – the proof of service does not comply with the Practice Manual's provisions. See Chapter 3.2.
- ***No fee receipt, other proof of payment, or fee waiver request*** – the filing requires payment of a fee, but the filing does not include a fee receipt, fee waiver request, or **interim evidence of fee payment**. See Chapters 3.4(b) and 3.4(h).

- **Interim evidence of fee payment includes:** (1) a respondent's notice from the Department of Homeland Security to appear for a biometrics appointment; (2) a printout from the website of DHS, U.S. Citizenship and Immigration Services, showing that the respondent's application has been received; (3) a photocopy of the check; (4) a photocopy of the money order receipt; or (5) an affidavit from the person who submitted the payment.
- **Note:** If interim evidence of fee payment is submitted, the judge may still require the fee receipt prior to adjudication at the hearing. Accordingly, court staff may advise the filing party to submit the fee receipt as soon as possible.
- **Fee incorrectly paid to court** – the respondent submitted a check or money order to the court, rather than the Department of Homeland Security. See Chapter 3.1(b).
- **No name** – the filing is missing the respondent's name. See Chapter 3.3(c)(vi).
- **No A-number** – the filing is missing the respondent's A-number. See Chapter 3.3(c)(vi).
- **No Notice of Entry of Appearance** – the attorney or representative has not yet entered an appearance by filing an EOIR-28, and the documents being submitted do not include an EOIR-28. See Chapter 2.1(b).
- **Other counsel entered** – if an attorney or representative files an EOIR-28, but another attorney or representative has already submitted an EOIR-28, please carefully review Section VII for instructions on how to handle.
- **Incorrect filing location (case at court)** – the respondent is in proceedings, but the filing was made at the wrong court. See Chapter 3.1(a).
- **Incorrect filing location (case at BIA)** – jurisdiction is with the BIA. See Chapter 6.3 and Appendix K.
- **Case not pending** – a Notice to Appear has not been filed. See Chapter 4.2(b).
 - **Exceptions:**
 - EOIR-33/ICs are accepted even if no Notice to Appear has been filed.
 - Bond redetermination requests are accepted even if no Notice to Appear has been filed. See Chapter 9.3(b).
- **Missing or improper signature** – the filing is not signed or the signature is improper, under the guidelines below. See Chapter 3.3(b).

- **All signatures must be *original* signatures.** Rubber-stamp signatures are not acceptable. Exception: do not reject Notices to Appear for signature defects. **Determinations regarding signatures on Notices to Appear are made by the judge.**
 - Signatures need not be legible, as long as the signature is accompanied by a printed name.
 - Signatures need not be dated.
 - Faxed signatures are only acceptable if the fax was authorized.
 - Photocopied signatures *are* acceptable on supporting documents only.
 - **EOIR-28s without an original signature are rejected.**
- ***No translation or improper translation*** – foreign language documents are rejected as outlined below. This applies whether the document was submitted by itself or as part of a larger package. If the document was submitted as part of a larger package, the entire package is rejected. *See* Chapter 3.3(a).
 - The document is untranslated.
 - **The document is translated, but submitted without a certificate of translation.**
 - **The document is translated, but submitted with an improper certificate of translation.**
- ***No cover page*** – the filing does not include a cover page. *See* Chapter 3.3(c)(vi).
- ***Not two-hole punched*** – the filing is not two hole-punched. *See* Chapter 3.3(c)(viii).
- ***No pagination*** – the filing does not contain page numbers. **The filing is rejected only if it contains *no* page numbers.** Do not reject merely because page numbers are not consecutive. *See* Chapter 3.3(c)(iii).
- ***No proposed order*** – for motions, no proposed order is included. *See* Chapter 5.2(b).
- ***Other*** – the filing is rejected for other unusual reasons not listed above. Please check with your supervisor before rejecting documents for any reasons not listed above. This space may also be used for any additional comments.

B. Give untimely filings to the judge

Untimely filings should be stamped and processed as usual and given to the judge, whether or not the filing was submitted with a motion to accept an untimely filing. *See* Chapter 3.1(d)(ii).

III. Filings by a non-detained unrepresented respondent

This section provides guidance on how to process filings that do not comply with the provisions of the Practice Manual if the filing was submitted by a non-detained *pro se* respondent. Note that, for non-detained *pro se* respondents, there are fewer defects for which filings will be rejected than for represented respondents.

A. Reject upon receipt

In the following situations, court staff should reject filings upon receipt and return the filings to the non-detained *pro se* respondent. To return a filing to a non-detained *pro se* respondent, please use the new uniform rejection notice entitled *Rejected Filing: Notice to Non-Detained Unrepresented Respondent*.

- *No proof of service or improper proof of service* – the filing does not contain a proof of service. See Chapter 3.2.
 - Exceptions: court staff should use their judgement to decide whether to accept a filing from a non-detained *pro se* respondent if:
 - There is a proof of service, but it does not fully comply with the Practice Manual's provisions; or
 - There is no proof of service, but circumstances warrant accepting the filing (for example, the filing is simple, such as a letter to the court, or the hearing date is near). *However*, if accepting a filing even though it does not have a proof of service, take the following steps:
 - Stamp the filing using a stamp reading "Served on the Department of Homeland Security";
 - Copy the filing;
 - Serve the filing on DHS; then
 - Place the filing in the ROP.
- *No name* – the filing does not contain the respondent's name. See Chapter 3.3(c)(vi).
- *No A-number* – the filing does not contain the respondent's A-number. See Chapter 3.3(c)(vi).
- *No fee receipt, fee waiver request, or interim evidence of payment* – the filing requires payment of a fee, but the filing does not include a fee receipt, fee waiver request, or interim evidence of fee payment. See Chapters 3.4(b) and 3.4(h).

- Interim evidence of fee payment includes: (1) a respondent's notice from the Department of Homeland Security to appear for a biometrics appointment; (2) a printout from the website of DHS, U.S. Citizenship and Immigration Services, showing that the respondent's application has been received; (3) a photocopy of the check; (4) a photocopy of the money order receipt; or (5) an affidavit from the person who submitted the payment. The receipt should be submitted as soon as available.
- Note: If interim evidence of fee payment is submitted, the judge may still require the fee receipt prior to adjudication at the hearing. Accordingly, court staff may advise the filing party to submit the fee receipt as soon as possible.
- *Fee incorrectly paid to court* – the respondent submitted a check or money order to the court, rather than the Department of Homeland Security. *See* Chapter 3.1(b).
- *Incorrect filing location (case at court)* – the respondent is in proceedings, but the filing was made at the wrong court. *See* Chapter 3.1(a).
- *Incorrect jurisdiction (case at BIA)* – jurisdiction is with the BIA. *See* Chapter 6.3 and Appendix K.
- *Case not pending* – a Notice to Appear has not been filed. *See* Chapter 4.2(b).
 - Exceptions:
 - EOIR-33/ICs are accepted even if no Notice to Appear has been filed.
 - Bond redetermination requests are accepted even if no Notice to Appear has been filed. *See* Chapter 9.3(b).
- *No translation* – foreign language documents are rejected if untranslated. This applies whether the document was submitted by itself or as part of a larger package. If the document was submitted as part of a larger package, the entire package is rejected. *See* Chapter 3.3(a).
 - Note: unlike filings by attorneys or representatives, foreign language documents from non-detained *pro se* respondents are accepted if:
 - translated but submitted without a certificate of translation; or
 - translated but submitted with an improper certificate of translation.
- *Other* – the filing is rejected for other unusual reasons not listed above. Please check with your supervisor before rejecting documents for any reasons not listed above. This space may also be used for any additional comments.

B. Give untimely filings to the judge

Untimely filings should be stamped and processed as usual and given to the judge, whether or not the filing was submitted with a motion to accept an untimely filing. *See* Chapter 3.1(d)(ii).

IV. Filings by a detained unrepresented respondent

This section provides guidance on how to process filings that do not comply with the provisions of the Practice Manual if the filing was submitted by a detained *pro se* respondent. Note that, for detained *pro se* respondents, the court only rejects filings in very limited circumstances.

A. Reject upon receipt

In the following situations, court staff should reject filings upon receipt and return the filings to the detained *pro se* respondent. To return a filing to a non-detained *pro se* respondent, please use the new uniform rejection notice entitled *Rejected Filing: Notice to Detained Unrepresented Respondent*.

- *No name* – the filing does not contain the respondent’s name. *See* Chapter 3.3(c)(vi).
- *No A-number* – the filing does not contain the respondent’s A-number. *See* Chapter 3.3(c)(vi).
- *Incorrect filing location (case at court)* – the respondent is in proceedings, but the filing was made at the wrong court. *See* Chapter 3.1(a).
- *Incorrect filing location (case at BIA)* – jurisdiction is with the BIA. *See* Chapter 6.3 and Appendix K.
- *Case not pending* – a Notice to Appear has not been filed. *See* Chapter 4.2(b).
 - Exceptions:
 - EOIR-33/ICs are accepted even if no Notice to Appear has been filed.
 - Bond redetermination requests are accepted even if no Notice to Appear has been filed. *See* Chapter 9.3(b).
- *Other* – the filing is rejected for other unusual reasons not listed above. Please check with your supervisor before rejecting documents for any reasons not listed above. This space may also be used for any additional comments.

B. No proof of service

If a filing from a detained *pro se* alien does not include a proof of service, do not reject the filing. Rather, the filing should be served on DHS by following the steps below:

- Stamp the filing using a stamp reading “Served on the Department of Homeland Security”;
- Copy the filing;
- Serve the filing on DHS; then
- Place the filing in the ROP.

C. Give untimely filings to the judge

Untimely filings should be stamped and processed as usual and given to the judge, whether or not the filing was submitted with a motion to accept an untimely filing. *See* Chapter 3.1(d)(ii).

V. Filings submitted directly by a third party or a represented respondent

This section provides guidance on how to process a filing in two situations:

- the filing is submitted directly to the court by a third party (someone who is not the respondent, the attorney, or DHS); or
- the filing is submitted directly to the court by a respondent who is represented, rather than by the attorney or representative (filings by represented respondents are supposed to be filed by the attorney).

A. Filing is submitted by a third party

If a filing is submitted by a third party, court staff should reject the filing upon receipt and return the filing to the individual who submitted it. *See* Chapter 2.1(d). To return a filing to a third party, please use the new uniform rejection notice entitled *Rejected Filing: Filing Submitted Directly by Represented Respondent or by Third Party*. A copy of the rejection notice should be sent to the respondent (if unrepresented) or the respondent’s attorney (if represented), and to the Department of Homeland Security.

B. Filing is submitted by a represented respondent

If a filing is submitted to the court directly by a represented respondent, rather than by the attorney or representative, court staff should use their judgement to decide whether to reject the filing or whether to process it and give it to the judge. *See* Chapter 2.1(d). For example, if a respondent

writes a letter to the court reporting that his or her attorney has acted improperly, it may well be appropriate to accept the letter and bring it to the attention of the judge.

If court staff elects to reject a filing because it was submitted directly to the court by a represented respondent, please use the new uniform rejection notice entitled *Rejected Filing: Filing Submitted Directly by Represented Respondent or by Third Party*. A copy of the rejection notice should be sent to the respondent's attorney and the Department of Homeland Security.

VI. Respondent changes address but fails to file an EOIR-33/IC

Sometimes the court will receive a letter from a respondent notifying the court that he or she has moved, but the respondent does not include an EOIR-33/IC. Likewise, a respondent will sometimes file documents with a return address that is different than the official address in CASE. In these situations, court staff should *not* change the address in CASE. See Chapter 2.2(c). Rather, court staff should follow the steps below:

- Issue the notice entitled ***Notice and Warning: Form EOIR-33 Required for Any Change of Address***. Attach an EOIR-33 I/C to the notice and send it to the respondent's official address listed in CASE. Also send a copy of the notice and an EOIR-33/IC to the respondent's new, unofficial, address.
 - If the court receives a completed EOIR-33/IC from the respondent, change the respondent's address in CASE to the address provided on the EOIR-33/IC.
 - If the court does not receive a completed EOIR-33/IC, do not change the respondent's address in CASE.

VII. Processing an EOIR-28 where another attorney has entered an appearance

This section provides detailed guidance on how to process an EOIR-28 where another attorney or representative has already entered an appearance in the case. To determine how to process the EOIR-28, please follow the steps below.

A. EOIR-28 is filed *without* a motion to substitute

Where a respondent is already represented, and a new attorney or representative files an EOIR-28 *without* a motion to substitute:

- ***Check whether annotated*** – determine whether the EOIR-28 is annotated to reflect that the new attorney or representative is making an appearance “on behalf of” the previous attorney or is joining as “co-counsel.” See Chapters 2.3(e) and 2.3(j).

- *If "on behalf of"* – if the EOIR-28 is annotated to reflect an "on-behalf-of" appearance, place the EOIR-28 in the Record of Proceedings, and enter the appearance in CASE as a non-prime attorney or representative.
- *If "co-counsel"* – if the EOIR-28 is annotated to reflect that the attorney or representative is joining as "co-counsel," place the EOIR-28 in the Record of Proceedings, and enter the appearance in CASE as a non-prime attorney or representative.
- *If not annotated* – if the EOIR-28 is not annotated, it is rejected, using the new uniform rejection notice entitled *Rejected Filing: Notice to Attorney or Representative*.

B. EOIR-28 is filed *with* a motion to substitute

Where a respondent is already represented, and a new attorney files an EOIR-28 *with* a motion to substitute:

- *Enter motion in CASE* – enter the motion to substitute in CASE (do not enter the EOIR-28 in CASE), and forward the submission to the judge. *See* Chapter 2.3(i)(i).
- *If granted* – if the judge grants the motion to substitute, enter the attorney or representative in CASE.
- *If denied* – if the judge issues an order denying the motion to substitute, do not enter the attorney or representative in CASE. Stamp the EOIR-28 using a stamp reading "Motion to Substitute Denied" and place the EOIR-28 in the Record of Proceedings.

VIII. Conclusion

This memorandum provides guidance to court staff on how to process defective filings beginning on July 1, 2008. If you have questions regarding this memorandum or the attached uniform rejection notices, please contact your court administrator.