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Types of Immigration Court Proceedings And Removal Hearing Process

The Executive Office for Immigration Review (EOIR), an agency of the Department of Justice, oversees three components which adjudicate matters involving immigration law matters at both the trial and appellate level. Under the Office of the Chief Immigration Judge, more than 200 Immigration Judges located in 53 Immigration Courts nationwide conduct proceedings and decide individual cases. The agency includes the Board of Immigration Appeals (BIA), which hears appeals of Immigration Judge decisions, and the Office of the Chief Administrative Hearing Officer, which handles employment-related immigration matters.

This fact sheet summarizes the most common types of immigration court proceedings. These descriptions are not fully inclusive and do not encompass the many regulatory and court interpretations that may have bearing on the following information. Also, the descriptions that follow are subject to change since Congress may legislate new laws. Accordingly, the following summaries are intended only to assist the public's general understanding of the types of immigration court proceedings, and interested parties should therefore refer to controlling law and regulations for a precise and complete understanding of the topics presented.

Immigration Judges conduct removal proceedings, which account for approximately 80 percent of their caseload. Federal rules of evidence are inapplicable in Immigration Court; thus, an Immigration Judge has greater authority to receive most kinds of evidence in deciding a case. The types of proceedings an Immigration Judge may preside over are briefly discussed below.

Removal Hearings – Removal hearings are conducted to determine whether certain aliens are subject to removal from the country. Beginning April 1, 1997, the distinction between exclusion and deportation proceedings was eliminated, and aliens subject to removal from the United States were all placed in removal proceedings. Thus, the removal proceeding is now generally the sole procedure for determining whether an alien is inadmissible, deportable, or eligible for relief from removal.

The Department of Homeland Security (DHS), which absorbed the functions of the Immigration and Naturalization Service, is responsible for commencing a removal proceeding. If the DHS alleges a

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violation of immigration laws, it has the prosecutorial discretion to serve the alien with a charging document, known as a Notice to Appear, ordering the individual to appear before an Immigration Judge. The Notice to Appear is also filed with the Immigration Court having jurisdiction over the alien, and advises the alien of, among other things, the nature of the proceedings; the alleged acts that violated the law; the right to an attorney at no expense to the government; and the consequences of failing to appear at scheduled hearings.

Removal proceedings generally require an Immigration Judge to make two findings: (1) a determination of the alien's removability from the United States, and (2) thereafter deciding whether the alien is eligible for a form of relief from removal. For more information on the types of relief available to an alien, please see Forms of Relief from Removal Fact Sheet at www.usdoj.gov/eoir.

Bond Redetermination Hearings – An Immigration Judge conducts a bond redetermination hearing for aliens who are in DHS detention. The alien makes a request to the Immigration Judge to lower or eliminate the amount of the bond set by the DHS. These hearings are generally informal and are not a part of the removal proceedings. This decision can be appealed by either the alien or by DHS to the BIA.

Recession Hearing – An Immigration Judge conducts a recession hearing to determine whether a lawful permanent resident (LPR) should have his or her residency status rescinded because he or she was not entitled to it when it was granted.

Withholding-Only Hearing – An Immigration Judge conducts a withholding-only hearing to determine whether an alien who has been ordered removed is eligible for withholding of removal under the law or the Convention Against Torture (CAT) (see below).

Asylum-Only Hearing – An asylum-only hearing applies to an individual who is denied a removal hearing under the law. These individuals include crewmen, stowaways, Visa Waiver Pilot Program beneficiaries, and those ordered removed from the United States on security grounds. An asylum-only hearing will be used to determine whether certain aliens who are not entitled to a removal hearing but claim a well-founded fear of persecution in their home country are eligible for asylum. In normal circumstances, asylum claims are heard by Immigration Judges during the course of a removal hearing.

Credible Fear Review – If an alien seeks to enter the United States without documents, or with fraudulent documents, and expresses a fear of persecution or an intention to apply for asylum, an DHS asylum officer will conduct a credible fear interview. An alien will demonstrate a credible fear of persecution if he or she shows that he or she could establish an asylum claim, or a claim based on withholding of removal or under the CAT. If an asylum officer decides that an alien does not possess a credible fear of persecution, an Immigration Judge will review that determination. If the Immigration Judge finds that the alien has a credible fear of persecution, the alien may apply for asylum, withholding of removal, or withholding under the CAT.

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Reasonable Fear Review – If an alien who is ordered removed during an expedited removal hearing expresses a fear of returning to his or her country, he or she must be given a reasonable fear interview by an asylum officer. Similar to the credible fear assessment discussed above, the asylum officer will determine whether the alien has a reasonable fear of persecution, or torture, based on a reasonable possibility that he or she will be persecuted due to his or her race, religion, nationality, membership in a particular social group, or political opinion, or due to a reasonable possibility that he or she would be tortured in the country of removal. If the interviewing officer determines that the alien has a reasonable fear of persecution based on any of the grounds noted above, or that the alien would be tortured in the country of removal, he or she will refer the alien for a hearing before an Immigration Judge. This hearing is known as a withholding-only hearing, given that the Immigration Judge will adjudicate only the issue of withholding of removal.

Claimed Status Review – If an alien in expedited removal claims under oath to be a U.S. citizen, to have been lawfully admitted for permanent residence, to have been admitted as a refugee, or to have been granted asylum, he or she can obtain a review of that claim by an Immigration Judge when DHS determines that the alien has no such claim.

In Absentia Hearing – If an alien does not appear for a scheduled hearing, he or she may be ordered removed *in absentia* (being absent for a hearing). The Immigration Judge will order an alien removed *in absentia* if DHS can demonstrate that the alien is removable, and he or she was served with a written notice to appear for the hearing, including an appraisal of the consequences of being absent for a hearing. *In absentia* hearings are not considered a distinct type of immigration proceeding.

In FY 2003, Immigration Courts completed more than 295,000 matters. Of that total, more than 250,000 were removal hearings. A chart of the removal hearing process is attached.

Statistics on BIA and Immigration Court matters can be found on the EOIR Web site at <http://www.usdoj.gov/eoir/statspub.htm>.

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Attachment: *EOIR Removal Proceedings Process*

EOIR Removal Proceedings Process

