U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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December 2, 2013

MEMORANDUM

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

FROM: Brian M. O'Leary
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 13-02:
The Asylum Clock

This Operating Policies and Procedures Memorandum (OPPM) supersedes OPPM 11-02.

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I. Introduction

The Executive Office for Immigration Review ("EOIR") operates an "asylum clock," which measures the length of time an asylum application has been pending for each asylum applicant in removal proceedings. As explained below, the asylum clock is an administrative function that tracks the number of days elapsed since the application was filed, not including any delays requested or caused by the applicant. This Operating Policies and Procedures Memorandum ("OPPM") provides guidance on the asylum clock for proceedings before EOIR.

II. Authority

The Immigration and Nationality Act ("INA" or "Act") contains two distinct provisions relating to 180-day time frames in the context of asylum applications.

INA § 208(d)(5)(A)(iii) sets a goal for adjudication of asylum applications:

> In the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed.

INA § 208(d)(2) addresses employment authorization in the context of asylum applications:

> An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

Both of these sections of the Act are interpreted at 8 C.F.R. §1208.7(a)(2):

> The time periods within which the alien may not apply for employment authorization and within which the [Department of Homeland Security] must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with [8 C.F.R.] §§ 1208.3 and 1208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods, including delays caused by failure without good cause to follow the requirements for fingerprint processing.

When an asylum application is pending before an Immigration Judge, EOIR tracks the time elapsed since the filing date to measure compliance with the asylum adjudications goal of INA § 208(d)(5)(A)(iii). This period does not include any delays requested or caused by the applicant, and it ends with the final administrative adjudication of the application. This period also does not include administrative appeal or remand. *See* section VIII (Cases on Appeal or Remand), below.

The Department of Homeland Security ("DHS"), U.S. Citizenship and Immigration Services ("USCIS"), is responsible for adjudicating applications for employment authorization filed by asylum applicants. The USCIS Asylum Division manages the asylum clock while the asylum application is pending with USCIS. To facilitate USCIS's adjudication of employment authorization applications, EOIR provides USCIS with access to its asylum adjudications clock for cases before EOIR.

III. Applicability

All asylum applications have an asylum clock, except as described below.

A. Applications Filed Prior to January 4, 1995

Asylum applications filed before January 4, 1995, do not have an asylum clock.

B. ABC Cases

Asylum applications filed pursuant to the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991), do not have an asylum clock.

IV. Starting the Asylum Clock

The asylum clock starts as follows, depending on whether the application was filed with USCIS or in immigration court.

A. Applications Filed With USCIS

An asylum application filed with USCIS is known as an "affirmative" application. For affirmative applications that have an asylum clock, USCIS commences the tracking of the asylum clock when a complete application is filed with USCIS. When an affirmative asylum application is referred from the USCIS Asylum Division, EOIR begins to track the clock calculating the days from the day when a complete application was filed with USCIS. The case is referred with the clock either running or stopped, as described below, depending on the status of the proceedings before USCIS.

1. Referred After Interview

If the application is referred after the applicant appeared at an interview with a USCIS asylum officer, the asylum clock is running when the case is referred to EOIR. For example, if USCIS's clock is running at 48 days when the case is referred, then EOIR's clock begins running at 48 days on the date of referral.

a. Fewer Than 75 Days at Referral

If a case is referred to EOIR with fewer than 75 days elapsed on the asylum clock, the case is treated as an "expedited asylum case" and is therefore subject to EOIR's 180-day adjudications deadline. These cases should be completed within 180 days after the application was filed, not including any delays caused by the applicant. For more information on the handling of expedited asylum cases at the immigration court, see section VI(C)(1) (Expedited Cases), below.

b. 75 Days or More at Referral

If a case is referred to EOIR with 75 days or more elapsed on the asylum clock, the case is not treated as an "expedited asylum case" and is therefore not subject to EOIR's 180-day adjudications deadline, although the clock will run and stop as usual. For more information on the handling of such cases at the immigration court, see section VI(C)(2) (Cases With 75 Days or More at Referral), below.

2. No-Show at Interview Before USCIS

If an applicant fails to appear at an interview before USCIS, the clock may be stopped by USCIS. If the case is then referred after the clock is stopped by USCIS, the clock is not restarted by EOIR. *See* 8 C.F.R. §§ 208.10, 1208.7(a)(2), 1208.7(a)(4). For more information on such cases, see section VI(C)(3) (Cases Where the Applicant Failed to Appear Before USCIS), below.

The applicant can request that USCIS reopen the case before USCIS. The applicant can make such a request before the case is referred to EOIR. If the case has been referred to EOIR, the applicant may consult USCIS's procedures for such situations as explained in the USCIS *Affirmative Asylum Procedures Manual*, which is available online at http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/2007_AAPM.pdf.

3. Failure to Pick Up Decision and NTA

If an applicant fails to appear at his or her appointment with USCIS to receive the asylum officer's decision and the Notice to Appear (Form I-862), the clock is stopped on the date the applicant failed to appear. *See* 8 C.F.R. § 1208.9(d). The clock does not restart on the date the case is referred to EOIR. However, the clock can restart at the first master calendar hearing before the immigration court, as described in section VI (Proceedings Before the Immigration Court), below. Whether such a case is treated as an "expedited asylum case" depends on the number of days on the clock at referral. *See* section IV(A)(1) (Referred After Interview), above.

B. Applications Filed With the Immigration Court

An asylum application that is first filed in immigration court is known as a "defensive" application. For defensive applications, EOIR's asylum clock begins to run when the applicant files a complete asylum application in accordance with 8 C.F.R. §§ 1208.3 and 1208.4. *See* 8 C.F.R. § 1208.7(a)(2).

A defensive asylum application is "filed" for asylum clock purposes when it is accepted by the judge at a hearing. *See* Revised OPPM No. 00-01, *Asylum Request Processing*. A Form I-589 (Application for Asylum and for Withholding of Removal) that is submitted as part of a motion to reopen or other motion filed out of court is not "filed" for asylum clock purposes until: (1) the motion has been granted; and (2) the asylum application is accepted by the judge at a hearing.

In some cases, a Form I-589 is filed as an application for withholding of removal under INA § 241(b)(3) or protection under the Convention Against Torture, but not asylum. A Form I-589 filed for these purposes can be accepted by the immigration court at the court window, by mail, or by courier service. However, acceptance of a Form I-589 at the court window, by mail, or by courier service is not a "filing" for asylum clock purposes. *See* section V(B) (Applications for Withholding of Removal and Convention Against Torture), below.

Furthermore, an asylum application is not "filed" for asylum clock purposes if it does not include a response to each of the questions contained in the Form I-589, is unsigned, or is unaccompanied by the required materials specified in 8 C.F.R. § 1208.3(a). *See* 8 C.F.R. § 1208.3(c)(3). For information on supplementing an asylum application that has already been filed, see section VI(G)(1) (Code 21 (*Supplement Asylum Application*)), below.

V. General Principles

EOIR applies the following general principles with respect to the asylum clock in all cases.

A. One-Year Filing Deadline

EOIR interprets the federal regulations to provide that the asylum clock runs, except during applicant-caused delays, until the judge has adjudicated whether the asylum application was filed within one year after the date of the applicant's arrival in the United States and, if not, whether an exception to this filing deadline applies. *See* INA § 208(a)(2)(B); 8 C.F.R. §§ 1208.3, 1208.4, 1208.7.

Therefore, when an alien files a Form I-589 as an application for asylum, the clock runs, except during applicant-caused delays, until:

- The applicant concedes that the asylum application was not timely and that no exceptions to the deadline apply; or

- The judge has adjudicated that the asylum application was not timely and that no exceptions to the deadline apply; or

- The judge has otherwise adjudicated the asylum application.

B. Applications for Withholding of Removal and Convention Against Torture

If a Form I-589 is filed as an application for withholding of removal under INA § 241(b)(3) or protection under the Convention Against Torture, and not as an application for asylum, there is no asylum clock. *See* Revised OPPM No. 00-01, *Asylum Request Processing*.

VI. Proceedings Before the Immigration Court

This section describes the operation of the asylum adjudications clock in proceedings before the immigration court.

A. Stopping and Starting the Asylum Clock

The clock runs during the proceedings before EOIR, except during "[a]ny delay requested or caused by the applicant." 8 C.F.R. § 1208.7(a)(2). Following each hearing, the clock runs or stops depending on the reason the hearing was adjourned. If the hearing was adjourned because of a DHS or EOIR-related delay, the clock runs until the next hearing. If the hearing was adjourned because of an applicant-caused delay, the clock stops until the next hearing.

Even if the clock stopped due to an applicant-caused delay, the clock will restart at the next hearing unless there is another applicant-caused delay.

B. Adjournment Codes

The clock is programmed to run or stop based on adjournment codes entered into EOIR's electronic database.

1. Codes that Stop and Run the Clock

The adjournment code reflects why the hearing was adjourned; certain codes are used for alien-related adjournments, certain codes for DHS-related adjournments, and certain codes for EOIR-related adjournments.

- When a code indicating an applicant-caused delay is entered, the clock is stopped until the next hearing.

- When a code indicating a DHS or EOIR-related delay is entered, the clock runs until the next hearing.

2. Neutral Adjournment Codes

Neutral adjournment codes are codes that do not affect the clock. For example, see section VI(F)(2) (Advancing Future Hearings).

C. Expedited and Non-Expedited Asylum Cases

1. Expedited Cases

Asylum cases subject to the 180-day adjudications deadline are known as "expedited asylum cases." These cases should be completed within 180 days after the application was filed, not including any delays requested or caused by the applicant. Accordingly, expedited asylum cases should be scheduled so the case is completed within the 180-day deadline.

Judges and staff should remember that two categories of asylum cases are not expedited, as explained below.

2. Cases With 75 Days or More at Referral

As noted in section IV(A)(1)(b) (75 Days or More at Referral), above, an affirmative asylum application referred to EOIR with 75 days or more on the asylum clock is not treated as an "expedited asylum case" and is therefore not tracked under EOIR's 180-day adjudications deadline. However, even though EOIR does not track these cases under the 180-day adjudications deadline, the clock will run and stop as usual. In such cases, hearings do not need to be expedited, but the appropriate adjournment code should be used to accurately reflect the reason for the adjournment. For example, if the case is being set from a master calendar to an individual calendar hearing, then a code 17 (*MC to IC – Merits Hearing*) should be used unless the applicant causes a delay in scheduling the individual calendar hearing.

3. Cases Where the Applicant Failed to Appear Before USCIS

As noted in section IV(A)(2) (No-Show at Interview Before USCIS), above, if an asylum application is referred after an applicant fails to appear at an interview with a USCIS asylum officer, and the clock is stopped by USCIS, it is not restarted by EOIR. In such cases, hearings do not need to be expedited.

Please note that, in cases where the applicant failed to appear at his or her appointment with USCIS to receive the asylum officer's decision and the Notice to Appear (Form I-862), the clock is *not* permanently stopped. *See* section IV(A)(3) (Failure to Pick Up Decision and NTA), above. Whether such a case is expedited depends on the number of days on the clock at referral.

D. Judge, Court Administrator, and Court Staff Responsibilities

When a case is before the immigration court, responsibilities related to adjournment codes and the asylum clock are divided as follows. The judge is responsible for deciding the reason for each adjournment. If at a hearing, the judge must make the reason(s) for the case adjournment

clear on the record. In addition, the judge may inform the parties how many days are on the clock and whether the clock is running or stopped.

In all cases, the judge should annotate the case worksheet on the left side of the Record of Proceedings with the corresponding adjournment code. When a judge specifies a code, or states how many days are on the clock and whether the clock is running, the judge is performing an administrative function, not making an adjudication.

For example, the judge might state on the record: "This hearing is being continued to allow the respondent time to retain an attorney or representative." The judge would annotate the case worksheet with "code 01," and the court administrator or court staff would then ensure that the adjournment code 01 (*Alien to Seek Representation*) is entered into the Case Access System for EOIR ("CASE").

The court administrator and court staff are responsible for ensuring that each adjournment code is accurately entered into CASE.

For responsibilities in responding to asylum clock inquiries, see section VII (Addressing Asylum Clock Requests), below.

E. Offering Future Hearing Dates

This section provides instructions for offering a future hearing date during a hearing in an asylum case. Because the asylum clock can restart after it was previously stopped, judges must follow the instructions below whenever resetting an asylum case for a future hearing.

The judge should begin by determining on the record whether the case is an expedited asylum case. *See* section VI(C) (Expedited and Non-Expedited Asylum Cases), above. After this determination has been made, the judge should proceed as follows.

1. Non-Expedited Cases

In a non-expedited asylum case, the judge should determine on the record the reason for the adjournment. The appropriate adjournment code should be used and the case need not be scheduled within the 180-day adjudications deadline.

2. Expedited Cases

In an expedited asylum case, the judge should first make an initial assessment on the record of why the case should be adjourned. For example, the judge might determine that the case should be adjourned to allow the applicant's attorney time to prepare, or to allow DHS time to conduct an investigation.

Having made this assessment, the judge should proceed as follows.

a. Making an Initial Determination

The judge should then make an initial determination whether the next hearing should be scheduled within the 180-day adjudications deadline. The next hearing need *not* be scheduled within the 180-day adjudications deadline if the case is being adjourned for an alien-related reason.

For example, if the case is being adjourned to allow the applicant's attorney additional time to prepare, then the next hearing need not be scheduled within the 180-day adjudications deadline. The adjournment code 02 (*Preparation – Alien / Attorney/ Representative*) should be entered, and the clock will stop until the next hearing.

In all other situations, the next hearing may need to be scheduled within the 180-day adjudications deadline, and the judge should proceed as described below.

b. Asking Whether the Applicant Wants an Expedited Hearing Date

If the judge determines that the next hearing may need to be scheduled within the 180-day adjudications deadline, the judge should then specifically ask on the record whether the applicant wants an "expedited asylum hearing date."

If the applicant does not want an expedited asylum hearing date, then adjournment code 22 (*Alien or Representative Rejected Earliest Possible Asylum Hearing*), or another appropriate code that also stops the clock until the next hearing, should be used. The case need not be scheduled within the 180-day adjudications deadline.

c. Offering an "Expedited Asylum Hearing Date"

If the applicant wants an expedited asylum hearing date, the judge should offer the first available date within the 180-day adjudications deadline. Generally, when setting a non-detained case from a master calendar hearing to an individual calendar hearing, a minimum of 45 days must be allowed, even if the 180-day adjudications deadline is imminent. Generally, when setting a detained case from a master calendar hearing to an individual calendar hearing, a minimum of 14 days should be allowed. These time periods may be shortened if requested by the applicant. For example:

- If the applicant accepts that hearing date, then adjournment code 17 (*MC to IC – Merits Hearing*), or another appropriate code that also allows the clock to run until the next hearing, should be used.

- If the applicant declines or is unable to accept that hearing date, then adjournment code 22 (*Alien or Representative Rejected Earliest Possible Asylum Hearing*), or another appropriate code that also stops the clock until the next hearing, should be used. For example, if the applicant wants an expedited hearing date but is unable to accept the date offered because he or she will not be able to timely file supplementary documents prior to that date, the adjournment code 21 (*Supplement*

Asylum Application) should be used. When the applicant declines or is unable to accept the hearing date offered, the case need not be scheduled within the 180-day adjudications deadline.

3. Judges Should Not Use Other Language

When scheduling a future hearing in an asylum case, judges should not use language other than that described above. For example, judges should not ask an asylum applicant if he or she wishes a hearing "on the expedited docket" or wishes to "waive the clock." Phrases such as these can lead to confusion as to how the asylum clock works.

F. Between Hearings

1. The Status of the Clock Does Not Change Between Hearings

In general, the status of the clock does not change between hearings. If a hearing was adjourned because of an applicant-caused delay, the clock is stopped until the next hearing. If a hearing was adjourned because of a DHS or EOIR-related delay, the clock runs until the next hearing.

For example, if an applicant requests that a hearing be adjourned to retain an attorney, then the clock is stopped until the next hearing because it is deemed an applicant-caused delay. The clock will remain stopped until the next hearing even if the applicant then retains an attorney one month before the next hearing. However, a party may file a motion to advance a future hearing, as described below.

2. Advancing Future Hearings

In some cases, a future hearing may be cancelled and rescheduled for an *earlier* date. This may be done because a judge has granted a party's motion to advance the hearing, or by the immigration court without a party's request.

When a hearing date is advanced, the status of the clock will remain the same until the new hearing date. Following the new hearing date, the clock will run or stop, depending on the reason for the adjournment. For example, if the clock had been stopped and the judge grants the applicant's motion to advance, the clock will remain stopped until the new hearing date. At that time, it will restart if the new hearing is adjourned for a DHS or EOIR-related delay.

When a future hearing is advanced, court staff should enter the adjournment code 55 (*Hearing Deliberately Advanced*) for the future hearing date that is being rescheduled. Code 55 is a neutral code that will not affect the clock.

3. Rescheduling Future Hearings

In some cases, a future hearing may be cancelled and rescheduled for a *later* date. This may be done at the request of one of the parties or by the immigration court without a party's

request.

When rescheduling a future hearing for a later date, court staff should enter an adjournment code for the cancelled hearing that accurately reflects why the hearing is being rescheduled, following the instructions below. The adjournment code previously used should not be reentered unless that adjournment code accurately reflects why the future hearing is being rescheduled.

a. Case is Rescheduled by Court

If the future hearing is being rescheduled for court-related reasons, court staff should enter an EOIR-related ("IJ" or "Operational") adjournment code for that hearing, unless a party causes a delay in rescheduling the hearing, as discussed below. If an EOIR-related adjournment code is used, the clock will run starting on the date the hearing would have taken place.

For example, if the hearing is being rescheduled because the judge will be on detail at another immigration court and will be unavailable to hear the case, the code 35 (*Unplanned IJ Leave – Detail / Other Assignment*) is the appropriate adjournment code. In such a case, even if the clock was previously stopped, it will run starting on the date the hearing would have taken place. Since code 35 allows the asylum clock to run, court staff should be mindful of setting the new hearing within the 180-day adjudications deadline.

When feasible, court staff may contact the parties when rescheduling a hearing to verify that they will accept the first available date for that hearing. If one of the parties causes a delay in rescheduling the hearing, the appropriate alien or DHS-related adjournment code should be used.

For DHS delays, court staff should be mindful of setting the case within the 180-day adjudications deadline, unless the case is not an expedited asylum case. *See* section VI(E) (Offering Future Hearing Dates), above.

Court staff should document in writing any delays caused by either party and place the documentation on the left side of the Record of Proceedings.

b. DHS-Caused Delay

If the future hearing is being rescheduled because the judge granted DHS's motion to continue, a code reflecting a DHS-related adjournment should be used. If such a DHS-related adjournment code is used, the clock will run starting on the date the hearing would have taken place. Court staff should be mindful of setting the case within the deadline, unless the case is not an expedited asylum case. *See* section VI(E) (Offering Future Hearing Dates), above.

c. Applicant-Caused Delay

If the future hearing is being rescheduled because the judge granted the applicant's motion to continue, a code reflecting an alien-related adjournment should be used. If such an alien-related adjournment code is used, the clock will stop on the date the hearing would have taken place.

4. Changes of Venue and Transfers

When an asylum applicant files a motion to change venue from one immigration court to another immigration court, and the judge grants the motion, the asylum clock is stopped from the date the motion is granted until the next hearing. On the date of the next hearing, the clock may restart or remain stopped, depending on the reason for the adjournment.

When DHS files a motion to change venue from one immigration court to another immigration court, and the judge grants the motion, if the asylum clock was running, it continues to run until the next hearing. If the clock was stopped before the judge granted the motion, it starts to run from the date the motion is granted until the next hearing. On the date of the next hearing, the clock may continue to run or may be stopped, depending on the reason for the adjournment.

In addition, cases are sometimes transferred between two hearing locations that share administrative control of cases, without a motion to change venue. Typically, these hearing locations are located close to one another, and one of them is in a prison or other detention facility. When an asylum case is transferred between two hearing locations, the clock runs from the date of the transfer until the next hearing. On the date of the next hearing, the clock may stop or continue running, depending on the reason for the adjournment.

G. Additional Adjournment Code Guidance

This section provides additional guidance on the use of particular adjournment codes.

1. Code 21 (*Supplement Asylum Application*)

When the applicant has filed an asylum application pursuant to 8 C.F.R. §§ 1208.3 and 1208.4 and states that he or she wants an expedited asylum hearing date and will be supplementing the application, the judge should offer an expedited asylum hearing date. If the applicant accepts the initial hearing date offered and will be able to timely file any supplements to the application before that hearing, the clock should run until that hearing.[1] Code 21 (*Supplement Asylum Application*), which stops the clock, is the appropriate adjournment code *only if* the applicant requests a *delay* to supplement the application. For example:

- The applicant has filed an asylum application. At a master calendar hearing, the applicant accepts an expedited asylum hearing date, and states that he or she will be timely filing an additional affidavit and background documents. Adjournment code 17 (*MC to IC – Merits Hearing*) should be used, permitting the asylum clock to run until the next hearing.

- If, in the previous example, the applicant will not be able to timely file the

[1] Timeliness is determined according to Chapter 3.1(b) (Timing of submissions) of the Immigration Court Practice Manual, unless otherwise specified by the judge on the record.

supplementary documents prior to the expedited hearing date, then the applicant should not be provided the expedited hearing date and adjournment code 21 (*Supplement Asylum Application*), or another appropriate code that stops the clock, should be used.

2. Code 36 (*Preparation of Records / Biometrics Check / Overseas Investigation by Alien*)

Code 36 (*Preparation of Records / Biometrics Check / Overseas Investigation by Alien*), which stops the asylum clock, is the appropriate adjournment code *only if* the applicant causes a *delay* because of failure without good cause to follow the requirements for fingerprint or biometrics processing. 8 C.F.R. § 1208.7(a)(2).

H. Issuing a Decision at a Later Date

1. Adjourning for a Decision at a Later Hearing

When the judge adjourns a hearing to enter a decision at a later hearing, the first hearing should be adjourned using the adjournment code 13 (*Insufficient Time to Complete Hearing*), which allows the clock to run. However, if there is an independent reason for the case to be adjourned, the appropriate code should be used. For example, if all testimony has been taken but the applicant failed without good cause to follow the requirements for fingerprint or biometrics processing, the adjournment code 36 (*Preparation of Records / Biometrics Check / Overseas Investigation by Alien*) would be appropriate.

2. Reserved Decision

When the judge adjourns a hearing to issue a written decision without scheduling a future hearing date, the hearing should be adjourned using the adjournment code RR (*Reserved Decision*), which allows the clock to run. The judge should be mindful of issuing the decision within the 180-day adjudications deadline.

I. Motions to Reopen

When an alien who has filed an asylum application submits a motion to reopen to the immigration court, the guidelines in Revised OPPM No. 00-01, *Asylum Request Processing*, should be followed.

VII. Addressing Asylum Clock Requests

This section describes the administrative procedures to follow in addressing concerns relating to EOIR's asylum adjudications clock in particular cases.

A. Parties

Parties should not file motions related to the asylum clock. If an asylum applicant believes an asylum clock in a particular case is incorrect, this should be addressed as follows:

- During a hearing, the issue should be addressed to the judge, and the judge should address the issue on the record with the parties.
- After a hearing, the issue should be addressed to the court administrator in writing.
- If a party believes the issue has not been addressed correctly at the immigration court level, the party may then contact the Assistant Chief Immigration Judge in writing.
- For cases pending before the Board of Immigration Appeals, see section VIII (Cases on Appeal or Remand), below.
- When a party addresses an asylum clock issue in writing, the party should provide a detailed explanation of why they believe the clock is incorrect. Such an explanation assists EOIR in resolving the issue.

B. Judges and Court Administrators

When a concern has been raised out of court about a particular case, the court administrator is responsible for ensuring that each adjournment code accurately reflects the reason the hearing was adjourned, and that the asylum clock is accurate.

When a court administrator receives an inquiry relating to the asylum clock, the court administrator should review the Record of Proceedings, EOIR's electronic database, and the hearing recording. If necessary, the court administrator should discuss the purpose of any adjournments with the judge. The court administrator should take corrective measures needed to ensure that each adjournment code is correct and that the asylum clock is accurate.

After ensuring that each adjournment code is correct and that the clock is accurate, the court administrator should respond by letter or e-mail to an applicant's request to adjust the clock. Except for motions and judges' responses to any motions, which are discussed below, any correspondence, including e-mails, regarding the clock should be placed on the left side of the Record of Proceedings.

For additional information on judge and court administrator responsibilities with respect to the asylum clock, see section (VI)(D) (Judge, Court Administrator, and Court Staff Responsibilities), above.

C. Judges Should Not Issue Clock Orders

Because the asylum clock is an administrative function, and decisions regarding the

asylum clock are not adjudications, judges should not issue orders regarding the asylum clock. If a court receives a motion regarding the asylum clock, the judge should not issue an order in response, but rather should give a copy of the motion to the court administrator to be resolved as described above. In response to a clock motion, the judge may issue a standard response; for example, "The respondent's motion to restart the clock is an administrative request. Accordingly, it has been referred to the court administrator for resolution." The motion and the judge's response to the motion should be placed on the right side of the Record of Proceedings. The judge's response should be served on both parties.

VIII. Cases on Appeal or Remand

As discussed in section II (Authority), above, EOIR's asylum clock is an adjudications clock that is maintained for the purpose of measuring compliance with the asylum adjudications goal of INA § 208(d)(5)(A)(iii). EOIR's asylum adjudications clock permanently stops when the judge issues a decision granting or denying the asylum application, as the decision constitutes "final administrative adjudication of the asylum application, not including administrative appeal" under INA § 208(d)(5)(A)(iii). Therefore, EOIR's asylum clock does not run during any appeal of the decision to the Board of Immigration Appeals ("Board"), during judicial review before the Federal courts, or if a case has been remanded to the immigration court. However, if an applicant is applying for asylum for the first time during a remanded proceeding, then the clock starts and stops as usual.

Furthermore, as discussed in section II (Authority), USCIS is responsible for adjudicating applications for work authorization. Accordingly, if an applicant believes that he or she is eligible for work authorization while the case is on appeal or remand, the applicant should contact USCIS.

However, if a case is pending before the Board and the asylum applicant believes that more time should have accrued on the clock during the *initial* proceedings before the immigration court, the applicant may contact the Executive Office for Immigration Review, Office of the General Counsel, by letter. When a party addresses an asylum clock issue in writing, the party should provide a detailed explanation of why the clock appears to be incorrect. Such an explanation assists EOIR in resolving the issue.

IX. Conclusion

This OPPM provides guidance on the asylum clock for proceedings before EOIR. If you have any questions, please contact your Assistant Chief Immigration Judge or Mark Pasierb, Chief Clerk, Office of the Chief Immigration Judge.