

Advocates Hail Deportation Rule

By Shawn Zeller, CQ Staff

Advocates for immigrants have long complained about the Justice Department's system for evaluating the claims of those threatened with deportation. Unlike in regular criminal proceedings, immigrants have no right to a court-appointed lawyer if they can't afford one. Those with mental health problems have it particularly tough when they are not capable of defending themselves.

So the advocates were heartened, although cautious, earlier this month by a decision from Justice's Board of Immigration Appeals that will set some minimum standards to guide the department's immigration judges in determining how to proceed in such cases.



Specifically, the case dealt with a Jamaican citizen and lawful permanent resident of the United States who'd been convicted of drug dealing. Removing criminal aliens is a major priority of the Obama administration. But in this instance, the appeals board sent the case back to an immigration judge on the grounds that the court needed to evaluate the man's mental health thoroughly before ordering him deported. The immigration judge who initially heard the

case had found that the man was not capable of answering basic questions but had not determined if he was mentally impaired.

“This means that if there is good cause to believe an immigrant lacks sufficient competency, the immigration judge has to implement appropriate safeguards to ensure a fair hearing,” says Melissa Crow, director of the American Immigration Council’s Legal Action Center.

The board also established procedures to evaluate an immigrant’s mental health by examining whether the immigrant understands the nature and object of the proceedings; can consult with an attorney or representative (if there is one); and has a reasonable opportunity to examine adverse evidence, present favorable evidence and cross-examine government witnesses.

The board said nothing about the right to an attorney, but Crow says she hopes the board will add that requirement.