

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

UNITED STATES IMMIGRATION COURT

San Diego, California

LOCAL OPERATING PROCEDURES

General

These rules are adopted under the authority of 8 C.F.R. Section 3.40 (1995) for the purpose of facilitating the convenient, efficient, and orderly conduct of the business of the United States Immigration Court, San Diego, California. These rules govern the procedures within the jurisdiction of the United States Immigration Court, San Diego, California.

PROCEDURE 1. Readiness

1.1 All matters shall proceed at the time and the date scheduled for hearing. Parties shall be prepared to go forward with their cases at that time and shall file a Record of Master Calendar Appearance at each Master Calendar hearing.

PROCEDURE 2. Filing Procedures

2.1 All documents, applications, and written motions shall be filed by mail, in person or by other delivery service at the public window of the Immigration Court during regular hours as posted in the Immigration Court, or as otherwise ordered by the Immigration Judge.

during and

2.2 In addition to complying with 8 C.F.R. Sections

the top and center of the page with holes 2 3/4 inches apart.

2.3 If a document is smaller than 8 1/2 x 11 inches, it must be taped to an 8 1/2 x 11 inch blank sheet of paper. If the document is longer than 8 1/2 x 11 inches, it shall be reduced in size by photocopying or other appropriate means as authorized by the presiding Immigration Court Judge.

2.4 Unless otherwise permitted by the Immigration Judge, all exhibits and documents exceeding five (5) pages in length shall have as a first page an index. Each page of exhibits and documents shall be identified with a page number identification in the lower right corner. If, in addition to page numbering, exhibit tabs are used, they are to be placed at the right side of the document or at the bottom of the document. A certificate of service on the opposing party shall be attached as the last page of the documentation submitted, and such certificate shall specifically describe the nature of the documents served. Any submission not meeting these requirements will not be accepted for filing and will be returned to the offeror.

2.5 All applications, motions, or documents must be filed by the date ordered by the Immigration Judge. If no date has been ordered by the Immigration Judge, all materials must be filed no later than Calendar hearing unless otherwise authorized by the Immigration Judge. If a document is offered after the expiration of the filing deadline, or within fifteen (15) days of the date of the hearing if no deadline was set, the document will not be accepted unless supported by a declaration of counsel for the offeror or if not represented, a declaration by the unrepresented party that the document is material and was not available and could not have been discovered or presented by the filing deadline, or for good cause shown as determined by the Immigration Judge.

Any objection to a proposed exhibit must be filed within ten (10) days of the filing of the proposed exhibit. The objection must set forth the specific basis for the objection and be supported with appropriate evidentiary materials.

2.6 Counsel shall provide a list of proposed witnesses intended to be called and a brief statement of each witness's expected testimony. All proposed witness lists, along with the statement, must be filed by the date ordered by the Immigration Judge. If no date has been ordered by the Immigration Judge, the witness list must be filed no later than fifteen (15) days prior to the scheduled Individual Calendar hearing unless otherwise authorized by the Immigration Judge. If a witness list is offered after the expiration of the filing deadline, or within fifteen (15) days of the date of the hearing if no deadline was set, the witness may be precluded from testifying unless the witness list is supported by a declaration of counsel for the offeror that the witness's testimony is material and was not available and could not have been discovered or presented by the filing deadline.

Any objection to a proposed testimony of a witness must be filed within ten (10) days of the filing of the proposed witness list. The objection must set forth the specific basis for the objection and be supported with appropriate evidentiary materials.

PROCEDURE 3. Continuances

3.1 In addition to complying with 8 C.F.R. Sections 3.23 (a), 3.29, and 3.32, a request for continuance of any scheduled hearing shall be made by written motion supported by an affidavit or declaration under penalty of perjury setting forth in detail the nature of the request and the reasons therefor. The motion shall include the date and time of the scheduled hearing, and the alien's name and file number.

3.2 The motion shall be filed with the Immigration Court no later than fifteen (15) days prior to the scheduled hearing. Motions submitted within fifteen (15) days of the hearing will be considered only with the consent, and in the discretion of the Immigration Judge for good cause shown. In accordance with 8 C.F.R. Sections 3.23 (a) - (b), and except as otherwise ordered by the Immigration Judge, any party opposing a motion served in accordance with this provision shall, no later than ten (10) days after the filing of the motion, file with court a written response to said motion. Failure to timely respond shall result in the motion being deemed unopposed.

3.3 Pendency of a motion for continuance does not excuse appearance at any scheduled hearing addressed by the motion. Unless notified by the Immigration Court that the continuance has been granted, all parties must attend the hearing prepared to go forward.

PROCEDURE 4. Motions

4.1 In addition to complying with 8 C.F.R. Section 3.23, all motions submitted prior to the Individual Calendar hearing must be filed with the Court and served upon the opposing party no later than fifteen (15) days prior to the scheduled Individual Calendar hearing unless otherwise specified at the Master Calendar.

4.2 All motions submitted by counsel for consideration by the Immigration Judge must be accompanied by a proposed order.

4.3 A motion submitted on a pre-decision basis must bear the name and file number of the case. It must include the date and time of the upcoming Master or Individual Calendar hearing and the name of the presiding Judge. The word MOTION shall be displayed in prominent letters immediately below the case caption.

4.4 A motion submitted on a post-decision basis shall bear the case name, file number and the phrase POST-DECISION MOTION shall be displayed in prominent letters below the caption. If it is a motion to reopen or reconsider, it must comport with 8 C.F.R. Section 3.23 (b) and the provisions cited therein. If applicable, it must indicate whether an appeal from the decision was taken to the Board of Immigration Appeals.

4.5 In accordance with 8 C.F.R. Sections 3.23 (a) and (b), except as otherwise ordered by the Immigration Judge, any party opposing a motion served in accordance with the provisions of 8 C.F.R. Sections 3.13 and 3.32 shall, no later than ten (10) days after the filing of the motion, file with the court a written response to said motion. Failure to timely respond shall result in the motion being deemed unopposed.

4.6 Any motion not meeting the above requirement will not be accepted for filing or consideration, and will be returned to the filing party.

PROCEDURE 5. Withdrawal and Substitution of Counsel

5.1 Withdrawal of counsel is only by permission of the Immigration Judge assigned to the matter in question. Withdrawal of representation shall be requested by written or oral motion addressed to the Immigration Judge to whom the matter is assigned. The motion for withdrawal shall set forth the following:

A. The reason(s) for request;

B. Evidence of the client's consent to withdraw, or a statement of why evidence of such consent is unobtainable;

C. The current or last known address of the motion to withdraw;

D. All efforts made to notify the client of the motion to withdraw;

E. That the client has been notified of all outstanding deadlines in the case and of the date, time and place of the next scheduled hearing in the matter; of the necessity of meeting deadlines and appearing at scheduled hearings; and of the consequences of failure to meet deadlines or appear at scheduled hearings.

5.2 Substitution of counsel shall be requested by written or oral motion accompanied by Notice of Entry of Appearance on Form EOIR-28 completed by the attorney/representative assuming representation in the matter. Such motion shall be accompanied by evidence that the client is aware of the substitution or that a reasonable attempt has been made to make the client aware thereof.

5.3 Counsel shall continue to be considered by the court as counsel or co-counsel of record until a motion for substitution or withdrawal has been granted by the court.

PROCEDURE 6. Motions to Change Venue

6.1 In addition to complying with 8 C.F.R. Sections 3.20, 3.23(a), and 3.32, all motions for change of venue submitted by counsel shall contain the respondent/applicant's plea to the allegations and charge(s) in the charging document; the designation of a country in the event of deportation or the declination to designate such a country; the relief, if any, which the respondent/applicant will be requesting; the date and time of any scheduled hearing; and a clear and detailed statement of the reasons for the request.

6.2 The pendency of a motion to change venue does not excuse appearance at the scheduled hearing addressed by the motion. Unless the motion is granted in writing prior to the hearing, the parties and

their counsel will be expected to appear at the hearing prepared to go forward.

6.3 Nothing in this procedure shall be construed to inhibit the Judge's authority to waive the provisions of this procedure and address expeditiously motions to change venue in custody cases.

PROCEDURE 7. Pre-hearing Statements or Briefs

7.1 A failure to abide by a briefing schedule set by the court can be deemed a waiver or concession of the issues in question. The failure to file a pre-hearing statement directed in accordance with 8 C.F.R. Section 3.21 may be deemed a waiver or concession of the issue in question, and/or could result in the action directed by the pre-hearing order unless good cause is shown for the failure to comply with the briefing schedule or file a pre-hearing statement.

PROCEDURE 8. Trial Preparation

8.1 At the Master Calendar hearing, the parties shall be prepared as follows:

A. Respondent/Applicant shall be prepared to respond to the allegations and charges in the charging document, and to concede or deny proper service of the charging document and notice of the hearing.

B. Respondent/Applicant shall be prepared to indicate all forms of relief sought and the country for removal purposes, if necessary.

C. Both parties shall be prepared to state, in hours, the estimated time needed to present the case at the Individual Calendar hearing.

D. The Immigration and Naturalization Service shall be prepared to state its position on all issues and applications.

8.2 At the Individual Calendar Hearing, both parties shall be prepared to present all remaining testimony and evidence on all issues, including rebuttal.

PROCEDURE 9. Attorney/Representative's Change of Address

9.1 If an attorney/representative in any pending matter changes address, he or she shall advise the Immigration Court by a written notification solely and specifically for that purpose.