

## **SUPPORTING STATEMENT**

### **Notice of Appeal from a Decision of an Immigration Judge Form EOIR- 26**

#### **Extension Without Change of a Currently Approved Collection OMB No. 1125-0002**

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#### **Part A. Justification**

1. Necessity of Information Collection - A party (either the U.S. Immigration and Customs Enforcement (ICE) of the Department of Homeland Security or the respondent/applicant) affected by a decision of an Immigration Judge may appeal that decision to the Board of Immigration Appeals (Board), provided the Board has jurisdiction pursuant to 8 C.F.R. 1003.1(b). An appeal from an Immigration Judge's decision is taken by completing the Form EOIR-26 and submitting it to the Board. The form requests information, such as the respondent's name, alien registration number, mailing addresses for respondent/applicant and attorney or representative, and basis of appeal, necessary for the Board to process the appeal of the decision of the Immigration Judge.

EOIR seeks to amend this information collection to improve access the BIA Pro Bono Project (Project). The Project is a program available to individuals who do not have an attorney or representative to represent them on appeal before the Board. The Project is managed by EOIR's Office of Legal Access Programs and operated by a contract organization that screens cases for placement with an attorney or accredited representative at no cost to the individual. EOIR proposes to include instructions and a check box on the application to indicate if the individual would like to be considered for placement with a pro bono representative through the Program. By checking the box at new item # 9, the

individual gives their consent to have their case screened by the Project for potential placement with an attorney or representative; this includes sharing a summary of their case with potential attorneys and representatives via email. The summary will not contain any personally identifying information. The individual is also provided notice that there is no guarantee that their case will be accepted for placement or that an attorney or representative will accept their case for representation. By including a check box on the form, the Program is able to seek placement for eligible cases with a representative without delay, with the goal of placing the case before the Board issues a briefing schedule. For more information about the Project go to <https://www.justice.gov/eoir/bia-pro-bono-project>.

EOIR received one public comment that was supportive of including information and a check box about the Project. The commenter also recommended that in addition to these changes, information about the Project is also provided through EOIR's Legal Orientation Programs and other pro se resources. During the comment period, EOIR issued a public announcement about its intent to re-establish the Project and requested comments on the collection. Once the Project is fully re-established, EOIR intends to conduct further public outreach about the Project, including providing information about the Project during LOP presentations and through other LAP programs and initiatives. The commenter also suggested that EOIR create an instrument for obtaining consent from respondents who are subject to an appeal initiated by DHS. In such cases, DHS files the EOIR-26, not the respondent. EOIR is in the process of developing an instrument specific to the Project that would allow respondents to provide consent to have their case considered by the Project. In the interim, EOIR has a general consent form, EOIR-59 (OMB#1125-0017), that can be used to obtain the respondent's

consent.

EOIR will also make the instructions available in the top four languages most commonly spoken by respondents appearing before EOIR, in addition to English. Those languages are Chinese, Creole, Portuguese and Spanish. While the form itself will not be provided in these languages, the availability of the instructions is intended to further assist pro se limited English proficient respondents with completing the form as part of EOIR's continuing efforts to provide limited English proficient individuals with meaningful access to EOIR services.

2. Needs and Uses - The form is used to file an appeal with the Board from a decision of an Immigration Judge. In order to take such an appeal, the appellant must complete and file the form with the Board. Information contained in the form is considered to the extent necessary to process the appeal. The form is retained in the official record of proceedings for the respondent/applicant and certain information on the form is entered into EOIR's internal case management system. The form is reviewed by the Board to determine the sufficiency and merit of a party's appeal. The form may also be reviewed by the BIA Pro Bono Project for placement with an attorney or accredited representative at no cost to the individual.

2. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-26 is available as a fillable pdf on EOIR's website. An individual may either type the requested information into the fillable form online and then print the completed form for submission to the agency, or print the blank form in its entirety and complete it by typing or printing legibly. DHS and the respondent's

attorney or accredited representative have the ability to file the form electronically through electronic case filing system, EOIR's Courts & Appeals System (ECAS), available at <https://www.justice.gov/eoir/ECAS>.

4. Efforts to Identify Duplication - The only method for appealing an Immigration Judge's decision to the Board is to file a Form EOIR-26. A review of EOIR's existing forms revealed no duplication of effort, and there is no similar information currently available which can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities.

6. Consequences of Less Frequent Collection - Failure to collect and present the information regarding a party's reasons for appeal would deprive the party of a mechanism through which to preserve and exercise the regulatory right to appeal from a decision of an Immigration Judge to the Board.

7. Special Circumstances Influencing Collection - A party affected by an Immigration Judge's decision who wishes to appeal the decision must file the Form EOIR-26 within 30 calendar days of the Immigration Judge's oral decision or the mailing date of the Immigration Judge's written decision. 8 C.F.R. 1003.38(b). None of the other eight special circumstances identified in OMB instruction number 7 apply to this collection.

8. Federal Register Publication and Consultation- A 60-day notice covering this collection has been published in the Federal Register. *See* 87 FR 45364 (July 28, 2022). The 30-day notice has been published in the Federal Register. *See* 87 FR 63101 (Oct. 18, 2022). One comment was received, which is discussed above in Section 1, Necessity of Information Collection.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to parties in immigration proceedings.

10. Assurance of Confidentiality - The original Notice of Appeal from a Decision of an Immigration Judge is maintained by EOIR in the official court record of proceeding (ROP) and is accessed by those EOIR employees processing the ROP, EOIR's Office of Legal Access Program employees and EOIR's contractors as needed for the administration of the BIA Pro Bono Project. The confidentiality of the contents of a party's Notice of Appeal from a Decision of an Immigration Judge is protected by EOIR, as are all the documents in the ROP, to the extent permitted by the law, including the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions - There are no questions of a sensitive nature in the Form EOIR-26.

12. Estimate of Hour Burden

a. Number of Respondents	34,921
b. Number of Responses per Respondent	1

c. Total Annual responses	34,921
d. Hours per response	.5
e. Total annual hourly reporting burden	17,460.5

The total annual reporting burden is derived by multiplying the number of respondents (34,921) by the frequency of response (1) by the number of hours per response (.5): 34,921 respondents x 1 response per respondent x .5 hour per respondent = 17,460.5 burden hours. It is estimated that the total time to read and complete the form and gather all materials is no more than 30 minutes.

13. Estimate of Cost Burden - There are no capital or start-up costs associated with this information collection. The estimated public cost is zero.

For informational purposes, there may be additional costs to respondents. As noted above, this form is used by both respondents in immigration proceedings and attorneys who represent ICE in those proceedings. The costs referenced in this paragraph apply only to respondents in immigration proceedings, and not to the attorneys who represent ICE. Respondents may incur a cost if they hire a private practitioner to assist them with completing the Form EOIR-26. The Bureau of Labor Statistics reports that the median hourly wage for lawyers is \$61.54. For respondents who proceed without a practitioner, there is an estimated cost of \$10 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. Respondents may also incur a cost of \$110, which is the amount of the filing fee for this form. However, they may seek to have the filing fee waived by requesting a waiver by submitting Form EOIR 26-A.

14. Estimated Cost to Federal Government – EOIR estimates that the annual government cost for printing, distributing, stocking, processing and maintaining the Form EOIR-26 is \$145,138. This amount includes printing costs of \$24,444, which was derived by multiplying the 7 pages of the form by an estimated \$.10 per copy by the estimated 34,921 respondents per year. This amount also includes stocking, processing and maintenance costs of \$120,694, which was derived by calculating the personnel and overhead costs to EOIR for processing the form.

15. Reason for Change in Burden - The difference in burden is due to an agency adjustment, specifically an increase in the number of responses. Previously, EOIR estimated 26,536 respondents annually. At present, EOIR estimates it will receive 34,921 annually based on the average receipts received over the last three fiscal years. As the number of hours per response remained the same (30 minutes), the total burden hours increased from 13,268 to 17,460.5 burden hours, for an increase of 4,192.5 additional burden hours. Because of the higher number of responses, the cost burden similarly increased.

16. Plans for Publication - EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

17. Exceptions to Certification Statement - EOIR does not request an exception to the certification of this information collection.

**Section B. Collection of Information Employing Statistical Methods**

Not applicable.

## **PAPERWORK CERTIFICATION**

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with, including paperwork regulations, any applicable statistical standards or directives, and any other information policy directives promulgated under 5 C.F.R. 1320.

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