



EAC103- C  
1000 SIE S  
SIE S

Subject Adjudication of Petitions and Applications which are in Litigation or Pending Appeal	Date 08 FEB 1989
---	------------------

To  
 Regional Commissioners: Southern, Northern Eastern, Western  
 All District Directors  
 All Service Center Directors

From  
 Examinations (COEXTM)

The number and variety of field office decisions which are the subject of administrative appeal or judicial review are increasing dramatically.

It is not uncommon for a petitioner to file a duplicate petition or a new petition seeking the same or a similar benefit before the outcome of the appeal or litigation is decided. Subsequent decisions which are or might be construed to be inconsistent with an earlier adverse decision are extremely detrimental to the defense of the Service's position in court or in the administrative review process. Aside from the potential "embarrassment" of an inconsistent decision, the result of such inconsistency can be a significant financial loss to the Service if an appellant succeeds in recovering legal fees under the Equal Access to Justice Act.

There are often indicators present which should alert adjudicators that another petition or application may have been denied or may be the subject of litigation or an appeal. Many applications and petitions have specific questions relating to prior filings. The automated fee receipting system (FARES) in use at some offices indicates prior filings by the same applicant or petitioner. Use of a duplicate labor certification for I-140 petitions may be an indicator of an earlier filing. The Office of the General Counsel has agreed to periodically prepare and distribute a list of known cases which have pending litigation. Local offices accepting cases which would ordinarily be direct-mailed to a regional service center should be particularly cautious of potential duplicate filings.

We recognize that detection of duplicate filings is often difficult. In the development of the FARES/CASE adjudications system, a number of automatic checks will be installed to identify such duplicate petitions. The current version of FARES in use at the regional service centers is being enhanced and will be migrated to other locations during the next year. However, many of these refiled petitions may still go undetected unless adjudicators remain aware of this potential problem.

Todd  
SIE S  
I&E S

F-YI - guidance  
Ethel

RECEIVED  
GENERAL INVESTIGATIVE  
DIVISION  
FEB 11 1989  
SVC.

07/29/97 13:41

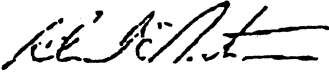
0000000000

DOJ/INS

0000

Adjudicators encountering cases which may already be the subject of an appeal or litigation should, before taking any action whatsoever, discuss the matter with the staff of the Administrative Appeals Unit if the matter is pending in that office or with the district or regional counsel if the matter is being considered by the Board of Immigration Appeals or in the federal courts.

Please bring this instruction to the immediate attention of all adjudicators.



RICHARD E. NORTON  
Associate Commissioner