U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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October 9, 2001

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Court Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policy and Procedure Memorandum 01-02--Changes of Venue

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INTRODUCTION

The large number of motions for Changes of Venue (COV) creates problems in caseload management between our courts. Many of these problems will be adequately resolved through the implementation of this OPPM. These policies and procedures, however, require that every

Immigration Judge, in fairness to the receiving Immigration Court, make an effort to ensure that "good cause has been shown" before granting a motion for COV. This OPPM supersedes OPPM 85-5 and OPPM 97-10 addressing motions for COV in light of changes in the regulations and in case processing procedures.

I. Immigration Judge Authority to Change Venue

Venue for Immigration Court proceedings lies with the Immigration Court where the charging document is filed by the Immigration and Naturalization Service (INS). 8 C.F.R. §§ 3.14 & 3.20. Immigration Judges may, upon a proper motion, change venue in those proceedings pursuant to the authority contained in 8 C.F.R. § 3.20. The standard for granting a motion for COV is "good cause." 8 C.F.R. § 3.20(b). The regulation provides authority to change venue only when one of the parties has filed a motion for COV and the other party has been given notice and an opportunity to respond. See 8 C.F.R. § 3.20(b). Immigration Judges may not sua sponte change venue. In those circumstances when the INS has moved an alien to a location outside the administrative control of the court where the case is pending, the INS must file a motion for COV if it wants to move the case. In the absence of such a motion, the court where the case is pending retains the authority to decide the merits of the case, including, if appropriate, termination. The INS filing a Form I-830, by itself, does not constitute a motion for COV.

In certain limited instances, two administrative control courts will share responsibility for a hearing location -- typically a court in a detention center. In those limited circumstances, a case can be moved between the detained and non-detained courts without the necessity of a motion for COV. Such "clerical transfers" are only authorized where the administrative control list reflects shared responsibility between two administrative control courts. In all other cases, a motion for COV is required before a case can be moved from one Immigration Court to another.

II. Requirement that Assigned Immigration Judge Rule on Motion for Change of Venue

When the INS files a charging document with an Immigration Court, the case is randomly assigned to a specific judge within that court. Once a case has been assigned to a judge, only the assigned judge may rule on a motion for COV, unless the judge is unavailable to complete his or her duties.

III. Requirement to Follow the Law of the Case Doctrine in Change of Venue Cases

Once an Immigration Judge issues an order changing venue to another court, the receiving judge is not free to hear the case de novo and ignore any orders prior to the venue change, unless exceptional circumstances, described in this OPPM, permit departure from this policy. The law of the case doctrine, while non-statutory, is a well-established legal doctrine with a long-standing foundation in the federal courts. In essence, this rule requires that once a court finally decides any issue of law, the ruling should not be revised by the receiving court. Adherence to this doctrine is so critical in COV situations, that even the Supreme Court has declared that "the policies supporting

the doctrine apply *with even greater force to transfer decisions* than to decisions of substantive law; transferee courts that feel entirely free to revisit transfer decisions of a coordinate court threaten to send litigants into a vicious circle of litigation." Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 816 (1988)(emphasis added).

Following the law of the case doctrine is crucial "to preserve the ordered functioning of the judicial process." United States v. Baynes, 400 F. Supp. 285, 310 n.3 (E.D. Penn.), aff'd, 517 F.2d 1399 (3d Cir. 1975). It is also used "to prevent 'delay, harassment, inconsistency, and in some instances judge-shopping.'" General Electric Co. v. Westinghouse Electric Corp., 297 F. Supp. 84, 86 (D. Mass. 1969). Moreover, it "promotes the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.'" Christianson, 486 U.S. at 816.

Immigration Judges are not expected to follow this rule blindly, however. The law of the case doctrine is not absolute; rather, there are certain delineated circumstances where departure from the doctrine may be permitted. As one court indicated, the "rule was not absolute and all-embracing and there are exceptional circumstances which will permit one judge of a district court to overrule a decision by another judge of the same court in the same case." United States v. Wheeler, 256 F.2d 745,747 (3d Cir.), cert. denied, 383 U.S. 873 (1958). Circumstances which may warrant a deviation from this policy include: 1) a supervening rule of law; 2) compelling or unusual circumstances; 3) new evidence available to the second judge; and 4) such clear error in the previous decision that its result would be manifestly unjust. Hayman Cash Register Co. v. Sarokin, 669 F.2d 162, 169 (3d Cir. 1982). See also Christianson, 486 U.S. at 816; Arizona v. California, 460 U.S. 605, 617 (1983).

In maintaining this requirement from OPPM 85-5 and OPPM 97-10, this OPPM continues to emphasize that the law of the case doctrine is consistent with all existing immigration laws and regulations, and its application can be inferred from 8 C.F.R. § 240.1(b). Moreover, one coherent record is necessary to comply with the requirements for review once an appeal is filed. See 8 C.F.R. § 3.5. Lastly, because the law of the case doctrine has been categorized "only as a rule of policy and not as one of law," Wilson v. Ohio River Co., 236 F. Supp. 96, 98 (S.D. W.V.A. 1964), pursuant to the authority under 8 C.F.R. § 3.9, the law of the case doctrine, as stated in this section, shall apply in COV circumstances.

The law of the case doctrine includes the recognition of another Immigration Judge's COV order. Absent one of the circumstances discussed above, Immigration Judges cannot return a case to the sending court on the ground that the change of venue was improper.

IV. Specific Requirements for Oral and Written Motions for Change of Venue

A. Oral Motions

If either party requests an oral motion for COV, the other party must be given notice and an opportunity to respond to the motion. 8 C.F.R. § 3.20(b). The Immigration Judge must record oral motions for COV, as well as his or her decision on the motion, on audiotape. If the oral motion for

COV is not part of the regular hearing tape, that tape must be properly labeled with the alien's name and A-number and included in the Record of Proceedings (ROP).

The Immigration Judge must issue a written order on the oral motion for COV, including an indication that the other party was given notice and an opportunity to respond. Notations in the ROP or on the Immigration Judge worksheet are insufficient to grant a motion for COV. The court administrator at the receiving court will return to the sending court any ROP that does not contain a written order.

B. Written Motions

If either party files a written motion for COV, the other party must be given notice and an opportunity to respond to the motion. 8 C.F.R. § 3.20(b). The court will not accept any filings that do not conform with 8 C.F.R. § 3.32(a) and Chapter 6, § II of the Uniform Docketing Manual. The written motion and any response must be filed on the right side of the ROP. See 8 C.F.R. § 3.20(b).

The Immigration Judge must issue a written order on the motion for COV, including an indication that the other party was given notice and an opportunity to respond. Notations in the ROP or on the Immigration Judge worksheet are insufficient to grant a motion for COV. The court administrator at the receiving court will return to the sending court any ROP that does not contain a written order.

V. Administrative Requirements for Valid Venue Changes

A. Mandatory Forwarding Address for Non-Detained Cases

OPPM 97-10 required that before a motion for COV could be granted, the movant must provide a forwarding address. This requirement has subsequently been codified at 8 C.F.R. § 3.20(c), and was instituted to avoid a court receiving an ROP through a motion for COV and having no way to notify the party of a hearing date at the new location. Therefore, before a motion for COV may be granted, an address where the respondent/applicant will reside must be provided to the Immigration Judge. It would be helpful if the name and address of the respondent's or the applicant's representative, if any, in the second location is also provided to the Immigration Judge entertaining the motion for COV. This information will allow the receiving court to properly notify the respondent/applicant of further hearings.

B. Pleadings and Issue Resolution

Prior to granting a motion for COV, the assigned Immigration Judge should make every effort, consistent with procedural due process requirements, to complete as much of the case as possible in the time available. Specifically, the judge should attempt to obtain pleadings; resolve the issue of deportability, removability, or inadmissibility; determine what form(s) of relief will be sought; set a date certain by which the relief application(s), if any, must be filed with the sending court; and

state on the record that failure to comply with the filing deadline will constitute abandonment of the relief application(s) and may result in the judge rendering a decision on the record as constituted. Note, however, that in the case of a defensive asylum application, a copy of the asylum application, Form I-589, submitted to support a motion for COV is not considered a filing. In the case of a defensive asylum application, if the COV is granted, the actual filing must occur in open court at the receiving court. See OPPM 00-01 § XIII, C.

C. Processing Problems and Procedures in Detained Removal Cases

Due to the periodic lack of bed space in some detention facilities, the INS continues to relocate aliens, even after charging documents have been filed. This obviously causes a serious problem for our court personnel because scheduled hearings are disrupted when changes of venue have not been granted by the Immigration Judge, and detained aliens are not available at the location where the case is pending. If the INS fails to produce a detainee because that alien has been moved to another location, the Immigration Judge retains jurisdiction. If the INS should produce the alien at a court in another location, absent a valid order changing venue or a new charging document, that court has no jurisdiction over the case except to deal with bond issues, if presented.

D. Processing Problems and Procedures in Expedited Asylum Cases

Judges should be mindful that COV orders or clerical transfers in expedited asylum cases may have asylum-clock implications. See OPPM 00-01. Judges should also be mindful of any one-year asylum filing deadline implications.

E. Forwarding the ROP

When a COV is granted, the ROP will be forwarded by overnight mail to the Immigration Court to which venue is changed. (Please refer to the current List of Administrative Control Offices for assistance in determining the proper mailing address.)

If you have any questions regarding this OPPM, please contact the Counsel to the Chief Immigration Judge, at (703) 305-1247 or your Assistant Chief Immigration Judge.

Michael J. Creppy
Chief Immigration Judge