

Harry Eig - on vacation 707-7896

HR 185

Not necessary

Immig Judge - are controlled EOIR - DOS
Separate from INS = ALT =

Appeal to BIA = ~~EOIR/DOJ~~ EOIR/DOJ

Federal Court - can appeal but limited
to Immig but can't say exclusion

Set up a whole new system -

Article ~~III~~ Judges

separate

Full F

District Court system = Immigration
Court

Already & can get

Introduced last ~~15~~ 15 yrs.

(Immig Judge -
get pay \$
for lifetime)

Carl Thorsen - Rep. McCullom - out this week

United States Department of Justice Executive Office For Immigration Review



Please read our [Privacy and Security Notice](#)

I. Background

On January 9, 1983, the Executive Office for Immigration Review (EOIR) was created through an internal Department of Justice (DOJ) reorganization which combined the Immigration Judge function previously performed by employees of the Immigration and Naturalization Service (INS) with the Board of Immigration Appeals (BIA). Originally, EOIR included the Office of the Director, BIA, which heard appeals to immigration decisions, and the Office of the Chief Immigration Judge (OCIJ), which supervised the performance of the Immigration Judges located in courts throughout the nation. In March 1987, the Office of the Chief Administrative Hearing Officer (OCAHO) was established as an additional unit within EOIR. OCAHO is responsible for administering the hearing process issues arising under the employer sanctions, document fraud, and antidiscrimination provisions of the Immigration Reform and Control Act of 1986 (IRCA) and the Immigration Act of 1990 (IMMACT). EOIR is completely independent of both the INS, the organization charged with the enforcement of the immigration laws, and the Office of Special Counsel for Immigration Related Unfair Employment Practices, the entity charged with the enforcement of the antidiscrimination provisions of IRCA.

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II. Responsibilities

The Attorney General is charged with the administration and enforcement of the Immigration and Nationality Act of 1952 (INA) and all other laws relating to the immigration and naturalization of aliens. The Attorney General has delegated to EOIR certain aspects of her authority to administer and interpret the immigration laws.

Specifically:

- Immigration Hearings
- Review of Immigration Hearings
- Employment Discrimination, Document Fraud, and Employer Sanctions Hearings

Essentially, EOIR's mission is to ensure fairness, competence, effectiveness, and efficiency in decisions relating to the status of individual aliens in the United States. However, EOIR's main function is to interpret immigration laws and conduct administrative hearings and appellate reviews on a wide variety of immigration issues.

III. EOIR Organization

EOIR is one of the components of the Department of Justice. EOIR consists of four major entities reporting to the Director: the Board of Immigration Appeals; the Office of the Chief Immigration Judge, which includes a headquarters staff and all Immigration Courts located throughout the country; and the Office of the Chief Administrative Hearing Officer.

A. Office of the Director

EOIR is headed by a Director, who is responsible for the supervision of the Chairman of the BIA, the Chief Immigration Judge, the Chief Administrative Hearing Officer, the Associate Director, and all agency personnel in the execution of their duties in accordance with 8 CFR Part 3.

The Director exercises the authority delegated by the Attorney General and represents the position and policies of EOIR to the Attorney General, Deputy Attorney General, Members of Congress and other governmental bodies, the press, the bar, and private groups interested in immigration matters. On behalf of the Director, the Associate Director oversees the EOIR Offices of: Security, Public Affairs, Equal Employment Opportunity, and General Counsel functions provided to the EOIR component organizations.

The Security Office provides policy and procedural guidance to Headquarters components and the Immigration Courts nationwide concerning physical, personnel, and information security programs to ensure compliance with national and Departmental regulations and guidelines. The Security Office also disseminates security awareness information, provides design and budgetary support for the installation of EOIR security systems, and emergency security support for threat situations involving EOIR employees.

The Public Affairs Office develops and implements publications policy, procedures, and outreach with EOIR constituent communities, both internal and external. The Public Affairs Officer serves as the primary counselor to the Director and senior staff on matters involving public affairs programs and the news media to ensure that the programs at EOIR are properly interpreted and understood.

The Office of Equal Employment Opportunity provides policy and procedural guidance to all EOIR employees in matters relating to equal opportunity in employment. Programs and policies are established to eliminate discriminatory practices in employment and to promote the full realization of equal employment opportunity through a continuing affirmative program in accordance with applicable equal employment regulations and guidelines.

The Office of General Counsel (OGC) provides legal advice on all legal matters involving the organization or its employees in the performance of their official duties. The OGC also manages EOIR's involvement in Federal court cases and administrative proceedings. The OGC staff coordinates the development of agency regulations, reviews proposed legislation, and processes all Freedom of Information and Privacy Act requests. The OGC also serves as the principal point of contact for U.S. Attorney offices, other Justice Department offices, and government agencies on all legal matters. These duties include responding to inquiries from U.S. Attorney offices and agencies regarding general litigation support, subpoenas, and access to certified copies of EOIR documents such as the Records of Proceedings from Immigration Courts and the BIA.

B. Board of Immigration Appeals (BIA or the Board)

The BIA is the highest administrative body for interpreting and applying immigration laws. The Board is composed of 18 Board Members, including the Chairman and Vice Chairman, a Chief Attorney Examiner (who is also an alternate Board Member), and 16 permanent Board Members. The Board is located in Falls Church, Virginia, and hears oral arguments only in that location.

The Board has been given nationwide jurisdiction to hear appeals from certain decisions rendered by Immigration Judges and by District Directors of INS in a wide variety of proceedings in which the Government of the United States is one party and the other party is either an alien, a citizen, or a business firm. In addition, the Board is responsible for recognition of organizations and accreditation of representatives requesting permission to practice before INS, the Immigration Courts, and the Board.

Decisions of the Board are binding on all INS officers and Immigration Judges unless modified or overruled by the Attorney General or a Federal court. Its decisions are subject to judicial review in the Federal courts. The majority of appeals reaching the Board involve orders of removal and applications for relief from removal. Other cases before the Board include the exclusion of aliens applying for admission to the United States, petitions to classify the status of alien relatives for the issuance of preference immigrant visas, fines imposed upon carriers for the violation of immigration laws, and motions for reopening and reconsideration of decisions previously rendered.

The BIA is directed to exercise its independent judgment in hearing appeals for the Attorney General. BIA decisions designated for publication are printed in bound volumes entitled Administrative Decisions Under Immigration and Nationality Laws of the United States.

C. Office of the Chief Immigration Judge (OCIJ)

OCIJ is headed by the Chief Immigration Judge, who is supported by two Deputy Chief Immigration Judges, and eight Assistant Chief Immigration Judges, who provide overall program direction, articulate policies and procedures, and establish priorities for more than 200 United States Immigration Judges located in 52 Immigration Courts throughout the nation. Immigration Judges are responsible for conducting formal judicial proceedings, and act independently in their decision-making capacity; their decisions are administratively final, unless appealed or certified to the Board. In removal proceedings, Immigration Judges determine whether an individual arriving from a foreign country should be allowed to enter the United States or should be removed. Each Judge has jurisdiction to consider various forms of relief available in removal proceedings. If deportability or inadmissibility is proven, the Immigration Judge will then focus on the type of relief from removal that may be available to the alien. These forms of relief include: asylum, cancellation of removal, adjustment of status, and voluntary departure.

Through its Criminal Alien Institutional Hearing Program, OCIJ currently has programs coordinated and in place in nearly all 50 states, Puerto Rico, the District of Columbia, and selected municipalities and Bureau of Prison facilities, to adjudicate the immigration status of alien inmates incarcerated by Federal, State, and municipal correctional authorities as a result of convictions for criminal offenses.

IV. Organizational Goals

- To adjudicate all immigration cases for which EOIR is responsible in a careful and timely manner, including cases involving detained aliens, criminal aliens, and aliens seeking asylum as a form of relief from removal, while ensuring the standards of due process and fair treatment for all parties involved.
- To fully implement the case processing and adjudication provisions of the Comprehensive Asylum Reform Initiative.
- To fully implement the case processing goals of the Expedited Deportation of Criminal Aliens Initiative, rendering decisions in all criminal alien cases prior to each alien's release from incarceration.
- To increase productivity by streamlining procedures and implementing management improvements.

V. National Performance Review Customer Service Initiative

"Public Access to Caseload Information"

A. Background

In keeping with the customer service goals of the National Performance Review, the EOIR established an electronic phone system to provide its customers with ready access to Immigration Court information. Information is provided in English and Spanish.

The goal of this system is to minimize the need and the time required for customers to go to the Immigration Courts and stand in information lines to gather standard caseload information. A secondary benefit is that the Immigration Court Staff at information windows can focus their efforts on the "non standard" requests for information. Therefore, processing time for all requests for information is improved.

The system was activated on July 1, 1995.

B. Information Provided on the System

The information available by dialing 1-800-898-7180 is:

- Next Hearing Date, Time and Location
- Elapsed Time and Status of the Clock for Asylum Cases
- Immigration Judge Decision Information
- Case Appeal Information, including Appeal Due Date, Brief Due Date, Date Forwarded to the BIA, and BIA Decision and Decision Date.

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HR 185 IH

106th CONGRESS

1st Session

H. R. 185

To establish the United States Immigration Court.

IN THE HOUSE OF REPRESENTATIVES

January 6, 1999

Mr. MCCOLLUM introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish the United States Immigration Court.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'United States Immigration Court Act of 1999'.

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT- Whenever in this Act an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act.

(c) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; amendments to Immigration and Nationality Act; table of contents.

Sec. 2. Establishment of United States Immigration Court.

Sec. 3. Judicial review of Immigration Court decisions by Court of Appeals for Federal Circuit.

Sec. 4. Conforming provisions.

Sec. 5. Effective dates and transition.

SEC. 2. ESTABLISHMENT OF UNITED STATES IMMIGRATION COURT.

(a) NEW CHAPTER 2- Title I is amended--

(1) by inserting the following after the title heading:

'Chapter 1--DEFINITIONS AND POWERS' ; and

(2) by adding at the end the following new chapter:

`Chapter 2--United States Immigration Court

`ESTABLISHMENT OF IMMIGRATION COURT

`SEC. 111. (a) IN GENERAL- There is established, under article I of the Constitution of the United States, a court of record to be known as the United States Immigration Court.

`(b) DIVISIONS- The Immigration Court shall consist of a trial division and an appellate division.

`APPELLATE DIVISION

`SEC. 112. (a) APPOINTMENT OF APPEALS JUDGES- The appellate division of the Immigration Court shall be composed of a chief immigration appeals judge and 8 other immigration appeals judges, appointed by the President by and with the advice and consent of the Senate.

`(b) TERM OF OFFICE- The term of office of each immigration appeals judge shall be 15 years, except that--

`(1) of the judges first appointed under this subsection, three shall each be appointed for terms of 5, 10, and 15 years,

`(2) a judge appointed to fill a vacancy occurring before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term, and

`(3) a judge may serve after the expiration of the judge's term until reappointed or a successor has taken office.

`(c) COMPENSATION- Each judge of the appellate division shall receive a salary at the rate equal to 93 percent of the next to the highest rate of basic pay for the Senior Executive Service, except that the chief immigration appeals judge shall receive a salary at the rate equal to 94 percent of the next to the highest rate of basic pay for the Senior Executive Service.

`(d) CHIEF IMMIGRATION APPEALS JUDGE- The chief immigration appeals judge shall be responsible on behalf of the appellate division for the administrative operations of the Immigration Court and shall have the power to appoint such administrative assistants, attorneys, clerks, and other personnel as may be needed for that purpose.

`(e) QUORUM- Three immigration appeals judges constitute a quorum of the appellate division, except that the chief immigration appeals judge (or any immigration appeals judge designated by the chief judge) is empowered to decide nondispositive motions.

`(f) ACTING IN PANELS- The appellate division shall act in panels of 3 or more judges or in banc (as designated by the chief immigration appeals judge in accordance with the rules of the appellate division). A final decision of such a panel shall be considered to be a final decision of the appellate division.

`(g) REMOVAL OF JUDGES FOR CAUSE- (1) Removal of an immigration appeals judge of the Immigration Court during the term for which the judge is appointed shall be only for incompetency, misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability. Removal shall be by the United States Court of Appeals for the Federal Circuit, but removal may not occur unless a majority of all judges of such court of appeals concur in the order of removal.

`(2) Before any order of removal may be entered, a full specification of the charges shall be furnished to the immigration appeals judge involved, and such judge shall be accorded an opportunity to be heard on the charges.

`(3) Any cause for removal of any immigration appeals judge coming to the knowledge of the Director of the Administrative Office of the United States Courts or to the Attorney General shall be reported by the Director or the Attorney General to the Chief Judge of the United States Court of Appeals for the Federal Circuit, and a copy of the report shall at the same time be transmitted to the immigration appeals judge.

`(4) An immigration appeals judge removed from office in accordance with this subsection shall not be permitted at any time to practice before the Immigration Court.

`(h) EXPENSES FOR TRAVEL AND SUBSISTENCE- Immigration appeals judges shall receive necessary traveling expenses and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount

as are new or may hereafter be applicable to the United States Court of International Trade.

`(i) OFFICE OF COURT- The principal office of the appellate division of the Immigration Court shall be in, or within twenty miles of, the District of Columbia, but immigration appeals judges may hold court at such times and in such places as the appellate division may provide by rule.

`TRIAL DIVISION

`SEC. 113. (a) APPOINTMENT OF TRIAL JUDGES- (1) The trial division of the Immigration Court shall be composed of a chief immigration trial judge and other immigration trial judges, appointed by the Chief Immigration Appeals Judge.

`(2) Each individual who is serving as an immigration judge as of the date of the enactment of this chapter shall be appointed by the Chief Immigration Appeals Judge to serve initially as an immigration trial judge pursuant to paragraph (1).

`(b) TERM OF OFFICE- The term of office of each immigration trial judge shall be 15 years, except that--

`(1) a judge appointed to fill a vacancy occurring before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term, and

`(2) a judge may serve after the expiration of such judge's term until reappointed or a successor has taken office.

`(c) COMPENSATION-

`(1) IN GENERAL- There shall be four levels of pay for immigration trial judges, under the Immigration Judge Schedule, (designated as IJ-1, 2, 3, and 4, respectively), and each such judge shall be paid at one of those levels, in accordance with the provisions of this subsection.

`(2) RATES OF PAY- (A) The rates of basic pay for the levels established under paragraph (1) shall be as follows:

`IJ-1

70% of the next to highest rate of basic pay for the Senior Executive Service

`IJ-2

80% of the next to highest rate of basic pay for the Senior Executive Service

`IJ-3

90% of the next to highest rate of basic pay for the Senior Executive Service

`IJ-4

92% of the next to highest rate of basic pay for the Senior Executive Service.

`(B) Locality pay, where applicable, shall be calculated into the basic pay for immigration trial judges.

`(3) APPOINTMENT- (A) Upon appointment, an immigration trial judge shall be paid at IJ-1, and shall be advanced to IJ-2 upon completion of 104 weeks of service, to IJ-3 upon completion of 104 weeks of service in the next lower rate, and to IJ-4 upon completion of 52 weeks of service in the next lower rate.

`(B) Notwithstanding subparagraph (A), the Chief Immigration Appeals Judge may provide for a newly-appointed immigration trial judge to be paid at an advanced rate under such circumstances as the Chief Immigration Appeals Judge may determine appropriate.

`(4) TRANSITION- Immigration trial judges serving as immigration judges as of the effective date of this chapter shall be paid at the rate that corresponds to the amount of time, as provided under paragraph (3)(A), that they have served as an immigration judge, and in no case shall such an immigration trial judge be paid less than such judge was paid prior to the effective date.

`(d) CHIEF IMMIGRATION TRIAL JUDGE- In accordance with rules established by the appellate division of the Immigration Court, the chief immigration trial judge--

`(1) shall have responsibility for the administrative activities affecting immigration trial judges and shall have the power to appoint such administrative assistants, attorneys, clerks, and other personnel as may be needed for this purpose, and

`(2) may designate any immigration trial judge in active service to hear and decide any cases described in section 115.

`(e) REMOVAL FOR CAUSE- Immigration trial judges may be removed from office in the same manner as immigration appeals judges may be removed under section 112(g), except that any reference in that section to the United States Court of Appeals for the Federal Circuit shall be deemed a reference to the appellate division of the Immigration Court.

`(f) AUTHORITY OF JUDGES- Immigration trial judges shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. Immigration trial judges may take depositions, issue subpoenas requiring the attendance and testimony of witnesses and the production of documentation or other evidence from any place in the United

States or any territory or possession thereof, order the taking of depositions, and order responses to written interrogatories.

`(g) WITNESS FEES- Witnesses (whether appearing voluntarily or under subpoena) before the Immigration Court shall be paid the same fee and mileage allowance as are paid subpoenaed witnesses in any other court in the United States.

`(h) EXPENSES FOR TRAVEL AND SUBSISTENCE- Immigration trial judges shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Court of International Trade.

`JURISDICTION

`SEC. 114. (a) THE APPELLATE DIVISION-

`(1) IN GENERAL- The appellate division of the Immigration Court shall hear and determine appeals from any of the following:

`(A) A final decision of an immigration trial judge under this Act, other than a determination granting voluntary departure under section 240B within a period of at least 30 days if the sole ground of appeal is that a greater period of departure time should have been fixed.

`(B) A decision involving the imposition of administrative fines and penalties under title II of this Act, including mitigation thereof.

`(C)(i) A decision on a petition filed in accordance with section 204, other than petitions

to accord preference status under section 203(b) or petitions on behalf of a child describe in section 101(b)(1)(F).

`(ii) A decision on a request for revalidation and a decision revoking approval of such a petition under section 205.

`(2) REVIEW OF DECISIONS- (A) Either party to a case described in paragraph (1) may appeal an immigration trial judge's decision to the appellate division.

`(B) Appeals to the appellate division from a final order of removal (including an order respecting asylum contained in such an order) shall be filed not later than 20 days after the date of the final order.

`(C) The appellate division shall review the decision of an immigration trial judge based solely upon the trial record upon which the decision is made, and the findings of fact in the judge's order, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive.

`(3) BINDING DECISIONS- A final decision of the appellate division shall be binding on all immigration trial judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by the Court of Appeals for the Federal Circuit or by the United States Supreme Court.

`(4) DECISIONS WITHIN 60 DAYS- In a case in which the appellate division is considering an appeal of a decision of an immigration trial judge respecting an application for asylum, the division shall render its decision on the appeal not later than 60 days after the date the appeal is filed.

“(b) JURISDICTION OF TRIAL DIVISION-

(1) IN GENERAL- Immigration trial judges shall hear and decide the following:

- “(A) Removal proceedings under sections 238, 240, proceedings under section 360(c), and discretionary relief under section 240A(a).
- “(B) Rescission of adjustment of status cases under section 246.
- “(C) Applications for asylum referred to the Immigration Court for adjudication.
- “(D) The assessment of civil penalties under section 274A.
- “(E) Determinations relating to bond, parole, or detention of an alien under this Act.
- “(F) Such other cases arising under this Act as the appellate division may provide by regulation.

“(2) **DUTIES OF TRIAL JUDGES-** In considering and deciding cases coming before them, immigration trial judges shall record and receive evidence and render findings of fact and conclusions of law, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as may be necessary for the just and equitable disposition of cases coming before them.

“RULES OF COURT

“**SEC. 115. (a) RULES OF PRACTICE AND PROCEDURE-** The appellate division shall promulgate rules of court, consistent with this Act, governing practice and procedure in the appellate division and the trial division. Only such selected provisions of the Federal Rules of Evidence and the Federal Rules of Civil Procedure as the appellate division deems appropriate for inclusion in the rules of the Immigration Court shall apply to proceedings in the Immigration Court.

“(b) **REPRESENTATION-** (1) In any proceeding before the Immigration Court, each nongovernmental party shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as the party shall choose.

“(2) The rules of the Immigration Court shall provide for the admission of qualified attorneys and nonattorneys to practice before the court.

“(c) **CONTEMPT OF COURT-** Each division of the Immigration Court shall have the power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as--

“(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice,

“(2) misbehavior of any of its officers in their official transactions, or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Each such division shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States.

`(d) FEES- The Immigration Court may impose fees for the adjudication of asylum applications and for judicial review and such other fees as it may provide for under its rules and procedures.

`RETIREMENT OF JUDGES AND SENIOR JUDGES

`SEC. 116. (a) RETIREMENT OF JUDGES- (1) a judge of the Immigration Court who attains the age of 70 shall be retired upon attaining such age.

`(2) A judge of the Immigration Court who has attained the age of 65 may retire at any time after serving as a judge for fifteen years or more.

`(3) A judge of the Immigration Court who is not reappointed following the expiration of such judge's term of office may retire upon the completion of such term if--

 `(A) the judge has served as a judge of the Immigration Court for 15 years or more; and

 `(B) not earlier than nine months preceding the date of the expiration of such term of office and not later than 6 months preceding such date, the judge advised the President, in the case of an immigration appeals judge, or the Chief Immigration Appeals Judge, in the case of an immigration trial judge, that the judge was willing to accept reappointment to the court.

`(4)(A) A judge of the Immigration Court who becomes permanently disabled from performing judicial duties under this chapter shall be retired.

 `(B) A judge of the Immigration Court who becomes permanently disabled from performing judicial duties

under this chapter shall certify to the President, or in the case of an immigration trial judge to the Chief Immigration Appeals Judge, such disability in writing, and such certificate of disability shall be signed by the chief judge of the division. If the Chief Immigration Appeals Judge retires for disability, such retirement shall not take effect until concurred in by the President.

`(5) The provisions of subsection (d) (relating to computation and payment of retired pay, subsection (e) (relating to election to receive retired pay), subsection (g) (relating to coordination with civil service retirement), and subsection (i) (relating to revocation of an election to receive retired pay) of section 7447 of the Internal Revenue Code of 1986 shall apply to judges within a division of the Immigration Court in the same manner as such provisions apply to judges of the United States Tax Court.

`(6) A person who has elected to receive retired pay under the application of section 7447(e) of the Internal Revenue Code of 1986 to judges of the Immigration Court in accordance with paragraph (5) who thereafter--

 `(A) accepts any civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)); or

 `(B) provides legal services to a client in a case arising under this chapter;

shall forfeit all rights to retired pay under the application of such section of the Internal Revenue Code of 1986 for periods during which such person accepts such office or employment or provides such legal services.

`(7) In any determination of the length of service of any person as a judge of the Immigration Court there shall be included all periods of service (whether or not consecutive) during which the person served as a judge of the Immigration Court under this chapter.

`(b) ANNUITIES- (1) Judges of the Immigration Court may provide annuities to their surviving

spouses and dependent children in the same manner and subject to the same terms and conditions as judges of the United States Tax Court provide annuities to their surviving spouse and dependent children under section 7448 of the Internal Revenue Code of 1986.

`(2) Amounts deducted and withheld from the salaries of judges of the Immigration Court in the application of section 7448(c) of the Internal Revenue Code of 1986 to such judges in accordance with paragraph (1) shall be deposited in the Treasury of the United States to the credit of a fund to be known as the `Immigration Court Judges Survivors Annuity Fund'.

`(c) SENIOR JUDGES- (1) Any immigration appeals or trial judge of the Immigration Court who has retired from regular active service under subchapter III of chapter 83 of title 5, United States Code, shall be known and designated as a senior immigration appeals or trial judge and may perform duties as an immigration appeals or trial judge when recalled pursuant to paragraph (2).

`(2) The chief immigration appeals judge may recall any senior immigration appeals or trial judge, with such judge's consent, to perform such duties as an immigration appeals or trial judge and for such period of time as such chief judge may specify.

`(3) Any senior immigration appeals or trial judge performing duties pursuant to this section shall not be counted as an immigration judge for purposes of the number of judgeships authorized by subsection (a).

`(4) Any senior immigration appeals or trial judge, while performing duties pursuant to this section, shall be paid the same allowances for travel and other expenses as an immigration appeals or trial judge in active service. Such senior immigration appeals or trial judge shall also receive from the Immigration Court supplemental pay in an amount sufficient, when added to his civil service retirement annuity, to equal the salary of an immigration appeals or trial judge in active service for the same period or periods of time. Such supplemental pay shall be paid in the same manner as the salary of an immigration appeals or trial judge.'.

(b) CONFORMING AMENDMENTS TO THE TABLE OF CONTENTS- The table of contents is amended--

(1) by inserting before the item relating to section 101 the following:

`CHAPTER 1--DEFINITIONS AND POWERS';

and

(2) by inserting after the item relating to section 106 the following:

`CHAPTER 2--UNITED STATES IMMIGRATION COURT

`Sec. 111. Establishment of Immigration Court.

`Sec. 112. Appellate division.

`Sec. 113. Trial division.

`Sec. 114. Jurisdiction.

`Sec. 115. Rules of Court.

`Sec. 116. Retirement of judges and senior judges.'.

SEC. 3. JUDICIAL REVIEW OF IMMIGRATION COURT DECISIONS

THROUGH COURT OF APPEALS FOR THE FEDERAL CIRCUIT.

(a) IN GENERAL- Section 242(b)(2) (8 U.S.C. 1252(b)(2)) is amended by striking 'court of appeals for the judicial circuit in which the immigration judge completed the proceedings' and inserting 'Court of Appeals for the Federal Circuit'.

(b) ASYLUM- Section 208 (8 U.S.C. 1158) is amended by adding at the end the following new subsection:

'(e) JUDICIAL REVIEW THROUGH FEDERAL CIRCUIT- No court shall have jurisdiction to entertain a petition relating to a determination concerning asylum under this section except the United States Court of Appeals for the Federal Circuit.'

(c) CONFORMING EXPANSION OF JURISDICTION OF THE U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT- (1) Section 1295(a) of title 28, United States Code, is amended--

(A) by striking 'and' at the end of paragraph (13),

(B) by striking the period at the end of paragraph (14) and inserting '; and', and

(C) by adding at the end the following new paragraph:

'(15) by writ of certiorari of an appeal under section 242 or 208(e) of the Immigration and Nationality Act and to entertain and grant applications for writs of habeas corpus and petitions for relief respecting immigration matters pursuant to such sections.'

(2) Section 2241(a) of such title is amended by striking 'Writs' and inserting 'Except as provided in section 1295(a)(15) of this title, writs'.

SEC. 4. CONFORMING PROVISIONS.

(a) REFERENCES- Notwithstanding any other provision of law, except as may be provided under subsection (c), any reference in law or regulation in relation to the Immigration and Nationality Act and related immigration laws to an immigration or administrative law judge or to an administrative appeals process is deemed a reference to an immigration trial judge and to an appeals process through the Immigration Court, respectively, and the Immigration Court, in exercising authority under such Act for activities previously under the authority of the Attorney General, shall have the same ancillary authorities as the Attorney General previously had under Act or laws.

(b) SUPERSEDING OTHER PROVISIONS OF LAW-

(1) IN GENERAL- Chapter 2 of title I, as added by section 2(a)(2), is amended by adding at the end the following:

'RELATIONSHIP TO OTHER PROVISIONS

'SEC. 117. The provisions of this chapter supersede the other provisions of law to the extent such provisions are inconsistent with the provisions of this chapter.'

(2) CLERICAL AMENDMENT- The table of contents is amended by inserting after the item relating to section 116, as inserted by section 2(b)(2), the following new item:

'Sec. 117. Relationship to other provisions.'

(c) SUBMISSION OF LEGISLATIVE PROPOSAL FOR TECHNICAL AND CONFORMING AMENDMENTS- Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress, a legislative proposal proposing such technical and conforming amendments to the Immigration and Nationality Act and other immigration-related laws as are necessary to bring the law into conformity with the policies embodied in this Act.

SEC. 5. EFFECTIVE DATES AND TRANSITION.

(a) IN GENERAL- (1) Except as otherwise provided in this section, the amendments made by this Act take effect on the date of enactment of this Act.

(2) Section 113(c) of the Immigration and Nationality Act, as added by section 2, takes effect 90 days after the date of the enactment of this Act.

(b) TIMETABLE FOR ESTABLISHMENT OF COURT- (1) The President shall nominate the chief immigration appeals judge and other immigration appeals judges of the appellate division of the United States Immigration Court (in this section referred to as the 'Court') not later than 14 days after the date of the enactment of this Act.

(2) The chief immigration appeals judge, in consultation with the Attorney General, shall designate a date, not later than 30 days after the chief immigration appeals judge and a majority of the immigration appeals judges are appointed, on which the appellate division shall assume the present functions of the Board of Immigration Appeals (under existing rules and regulations).

(3) The appellate division of the Court shall provide promptly for establishment of interim final rules of practice and procedure which will apply to the Court and immigration trial judges under the Immigration and Nationality Act after the transition date designated under subsection (c).

(c) HEARING TRANSITION DATE- (1) In order to provide for the orderly transfer of proceedings from the existing system to the Court, the chief immigration appeals judge, in consultation with the Attorney General, shall designate a transition date, to be not later than 45 days after the date interim final rules of practice and procedure are established under subsection (b)(3).

(2) During the period before the transition date, any proceeding or hearing under the Immigration and Nationality Act which may be conducted by an immigration judge may be conducted by an individual appointed and qualified as an immigration trial judge in accordance with all the rules and procedures otherwise applicable to the conduct of such proceeding or hearing.

(d) CONTINUATION OF AUTHORITY- Individuals acting as immigration judges on the date of the enactment of this Act and on the transition date may (without regard to other provisions of law) continue to conduct proceedings or hearings under the Immigration and Nationality Act after such transition date during the period ending two years after the date of the enactment of this Act.

(e) CONTINUATION OF RIGHTS- (1) The enactment of this Act shall not result in any loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Board of Immigration Appeals or before immigration judges on the day before this Act takes effect.

(2) Under rules established by the appellate division of the United States Immigration Court, with respect to removal cases and asylum applications pending as of the transition date, the appellate division shall be deemed to be a continuation of the Board of Immigration Appeals and immigration trial judges shall be deemed a continuation of immigration judges for the purposes of effectuating the continuation of all existing powers, rights, and jurisdiction.

(f) SEVERABILITY- If any provision or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be invalid, the remainder of this Act and its amendments and the application of such provisions or amendments to any person or

circumstance shall not be affected thereby.

END

Bill Summary & Status for the 106th Congress

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H.R.185

SPONSOR: [Rep McCollum, Bill](#) (introduced 01/06/99)

STATUS: Detailed Legislative Status

House Actions

Jan 6, 99:

Referred to the House Committee on the Judiciary.

Feb 25, 99:

Referred to the Subcommittee on Immigration and Claims.

Not necessary.