Purpose

The purpose of this outline is to give the newly-appointed immigration judge guidance in how to conduct the master calender.

The Master Calendar: Origin and Nature, Then and Now

Origin. The master calendar concept originated in San Diego circa 1977, years before the founding of the Executive Office for Immigration Review in 1983. At that time, the San Diego judges were part of the former Immigration and Naturalization Service and were conducting exclusion and deportation hearings, the forerunners of today's removal hearing. The new cases were set for merits hearing upon receipt of the charging document, but very few of those hearings were completed at first setting as the parties moved for time to prepare, retain counsel and so forth. The judges then decided to set all new cases for initial hearing on Monday at 9:00 a.m. in order to conduct a pre-trial of these cases.

Nature. Thirty years ago, the nature and purpose of the master calendar were to conduct a thorough pre-trial of each case to identify issues, set filing deadlines and briefing schedules, and get each case in a posture so that it could be transferred to the individual calendar for merits hearing and an oral decision, all in one session of the individual calendar.

If a case was susceptible to summary disposition, such as a simple matter of voluntary departure, or a matter where deportability was clearly shown and no relief available, the case was disposed of on the master calendar with an oral decision from the bench.

Today, as it was thirty years ago, the purpose of the master calendar remains the same, namely, to dispose of cases on that calendar that are susceptible to summary disposition and to ready the other cases for merits hearing and decision in one session of the individual calendar.

A case should not be set for merits hearing unless it is ready for hearing. It may take more than one master calendar session to get a case ready for hearing, and it thus may be necessary to continue a case to another master calendar for more pre-trial conference hearing.

Simply stated, the master calendar is the pre-trial docket, and the individual calendar is the trial docket. The master calendar feeds the individual calendar. The effectiveness of the latter is dictated by how well the former is conducted.

The BIA has commented that neither the Immigration and Nationality Act nor regulations define "a master calendar." It is understood to mean a plenary stage of the proceedings at which, when little or no testimony is taken, the immigration judge has great flexibility to identify issues, make preliminary determinations of possible eligibility for relief, resolve uncontested matters, and schedule further hearings. In addition, this is the stage of the proceedings at which the judge generally ensures that the alien has been advised of his or her rights, including the right to apply for relief, and has been given notice and warnings regarding his or her obligation to attend future hearings, file applications and evidence in a timely manner, and otherwise cooperate with the orders of the immigration court. In re Cordova, 22 I&N Dec. 966 (BIA 1999).

The 9th Circuit Court of Appeals observed that a master calendar hearing generally resembles a docket call or status call in state or federal courts. The local operating procedures for immigration courts that discuss a master calendar hearing generally advise aliens to be prepared to respond to the allegations contained in the charging document, to present all applications for relief from removal, and indicate how much time will be needed for trial. Generally, an alien may request a continuance to find counsel, or concede removability and make an affirmative request for relief from deportation. Khan v. Ashcroft, 374 F.3d 825, 827 (9th Cir. 2004)

Preparing for the Master Calendar Hearing

Review the files. The typical master calendar may have detainee or non-detainee cases. It may number as few as 10 cases or as many as 40. No matter what the number, it is important to review the files before the call of the calendar, paying particular attention to:

The Notice to Appear (NTA) charging document:

Is it signed by the issuing officer?

Is there proper proof of service on the reverse of page 1?

Are the allegations and charge correctly stated?

Case law states that the respondent is entitled to fair notice of what the Government is alleging. The NTA is not prepared by lawyers and there will be errors. If there are, make a note to address the matter with the Government attorney at master calendar.

The Government can correct NTA shortcomings by lodging factual allegations and charges on Form I-261 “at any time during the hearing, ” this according to the regulations. If corrections are needed, and they cannot be done at the calendar session, the case should be continued to another master calendar with instructions to the Government attorney to file by a deadline prior to the next hearing.

And counsel for the respondent can be required to file a pleading before next master calendar hearing.

Is it a venued-in case?

Transfer-in cases can be troublesome. Some are thick files, the record material is disorganized, there were many continuances and there are no Minutes explaining what has gone before. The regulations impose upon the receiving judge the obligation for reviewing the record, and this may include listening to the tape recording of the prior hearing.

Did the immigration court staff send proper notice of hearing to the respondent?

If there is an attorney of record, the attorney’s notice of appearance will be on the left side of the record of proceedings file, the green EOIR 28. Check the right side of the file to ensure that notice of hearing went to the attorney. If not, have notice sent.

Notice of hearing to counsel is also notice of hearing to the respondent, so it is not usually necessary to send notice of hearing to the respondent if he or she is represented.

If the respondent is not represented, is the address on the file copy of the hearing notice accurate?

Compare the address on the file copy of the hearing notice with the address of record shown for the respondent. If it is not correct, have the staff send corrected hearing notice.

Accuracy is important. In the 9th Circuit Court of Appeals jurisdiction, an error of even one digit on the Zip Code can void an absentia order of removal.

Review the rest of the file. There may be exhibits from a prior hearing. Make a note as to what they are.

There may be issues of law or fact raised by the filings, so make a note of the issues as a reminder to take the matter up with the parties at master calendar hearing.

Research. It may be that the file review reveals unfamiliar issues. Take the time to do some preliminary research.

Ask other judges if they have had experience with such issues. Experienced judges can give valuable guidance to novice judges and are usually eager to assist them.

If there is access to a judicial law clerk, give the law clerk a clear recitation of the issue and ask him or her to do some quick research.

Observe other master calendar hearings. It is a good idea to watch other judges while they do their master calendar sessions. Take notes as to their technique.

Test the equipment. It is most important to learn the operation of the audio cassette tape recorder. Just prior to the commencement of the master calendar hearing, check the operation of the tape recorder by running a test tape to make sure that the recorder is functioning properly and all microphones are operational. Also make sure that there is an adequate supply of blank recording tapes on the bench.

If the interpreter is to use the electronic earphones, have the staff test the earphones to make sure that they are operational.

It is often necessary at master calendar hearing to use the services of the contract interpreter by means of the telephone which is located on the bench. The phone has a remote microphone which is used by the respondent to communicate with the interpreter. Have the staff check the microphone to make sure it is operational.

Adjournment and call up codes. Obtain a list of the adjournment and call-up codes. At master calendar hearing, when each case is adjourned, write on the computer worksheet on the left side of the file what the adjournment code is for each case that is continued to another date.

The staff member assisting at master calendar will input the adjournment code into the computer; the judge must designate the code. The staff assistant will also input any call up code.

Call up codes are used by the staff to track the filing of motions and relief applications that are submitted subsequent to master calendar hearing. The record of proceedings file will be pulled from the filing cabinet when the promised item has been received. The file is usually then given to the judge for further review. Conversely, if the promised item is not filed on time, the staff member will refer the file to the judge and await further instructions from the judge as to what action should be taken in light of the failure to file.

Conducting the master calendar hearing: general considerations

It is suggested that the judge start the master calendar session on time. Starting on time is not only courteous but also guarantees the attorneys who attend the session will soon understand that the judge expects them to appear on time.

Keep in mind that the purpose of the master calendar session is to get each case in a posture for efficient disposition on the merits. If the case is a simple matter involving voluntary departure, it should be resolved at the master calendar session rather than setting it over for an individual calendar hearing. If the case is one where issues cannot be resolved at master calendar, the master calendar is used as a tool to get the case ready for transfer to the individual calendar and hearing on the merits with a decision from the bench and all in one session.

Also keep in mind that the inquiry with regard to any case can be simply stated as follows:

Is the respondent an alien?

If the respondent is an alien, is he or she deportable/removable/inadmissible on the charge or charges set forth in the notice to appear?

If the respondent is deportable/removable/inadmissible, is there any provision of law which would allow the respondent to remain in the United States permanently?

If there is nothing in the law which would allow the respondent to remain permanently in the United States, is the respondent going to be leaving the United States under order of removal and deportation or will the respondent be granted the privilege of voluntary departure at his or her own expense?

Conducting the master calendar hearing: the represented respondent

In handling the master calendar case that is represented by counsel, it may be helpful if counsel read from a script. See Attachment A for an example.

The script attached to this outline addresses all of the salient points to be covered at master calendar hearing. Copies of the script can be handed out to the attorneys before the judge takes the bench and the staff member assisting can explain to the attorneys that the judge expects them to follow the script when their cases are addressed.

Pleading to the Notice to Appear. It is crucial that a clear pleading is made to the charging document. Some attorneys like to "talk story" in making a pleading and, at the end of their dissertation, it is not at all clear if the factual allegations and the charge or charges have been admitted or denied. Bear in mind that the regulations mandate that there be a pleading to each factual allegation and each charge.

If there is a denial of a factual allegation or charge, the immigration judge should then ask the Government attorney to present evidence on the matter. This usually consists of documents, such as the Form I-213 Record of Deportable/Inadmissible Alien.

The Government attorney may announce that the documents bearing on the issue are not ready for filing at that particular time. In that event, the judge should consider postponing the case to another master calendar session with instructions to the Government attorney to file the documents by a deadline set by the judge. This deadline would, of course, be prior to the next master calendar hearing. It is suggested that such a deadline be set to allow time for the respondent to file any notice of objections to the documents.

Once a filing deadline is set, the judge may wish to consider setting a filing deadline for counsel for the respondent to file a notice of objections to the government documents.

The advantage of setting a filing schedule for filing of Government documents is to afford the respondent fair notice as to what is being offered as proof of unlawful status and to also give the Government fair notice as to what objections are lodged with regard to its evidence. In addition, this procedure allows the immigration judge to consider in advance of the next master calendar hearing the nature of the Government documents and the objections of the respondent to those documents.

On the other hand, if the Government attorney offers documents on a contested allegation or charge, counsel for the respondent should be asked whether he or she stipulates that the document relates to the respondent and, if so, is there any objection to the document. Of course, counsel for the respondent may ask for time to prepare on the issue of possible objections. Again, in such an instance, the case could be set over to another master calendar with a filing deadline for counsel to file notice of objections.

If the pleading to the charging document admits all the factual allegations and concedes all charges, the immigration judge should then state for the record whether or not the pleading establish deportability/ removability/inadmissibility. The federal regulations and case precedents both provide that, if there is no denial to the factual allegations and charges and if no issue of law or fact remains, than the pleadings settle the issue of deportability/removability/inadmissibility.

Counsel for the respondent should be questioned as to what country of removal and deportation the respondent would select, should that be the ultimate disposition of the case.

If counsel for the respondent states a country of deportation that is the country of the respondent's birth and citizenship as set forth in the notice to appear, both the respondent and counsel should be questioned as to whether the respondent has any fear of returning to that country.

If the respondent declines to choose a country of deportation, the immigration judge can proceed in one of two ways. First, the immigration judge can state that, since the respondent has not chosen a country of deportation, the statute expects the judge to designate a country and, therefore, the judge will designate the country of birth and nationality as shown in the Notice to Appear. Or the judge may prefer to ask the Government attorney for a recommendation as to the country of deportation.

When the judge designates the country of deportation, the judge must tell the respondent that he or she has the right to apply for asylum and withholding of removal under the Immigration and Nationality Act and also for protection under the Convention Against Torture if he or she fears returning to the designated country. If the respondent expresses such a fear, the immigration judge must then set the case over to another master calendar for the filing in court of the asylum application.

If the respondent expresses no fear of returning to the country designated by the judge, there is no need to continue the case for the purpose of allowing the filing of an application for asylum.

The usual scenario is that the notice to appear mentions only one country of birth and citizenship. However, there may be unusual situations where the judge must consider designation of more than one country of removal and deportation, should that action become necessary. This usually arises in a case where the respondent is a native of one country but a citizen of another country. Or it may come up because the respondent, prior to coming to the United States, had immigrant status in a third country. There is nothing in the statute, regulations or case law that prohibits the immigration judge from designating more than one country of removal and deportation. Of course, if more than one country is chosen, the respondent must be given an opportunity to apply for asylum and related remedies if he or she fears to return to the alternative country of deportation.

The issue of relief. The next topic for discussion with the represented respondent at master calendar hearing is the issue of remedies against deportation and removal. This topic must be explored even in a case where the respondent contests that he or she is subject to removal or deportation, as it may well be that the Government has enough evidence to sustain the allegations of fact and charge even in the face of a contest.

With an experienced, proficient attorney, this is a relatively easy matter to explore because the lawyer will have done a thorough job of investigating the case to determine all remedies against removal and deportation.

Unfortunately, not all attorneys appearing at master calendar are experienced and proficient. The attorney appearing may be a complete novice in the area of the immigration law. For whatever reason, this lawyer has agreed to represent a client in an area of the law the attorney knows little or nothing about. Or the attorney appearing may be a veteran of immigration court hearings but that attorney lacks attention to detail and possesses a superficial knowledge of the law and the facts of the case. In these two situations, in order to make certain that justice is done, the judge may resort to questioning the respondent to ferret out the salient facts regarding possible remedies against removal and deportation.

The judge should determine whether or not the respondent is the beneficiary of a visa petition that has been filed on his or her behalf with the Department of Homeland Security, this to accord him or her status for immigrating to this country as a lawful permanent resident. Visa petitions are usually based on such things as family relationship, employment, and even on the status of a battered spouse of an immigrant or lawful permanent resident immigrant.

If the visa petition is approved by the Government, the judge must consider whether the approval will render the respondent eligible to apply for adjustment of status to that of lawful permanent resident under section 245 of the Immigration and Nationality Act.

If the respondent is an immigrant, the judge must consider if he or she is eligible to apply for cancellation of removal as a longtime permanent resident under section 240(A)(a) of the Immigration and Nationality Act. The judge must inquire into such matters as how long the respondent has been an immigrant, whether the respondent has resided continuously in the United States for seven years after having been admitted in some status, and whether the respondent has any criminal record which would stop the accrual of residence for cancellation purposes. The judge does this by questioning the attorneys as to the existence of a criminal record or any other facts that would disqualify the respondent from cancellation eligibility.

If the respondent is a longtime nonpermanent resident of the United States, the immigration judge must consider whether the respondent shows apparent eligibility for cancellation of removal under section 240A(b) of the Immigration and Nationality Act. Again, the judge must inquire as to length of residence in the United States, whether the respondent has a lawful permanent resident immigrant or United States citizen parent, spouse or child for whom the respondent could claim exceptional and extremely unusual hardship if the respondent is expelled from this country, and also the matter of whether the respondent has any disqualifying factors, such as a criminal record or any prior “voluntary returns “ by immigration officers without benefit of a deportation or removal hearing. To garner these facts, the judge should question the attorneys and, if need be, the respondent.

Issues of eligibility for the cancellation remedy for both permanent and non-permanent residents must include the question of any cut-off of residence or physical presence under section 240A(d)(1) of the Immigration and Nationality Act.

A further issue of eligibility for cancellation is the bar precluding the remedy for any alien who was previously granted section 212(c) relief, previous cancellation, or suspension of deportation under former section 244(a) of the Act. The judge should interrogate the parties on this point, along with other disqualifying factors in 240A(c) of the Act.

In addition, nonpermanent residents may be ineligible for cancellation of removal under section 240A(b)(1) (A) with regard to physical presence or 240A(b)(1)(C) relating to offenses under sections 212(a)(2), 237(a)(2) or 237(a)(3) of the Act.

Setting for merits hearing. Once the issues in the represented case have been identified and explored, the immigration judge must make some disposition. If, for example, the only issue presented is voluntary departure, the judge should be able to dispose of the case at master calendar. If the facts are incomplete on an issue, then a set-over to another master calendar would be appropriate. In many other cases, however, when the issues are clear and the preliminary facts developed, there are complicated issues of deportability or removability or involved applications for relief which require a written application, and these cases must be set for merits hearing on the individual calendar.

Individual calendar hearing time is allocated in half-hour blocks of time. Therefore, if the judge has determined that the case will take one hour of trial time to resolve, the judge will choose one hour of hearing time of the individual calendar to allocate for that case. Of course, this will require an estimation in time as to how long it may take to resolve the case. On the other hand, if there are complicated issues of law or fact, more trial time should be allocated.

Some attorneys for the respondents wish to bring to court numerous witnesses whose testimony would be cumulative. To save hearing time, the judge should encourage the attorneys to submit in advance of hearing affidavits under jurat or declarations under penalty of perjury, this in order to cover witness testimony.

With the individual calendar hearing date decided upon, the immigration judge must next consider the setting of a filing date for relief applications, briefs and motions.

The filing deadline will be a date chosen by the judge some time prior to the individual calendar merits hearing. The reality is that many attorneys are lackadaisical in that they promise to file by a certain date but later take no action. Other attorneys meet the filing deadline but submit a relief application that is incomplete in that all of the information called for by the application is not provided.

The most effective way of dealing with attorneys who do not meet filing deadlines is to emphasize at master calendar hearing that the deadlines set by the immigration judge must be respected by the attorneys and upheld by the immigration court. In order to give emphasis to this concept, the judge should consider issuing a generic master calendar order which will stress the necessity of meeting the filing deadline and also stress the necessity of submitting a completed relief application.

Continue the case. With all matters addressed, the immigration judge will then continue the master calendar hearing. The judge should state on the record that written notice of the upcoming hearing is being furnished it to the parties.

The judge must make some written memorandum of the master calendar session. This memorandum or notation should indicate what matters were discussed, issues resolved, filing deadlines, and the next hearing date. The computer-generated worksheet on the left side of the record of proceedings file can be used for this purpose. It has spaces to show whether the charge was admitted or denied, the country of removal and deportation, the relief applications to be filed, and upcoming hearing dates. It also has a space at the bottom to show what rights were covered and what the language of the case will be at merits hearing.

The Executive Office for Immigration Review has never adopted a Minutes sheet for master calendar hearing. The San Diego experience, however, indicates that such a sheet is a very useful tool for the presiding judge to track the progress of a case. The judges in San Diego use a Record of Master Calendar Hearing. This document clearly shows what transpired at the master calendar hearing session. It is signed by the respondent, the attorneys, and the immigration judge. Copies are handed to the attorneys at conclusion of the master calendar hearing.

Checklist

The judge should have a Master Calendar Checklist and check the items off as he or she goes through the case. See Attachment B for an example of such a checklist.

Conducting the master calendar hearing: the unrepresented respondent

This master calendar hearing will follow the same general pattern as the hearing for the represented respondent. However, the immigration judge must communicate directly with the respondent and inform him or her of the nature of the hearing and hearing rights.

Establish communication. After opening the hearing by reciting the date of hearing, the name of the immigration judge, the place of hearing, and identifying the Government attorney in

attendance and the interpreter, if one is present, the immigration judge must then establish communication with the respondent.

Ask the respondent the following questions:

What language you speak and understand best?

What language did you first speak as a child?

With this information, the judge can then determine whether the services of an interpreter are needed. If the language is Spanish, a staff interpreter is usually assigned to the master calendar to assist. If the interpreter is not on hand, the immigration judge must use the telephone to contact the interpreter, who will then assist by speaker phone.

The name of the respondent. Once communication is established with the respondent with the help of the interpreter, the respondent should then be asked to state his or her true name.

Service of the Notice to Appear. With the respondent's identity established, the immigration judge should then show to the respondent the notice to appear and ask him or her if he received a copy.

If the respondent states that he or she has received the Notice to Appear, the judge should then mark the document in evidence as Exhibit 1.

If the respondent denies having received a copy, ask Government counsel if there is an extra copy in the Government file. If not, have the court staff assistant make a copy.

The respondent's address. Ascertain the respondent's address by asking him or her if the address shown on the Notice to Appear or on other papers in the record of proceedings file is his or her correct address.

Then explain to the respondent the address reporting requirement, emphasizing that, if his or her address changes, he or she is required by law to report the change of address to the immigration court on the (blue) Form EOIR- 33: give the respondent that form.

Explain the penalties for failure to appear at future hearing. Stress to the respondent the importance of appearing on time at all future hearings. Explain that, if the respondent does not appear, the law expects that the judge will proceed in the respondent's absence and order removal and deportation if the evidence so requires. Emphasize that, if an absentia order is issued, the respondent will become ineligible, for a period of ten years to come, for most relief from removal and deportation, including voluntary departure, adjustment of status, cancellation of removal, change of status, and registry.

In order to stress to the respondent the importance of the address reporting requirement and need to appear at all future hearings, the judge may wish to give to the respondent, with a copy to the court file, a generic Master Calendar Certification which records in writing that these advisements were give. An example of such a Certification is attached as Attachment C.

Explain the nature of the hearing. Tell the respondent the general nature of the hearing and also explain, in non-technical language, the contents of the Notice to Appear.

Bear in mind that the respondent is not an attorney and may have difficulty in understanding the legal terminology in the charging document. For example, the respondent may not understand the "crime of moral turpitude" terminology and the judge should explain the concept in simple language.

Explain the right to counsel. Once the immigration judge is satisfied that the respondent understands the nature of the proceeding, the judge must explain the right to counsel. In doing so, the judge should make the following points:

That counsel must be of the respondent's own choosing-- neither the judge nor the Government can appoint counsel.

The judge should ask the respondent if he or she can afford to hire a private attorney. If the answer is yes, the judge should point out to the respondent that he or she may find a lawyer by

consulting the yellow pages of the local telephone directory in a search for a private attorney. If the respondent states that he or she is without funds to hire an attorney, explain that it may be possible to secure the services of a volunteer lawyer who can represent the respondent at little or no cost.

The immigration judge should give the respondent a list of the volunteer legal assistance offices, pointing out that one of those attorneys may agree to represent the respondent at no cost.

The federal regulations indicate that the legal assistance office list must be served upon the respondent and the list must be of those offices with volunteer lawyers located in the jurisdiction where the hearing will be held. However, the respondent may not reside in the jurisdiction where the hearing is being held, and it then would be appropriate to also serve the respondent with a copy of the legal assistance office list for the area of his or her residence. These lists can be obtained by the staff assistant from the EOIR website.

With the right to counsel explained, the judge would then ask the respondent if he or she understands the explanation and whether he or she wishes to have a postponement of hearing to seek legal assistance.

Explain other legal rights. The immigration judge should also explain to the respondent the additional hearing rights, which includes the right to examine and object to evidence presented against him or her by the Government, the right to cross-examine Government witnesses, the right to present his or her own witnesses and evidence, and the opportunity to make a statement in his or her defense. The respondent should also be assured that, if the judge determines the respondent is in the country illegally, the judge will carefully examine the case to determine what remedies may be available for the respondent to avoid an order of expulsion and that the respondent will be given an opportunity to apply for such remedies.

Adjourn or continue the hearing. If the respondent states that he or she wishes to have a lawyer, the judge must then continue the hearing to another master calendar date to afford him or her time to find counsel. The judge must instruct the respondent that, in the search for counsel, the respondent must be diligent and contact all offices on the legal assistance office list. Again, as with the represented respondent, the judge must give the respondent written notice of the next hearing.

If the respondent declines counsel, and the judge is satisfied that the waiver of this right is knowing and intelligent, the immigration judge should then proceed with the hearing by placing the respondent under oath.

Pleading to the Notice to Appear. The judge then asks the respondent to plead to the Notice to Appear, asking the respondent to admit or deny each factual allegation and each charge. With regard to a pleading to the charge, the immigration judge should explain the charge to the respondent and then ask the respondent if he or she understands the charge. Once the respondent indicates an understanding of the charge, the judge should then ask the respondent whether he or she admits or denies the charge.

If the respondent makes a contest, ask the Government attorney in attendance to present evidence to support the factual allegations and charge. If these documents are in English, it may be necessary to go off the record while the interpreter in attendance translates the documents to the respondent.

If time or other considerations, such as the fact that the interpreter is appearing by telephone, preclude a translation of the documents to the respondent, the judge should then set the case to another master calendar date with instructions to the respondent to find a friend, relative or other person to translate the documents.

The judge should then ask the respondent to present a defense to the charge. The judge should ask the respondent whether he or she has any witnesses, papers or documents to present at that time or to tell the judge about if such items are not available, which would show that the charge in the Notice to Appear is not correct or would show that the respondent has some legal right to be in the United States.

If a defense is made, the judge must consider the presentation of the respondent and make a ruling whether the charge is still sustained despite the defense.

On the other hand, if the respondent admits and concedes all on the Notice to Appear, and the judge is satisfied that no issues of fact or law are present, the judge can tell the respondent that the pleadings to the notice to appear establish the charge in the Notice to Appear.

Country of removal or deportation. The judge should explain to the respondent that, if

it later becomes necessary to order his or her removal from the United States, the respondent may choose a country to which he or she may be deported. Usually, the respondent will choose the home country. The judge should ask if he or she has any fear of returning there and, if so, it may be that the alien should be allowed to file an application for asylum.

Relief from removal and deportation. Since the respondent is not represented, the judge must question him or her to determine what remedies may be available to avoid an order of expulsion. The following matters should be considered:

Immigrants. If the respondent is subject to deportation but has been lawfully admitted to this country for permanent residence, the judge must consider if the respondent qualifies for cancellation of removal as an immigrant. Date of admission, residence in the United States after having been admitted in some status, and any disqualifying bars must be considered.

Other aliens. The judge must question the respondent to determine what remedies may be available to the alien who is subject to removal and deportation either as a nonimmigrant or as an alien who entered this country without inspection or parole by immigration officers. Questioning must center on those elements to qualify for cancellation of removal as a nonpermanent resident under section 240A(b)(1) or (2) of the Immigration and Nationality Act. Again, the judge must consider any disqualifying factors.

Adjustment of status. A visa petition may have been filed on the respondent's behalf which, if approved by the Government, may render the alien eligible for adjustment of status under section 245 of the Immigration and Nationality Act.

Registry. If the respondent is a longtime resident of the United States, the judge must consider whether the respondent shows apparent eligibility for Registry under section 249 of the Act

Citizenship issue. Although the respondent may have been born in a country outside the United States, it may be that the respondent has a claim to United States citizenship through either acquisition at birth or derivation after birth. Therefore, the respondent should be questioned as to whether his or her parents or even grandparents were ever American citizens.

The judge should now ask the Government attorney whether the respondent's Government immigration file shows any relief applications having been filed or is there anything the Government would like to state for the record. The recitation should be translated to the respondent and, if it asserts negative facts, ask the respondent if he admits or denies those facts.

Filing the relief application. If the respondent shows apparent eligibility for a form of relief from deportation that requires a printed application form, the immigration judge should give the respondent the application form with instructions to complete it and file it at a later time.

This part of the master calendar hearing for the unrepresented respondent can prove very difficult for the judge. The usual respondent does not speak English and may have a limited education. The judge must explain to the respondent that, in addition to completing the application according to the instructions on the application form, the respondent must pay the filing fee with the Department of Homeland Security and also register with the Department's fingerprint registration center in order for his or her fingerprints to be taken to support the relief application.

The experience of the author with regard to the unrepresented respondent filing the relief application has shown that instructing the respondent to file the application by mail is not the best method of filing. Instead, it is suggested that the respondent be told to return to another master calendar hearing to present the application to the judge. The judge can then review the application to determine if it is correct and complete and also to ensure that the filing fee has been paid (or the respondent applies for fee waiver, if indigent), and also that the respondent has registered for fingerprinting. Experience as shown that it is extremely difficult to accomplish these tasks by mail.

Checklist

See Attachment D for a checklist of points to cover with the unrepresented respondent at master calendar hearing.

Detainee Master Calendar Hearing

The recently-appointed immigration judge may be assigned to a detention facility where large numbers of detained respondents await removal hearing. With such a large docket, it simply may be impractical to hear each case individually. Instead, the judge will probably group for cases together for hearing. There is no prohibition against joinder of cases as long as the group hearing is conducted in such a way to avoid offending due process.

The Immigration and Nationality Act and implementing regulations are silent on the issue of joinder. Guidance, however, is available in relevant case law.

The immigration court hearing may include multiple respondents without automatically transgressing the bounds of due process. U.S. v. Barraza-Leon, 575 F.2d 218 (9th Cir. 1978).

It is within the discretion of the immigration judge, subject to the requirements of due process, to join cases of different respondents if he or she deems it necessary to promote administrative efficiency. Matter of Taerghodsi, 16 I&N Dec. 260 (BIA 1977).

The number of respondents to be joined in a group hearing is within the discretion of the judge. However, there are limits on the number of cases that should be heard in a pairing, at least within the jurisdiction of the 9th Circuit Court of Appeals . The circuit has held that 33 and 29 respondents is the “outer limit” of numbers to be heard in a group hearing. U.S. v. Nicholas - Armenta, 763 F.2d 1089, 1091 (9th Cir. 1985); U.S. v. Calles-Pineda, 627 F.2d 976, 977 (9th Cir. 1980).

It is recommended that the new judge begin group hearings with small numbers of respondents. As the judge becomes more comfortable with the process, the numbers can be enlarged. In any event, it is recommended that a maximum number of 25 respondents be included in a group hearing.

With regard to organizing the cases for group hearing, it is best to select only those cases where the respondents are able to speak English or Spanish. Respondent speaking other languages should probably be heard individually as they will require the services of the telephonic contract interpreter.

In organizing a group hearing, it may be the preference of the judge not to include in a group the lawful permanent resident. Such cases are relatively few in number and can be heard individually.

A great deal of efficiency is gained if the immigration judge can coordinate with the Government detention officers to screen the detainees to determine which among them are contesting their cases and which are not. Those who are contesting can be heard in one group while those who are not contesting are heard in another. San Diego experience has produced a questionnaire that is completed by the immigration officer upon an interview with the respondent at the detention center. This questionnaire is attached to the back of the notice to appear and the questions posed and answers given clearly indicate whether the respondent is " fighting his case" or is willing to take a removal and deportation order, in other words, asking for a "non-contested removal" hearing.

The detainee Master calendar hearing is conducted in much the same way as the non-detainee Master calendar. In other words, all salient points discussed in the non-detainee setting must be covered in the detainee setting as well. In the detainee setting, it is important to get individualized answers from each respondent to important matters. For example, it would offend due process if the immigration judge obtains from the group a " mass silent waiver of the right of appeal." See, e.g., U.S. v. Lopez-Vasquez, 985 F.2d 1017 (9th Cir. 1993).

Record the detainee master calendar hearing

For the non-contested cases, the hearing is recorded on one cassette tape. Depending on the length of hearing, more than one tape may be required. The immigration judge must make sure that the tapes are properly labeled. Each tape should have the file number and the name of the first respondent on the detainee list and, after the name of the respondent, some judges prefer to enter "et. al" after the name. Some judges prefer to label the tapes " DMC" to designate a Detainee Master Calendar tape. Be sure to mark the tapes in sequence and also to mark the total number of tapes, e.g. tape 1 of 2.

For contested detainee master calendar group hearings, the procedure is somewhat more complicated but procedures can be used in order to save time. The judge can begin the hearing with all of the respondents in one group and on one tape. The judge will review the preliminary matters including the nature of the proceeding and the various rights. These individuals are contesting removal and therefore will be seeking counsel. After the judge has explained all of the rights to the group, the judge will then address each respondent individually and a grant each respondent a continuance to find a lawyer. The initial hearing tape is labeled tape 1 and, after the hearing, the staff assistant will make duplicate tapes so that each record of proceedings file has a copy of the initial hearing tape. When the second detainee master calendar hearing is convened later to see whether the respondent has found counsel, that hearing will be for that respondent alone and the hearing tape will be marked by the judge as tape 2.

It is rare that a respondent contesting removal will not request a postponement to find a lawyer. That individual, however, should not be heard in the group hearing but heard individually after the group hearing is adjourned.

The recently appointed immigration judge will need some kind of language guidance as to what to say in the detainee master calendar setting. Attached to this outline are “scripts” the judge can use.

Detainee Master Calendar Scripts

See Attachment I for an initial hearing with a represented alien and Attachment J for a script dealing with the initial master calendar group hearing.

Marking Exhibits.

There is no official system for marking exhibits. Most judges mark the exhibits in numerical sequence. Other judges use the numerical sequence system but prefix the exhibit number with an “R” for a respondent exhibit and “G” for a government exhibit. If the hearing consists of multiple respondent’s, such as a father, mother, and two children, the exhibits can be marked with identifying letters. For example, the Notices to Appear for the family would be marked as Exhibit 1, 1-A, 1-B, 1-C.

The judge must develop a system for identifying which exhibits have been accepted as evidence and those which have not. If a document is offered for the record and the judge determines it is inadmissible, the judge should nevertheless mark for identification. In that way, the appellate authority reviewing the case can determine the nature of the document that was excluded from evidence. The judge should assign an exhibit number to the document and, after the document number, make a notation such as “ identification only.”

If, later in hearing, the judge decides to admit the document as evidence, the judge can remove the legend “for identification only.”

It is a good practice to mark as many documents for evidence at the master calendar hearing as possible. This will save time during the individual calendar merits hearing, as the judge will not have to spend time at individual calendar merits hearing marking documents.

Before a document is marked as evidence, the judge should ask the opposing party whether there is any objection to the document. If there is an objection, the judge should rule on the record whether the objection is sustained or overruled, and the reasons.

Record the master calendar hearing. It is a wise practice to always record the master calendar hearing. Doing a master calendar hearing while not recording same can generate significant problems later. The regulations contemplate that all hearings will be recorded verbatim. If the judge decides to “go off the record” to discuss something with the attorneys, with the discussion completed the judge should go back on the record and recite the substance of the discussion and ask each party to affirm the recitation.

Chambers conference. It is not recommended that the judge get into the habit of holding chambers conference before hearing. If the topic of conversation in the conference will be the case at hand, and if the topic is important to the case, it makes no sense to talk about the topic in the office of the immigration judge prior to hearing. Rather, the topic of conversation should be placed on the record. If, however, the judge insists on using a chambers conference prior hearing , the judge should then take the bench and go on the record and recite the substance of the conference and ask both parties to ratify the recitation.

Summary

The newly-appointed immigration judge must keep in mind that the master calendar is not simply a setting calendar but a pretrial calendar which has a direct relationship to the individual calendar. The more thorough the master calendar hearing, the greater the chances that the judge will complete the case at individual calendar in one hearing session.