

APBCo + NIJC, MANAGING LONG-TERM IMMIGRATION MATTERS
October 13, 2022

TIPS AND TAKEAWAYS¹

1. Online filing for immigration matters through *my.uscis.gov*

NIJC: At NIJC, online filing is being piloted, but they do not expect any big shifts in recommendations for pro bono attorneys. Continue to use paper filing, but consult with your team if you think online filing may be in your client’s best interest.

General Discussion: There are benefits and drawbacks to online filing:

Pros	Cons
Near-instant receipts issued	Only accessible to those who know about it
Application can be downloaded for review before signing	Client needs email address, device with internet, and tech savviness
Application and materials can be accessed at any time, even after submission	Really should be done either on a Zoom call using screen share or together in person to ensure client understands process
Signatures are all online and no printing/FedEx/mail required	Questions are in a different order than paper version
No passport photos needed	No way to upload paper draft into system, must be hand typed in
Additional supplementary documentation can be uploaded at any time	(c)(8) (asylum applicant) EAD renewals not available online
	Officers are not used to online filing and get frustrated because making changes to application at interview is more difficult
	Form is only available in English
	No dedicated space to upload index
	All evidence must be catalogued by type individually, no option to bulk tag
	A-number lookup is not great
	No firm account management, each is tied to individual attorney
	Emails do not come automatically when a new document or notice is uploaded by USCIS
	System is somewhat buggy because it is new

¹ These notes were gathered from a bi-annual meeting of Pro Bono Counsel and the National Immigrant Justice Center. The objective of the meeting is to share current practices and strategies for managing long-term immigration matters, such as defensive asylum cases. All information is subject to change.

Question to manage: Firm Accounts do not exist as of yet, and being mindful of individual attorney accounts on departure is paramount for a variety of reasons not the least of which is continuity of representation. Laura Atkinson-Hope of Latham & Watkins LLP is raising advocacy with USCIS, if they can create an organizational account.

2. Current Practices for Motions to Advance in Defensive Asylum Cases

NIJC: Because of dates that are far off, it can be difficult to staff long-term defensive cases (or keep them staffed). Motions to advance are a potential docket management tool; we are setting merits for cases where both counsel and clients are ready.

General Discussion:

Timing

- When it's in the client's best interest *and* the client agrees to move forward.
- When a legal team can prepare the complete file and for hearing in a short time period.
- Does not matter if a master calendar hearing has been set or not.
 - Motion to advance can be filed when a Master Calendar hearing is set a few years out. The attorney may motion to skip master calendar hearing and plead to the Notice to Appear in the motion.
 - If nothing is happening in the case and no hearings are scheduled, you can motion to set merits. Again, this would generally skip masters and move to an individual hearing.

Nuts and Bolts of the Actual Motion

- If case has a merits date, but it is far out, frame it as a motion to advance. If there is no future hearing date scheduled, or there is just a master scheduled, frame it as a motion to set merits.
- If pleadings have not been taken, frame it as "Respondent's Written Pleadings and Motion to Set Merits Hearings", and give written pleadings as part of the motions.
 - The Immigration Court Practice Manual explains how to submit written pleadings; affidavits are required. Current experience suggests, most immigration judges won't set the merits unless pleadings have been taken.
- No specific grounds or cause need be set forth in the MTA. However, in the past, NIJC has explained that the client's previous hearings were cancelled due to the COVID-19 pandemic, and he is prepared to move forward with his merits and is therefore moving to schedule it. If there are compelling reasons (medical issues, danger to family in home country, etc.), it helps to lay those out in the motion as well.
- Note if the client has received the biometrics instructions that she will comply before the merits hearing. If your client has not been fingerprinted, make sure you have at least requested biometrics before filing a motion to set/advance.
- Request 3-4 hours for the hearing (unless they know they won't need that long), give anticipated number of witnesses, and the language the Respondent will testify in so they know which interpreter (if any) will be needed.
- Note that the Respondent will supplement his asylum application 15 days in advance of the merits hearing unless the IJ prefers a different call-up date.

- Include EOIR memo on prioritizing pro bono placement as an exhibit.

Factors that Impact Success of a Motion to Advance

- Clients must also be ready and willing.
- Whether or not the IJ has time on the calendar to move up.
- Prepping everything before filing the motion. If the motion is granted and a hearing is set within a month, and if the client and team are not ready, then the process is futile.
- Jurisdiction and judge dependent: in Chicago we have been successful, but consult NIJC before you make any final decisions on what to do. If outside of Chicago, check in with the referring agency in the event there are specific immigration judge /jurisdictional considerations to take into account before filing.