



U.S. Immigration and Customs Enforcement

March 2, 2005

ACTION

MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsel

FROM: (b)(6); (b)(7)(c)
Acting Chief of Detention and Removal Operations

Marcy M. Forman *Marcy M. Forman*
Director of the Office of Investigations

William J. Howard *WJH*
Principal Legal Advisor

SUBJECT: Preliminary Guidance on "Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals" Regulations

Purpose

The Executive Office for Immigration Review (EOIR) recently published a rule on background checks, which will go into effect on April 1, 2005. *See* 70 Fed. Reg. 4743 (January 31, 2005). These regulations will prevent Immigration Judges and the Board of Immigration Appeals (BIA) from granting benefits to aliens before DHS confirms that all background and security checks have been completed. These regulations will have a substantial impact on Detention and Removal Operations (DRO), Offices of Investigations (OI), and Offices of the Chief Counsel (OCC). As such, this memorandum will provide some preliminary guidance on how ICE Operating Units will implement and comply with the "Background and Security Investigations" regulations.

Background

DHS is currently developing a uniform, national policy on law enforcement and security investigations for all aliens issued charging documents and all aliens in immigration court. The "Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals" regulations will provide substantial assistance to ICE in achieving the goal

Subject: Preliminary Guidance on “Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals” Regulations

of insuring that law enforcement and security investigations are completed before immigration judges and the BIA grant benefits to aliens. While more specific field guidance on the regulations is being developed, this memorandum will provide some preliminary guidance on what policies and procedures will be forthcoming.

Discussion

The preamble to the “Background and Security Investigations” regulations and the regulations themselves makes clear that DHS has the sole authority “to determine what identity, law enforcement, and security investigations and indices are required . . . and when those investigations are complete.” ICE has decided that the FBI fingerprint checks and IBIS checks will be the required checks for purposes of the new regulations. In addition, ICE has decided that the FBI fingerprint checks will be considered current if they were conducted within fifteen (15) months of a grant of benefits by an immigration judge, whereas the IBIS checks will be considered current if they were conducted within one hundred and eighty (180) days of a grant of benefits by an immigration judge. The new regulations at 8 C.F.R. 1003.47(b), specifically state which applications for benefits are covered by the new procedures. They include: asylum, adjustment of status under section 209 and 245 of the Act, conditional permanent resident status or the removal of the conditional basis of such status under section 216 or 216A of the Act, waivers of inadmissibility or deportability under sections 209(c), 212, or 237 of the Act, cancellation of removal under section 240A of the Act, suspension of deportation, and 212(c) relief, withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture, registry under section 249 of the Act, and conditional grants relating to applications such as asylum pursuant to section 207(a)(5) of the Act and cancellation of removal in light of section 240A(e) of the Act.

Pursuant to the November 10, 2004, memorandum titled “Interagency Border Inspection System (IBIS) Pilot Project,” all local Field Office Directors, Special Agents in Charge, and Chief Counsels met and devised their own IBIS Standard Operating Procedures (SOPS) on how to run, resolve, and record IBIS background checks for all aliens seeking benefits in Immigration Court. Since December 1, 2004, 10 cities have participated in the IBIS Pilot. We are now directing the Pilot cities to continue with their IBIS procedures; however, the tracking requirements will cease and the final tracking reports will be due on March 7, 2005. We are now directing the cities that have not participated in the Pilot to prepare to implement the procedures contained within their IBIS SOPs on April 1, 2005, the date when the “Background and Security Investigations” regulations go into effect. Additional guidance on IBIS checks will be forthcoming.

Conclusion

All ICE field operational groups should plan to conduct FBI fingerprint checks and IBIS checks for all aliens seeking the benefits specified in 8 C.F.R. 1003.47(b), by April 1, 2005. Please refer any questions about upcoming regulations and procedures to your operational groups designated representative. Below is a list of each operational group’s designated representatives:

Field Office Directors –

(b)(6) (7)(C)

Supervisory Detention and Deportation Officer, DRO

(202) 616 (b)(6) (7)(C)

Memorandum for SACS, FODS, and Chief Counsel

Page 3

Subject: Preliminary Guidance on “Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals” Regulations

Special Agents in Charge –

(b)(6) (7)(C)

Chief, National Security and Threat Protection Unit

(202) 305- (b)(6) (7)(C)

Offices of the Chief Counsel –

(b)(6) (7)(C)

Associate Legal Advisor, National Security Law Division

(202) 514- (b)(6) (7)(C)