



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

April 4, 2017

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Dana J. Boente  
Acting Deputy Attorney General

*dlb*  
*4-4-17*

SUBJECT: Immigration Judge Hiring Process

DISCUSSION:

Attached for your review and approval is a memorandum proposing a new process for hiring Immigration Judges (see Tab A). If approved, this proposal would revise the current policy implemented by then-Attorney General Gonzales on April 2, 2007 (Tab B).

The Justice Management Division ("JMD"), the Executive Office for Immigration Review ("EOIR"), and the Office of Attorney Recruitment and Management ("OARM") have each concurred with the proposal.

The Office of Legal Counsel has also reviewed and approved the revised process for Form and Legality (*see* OLC Action Memorandum ahead of Tab A).

APPROVE: 

DATE: April 6, 2017

DISAPPROVE: \_\_\_\_\_

OTHER: \_\_\_\_\_

TAB A

Recommended Immigration Judge Hiring Process

April 2017

Former Attorney General Gonzales implemented the current hiring process for Immigration Judges ("IJs") on April 2, 2007 ("2007 Policy"; see Tab B). The Office of the Deputy Attorney General ("ODAG") recommends revising this hiring process to make it more efficient and prevent unnecessary delays and redundant levels of review. This memorandum details the newly proposed process, with an explanation for how it would change from the 2007 Policy. ODAG has consulted with the Executive Office of Immigration Review ("EOIR"), Justice Management Division ("JMD"), and Office of Attorney Recruitment and Management ("OARM"), who have each confirmed their approval of the proposal.

PRELIMINARY STAGE

Before reviewing applications, EOIR will post a generic vacancy announcement seeking applications for IJ positions, noting the cities in which judgeships are available and directing applicants to identify the cities where they would be willing to serve.

Change: Currently, EOIR must run a separate vacancy announcement for each city where a position is available. In EOIR's experience, most applicants apply to multiple cities. A single advertisement would substantially reduce the amount of time that EOIR employees spend reviewing applications, as the same application would not need to be re-reviewed multiple times. JMD agrees that this approach is reasonable and would increase efficiency in the hiring process.

STEP ONE

Upon receipt of initial application materials, Supervisory Immigration Judges will evaluate incoming applications and separate them into three tiers: (1) "Highly Recommend," (2) "Recommend," and (3) "Do Not Recommend."

Change: EOIR currently re-reviews applications categorized in the "Recommend" and "Do Not Recommend" tiers to determine whether they should be classified into higher tiers. Per EOIR, we recommend elimination of this re-review as unnecessary because it has never affected the final hiring decision.

STEP TWO

EOIR will contact all first-tier applicants for a writing sample and reference. EOIR will then execute a reference check.

Change: We do not recommend any changes to this step.

### **STEP THREE**

Three-member panels, composed of EOIR judges and supervisors, will interview all first-tier candidates and complete written interview summaries, which will be included in each candidate's application materials. These interviews will be completed within one month. To help meet this timeframe, EOIR should form multiple panels, running concurrently.

**Change:** Currently, there is no time limitation to this step. The revised procedure would require the completion of this step within one month. Towards this end, the revised process would clarify that EOIR should run concurrent panels to help meet the target timeframe.

### **STEP FOUR**

Based on review of the application packet, the EOIR Director (or his designee) will select five unranked candidates to be forwarded for consideration in Step Five for a particular court location.

**Change:** Currently, the Chief Immigration Judge and EOIR Director (or his designee) ranks three candidates. The change to having the EOIR Director select five unranked candidates would not only provide more options for eventual selection, but also give the Finalist Panel in the next step the discretion regarding which candidate to interview first.

### **STEP FIVE**

This is the last step before the Attorney General makes a selection. A two-member panel ("Finalist Panel"), comprising the Assistant Attorney General for Administration ("AAG/A") (or a career-SES employee designated by him) and a non-career SES employee selected by the DAG, will interview as many of the five candidates as appropriate. The Finalist Panel will recommend a single candidate to the DAG. The DAG will then determine whether he agrees with that recommendation and will forward any approved recommendation to the Attorney General.

This step will be completed within two weeks. To help meet this timeframe, the AAG/A and the DAG should designate multiple individuals so that separate IJ positions can have separate Finalist Panels and the separate Panels can sit concurrently to make recommendations for multiple vacancies.

**Change:** Currently, the panel is composed of three members. This revision would shrink the size of the panel from three to two members and permit the AAG/A to designate a career-SES employee and the DAG to designate a non-career-SES employee to serve on this panel. The revised process would also require this step to be completed within two weeks. Towards this end, we would make clear that the DAG and AAG/A should establish a separate Finalist Panel for each IJ position to help meet the target timeframe where appropriate.

## **STEP SIX**

The Attorney General will make the initial selection. The Attorney General may request additional candidates from the DAG if he does not want to select the recommended candidate.

Change: We do not recommend any changes to this step.

## **STEP SEVEN**

The applicant will go through a preliminary background check and then a full background investigation. While the full background check is pending, the Attorney General may choose to give a temporary appointment to the candidate, regardless of whether the candidate is a current federal employee or from outside the federal government. Once the candidate completes a full background investigation, the candidate's application package will go before the DAG and then the Attorney General for final approval.

Change: Currently, federal employees are able to receive Temporary Appointments for 14 months while they are pending full background, but applicants who are not federal employees do not have that option. This change would permit us to bring non-federal employees on board more quickly. Given the importance and sensitivity of the IJ position, ODAG will work with JMD and OARM to ensure that the IJ background investigations are handled as expeditiously as possible, consistent with other obligations.

TAB B



TAB B

BW

U.S. Department of Justice  
Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

March 29, 2007

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *BM 3/30/07*

FROM: Lee Liberman Otis *LO*  
Associate Deputy Attorney General

SUBJECT: Immigration Judge Hiring Process

Attached for your review and approval are two memoranda regarding the process the Department will use going forward to fill immigration judge positions. The first is a short executive summary of the process, the second a longer document laying out the process in greater detail. These memoranda were drafted in close consultation with the Office of Attorney General and the Executive Office of Immigration Review. They have been reviewed and concurred in by the Office of Legal Counsel, Justice Management Division, and Office of Attorney Recruitment and Management. A set of the messages memorializing these offices' concurrences is attached. I also attach an opinion from the Office of Legal Counsel providing various advice with respect to legal issues relating to these appointments.

Approve: *[Signature]* Date: April 2, 2007

Disapprove: \_\_\_\_\_ Date: \_\_\_\_\_

Other: \_\_\_\_\_ Date: \_\_\_\_\_

## IJ Hiring Process - Summary

This short memo is an executive summary of a more comprehensive hiring process laid out in the attached memorandum. This process is subject to revision at any time should the DAG or AG identify deficiencies in operation or possible improvements that could be made.

### STEP ONE

A group of Immigration Judges (usually between 7-9 individuals, from among the Chief Immigration Judge, Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in Headquarters) will initially evaluate and recommend applications, categorizing them as:

- Highly Recommend
- Recommend
- Do Not Recommend

Based on these recommendations, OCU will separate the applications into three preliminary tiers:

- First tier: applicants whom at least half the members of the screening panel voted "highly recommend"
- Second tier: applicants for whom at least one member of the screening group voted "highly recommend"
- Third tier: applicants who received only "recommend" or "do not recommend" ratings

The Director of EOIR (or his designee) and the Chief IJ will review the applications preliminarily placed in the second and third tier to determine whether any should be included in the first tier.

### STEP TWO

OCU contacts all first tier applicants to get a writing sample and references. *[In the case of the existing vacancy announcement, OCU will also confirm first tier candidates' continued interest in an IJ position and have them identify up to 5 cities they are interested in.]*

OCU hiring committee will check references (creating written summaries of discussions), consistent with obligations under federal law.

### STEP THREE

Three-member EOIR panels (made up of two Deputy CJS or ACJs and a senior EOIR manager) at EOIR will interview all first tier candidates *[in the case of the existing announcement, they will interview all first tier candidates who expressed an interest in a city with a vacancy, done in the order of priority of city based on EOIR's judgment].*



They will each create written interview summaries to complete the packets of information, which will include:

- cover letters, resumes and application materials
- writing sample(s)
- interview summaries
- reference summaries
- documentation of veterans' preference eligibility

**STEP FOUR**

Based on this packet, the CU and EOIR Director (or his designee) will select at least three candidates to recommend for final consideration. Any relevant veteran's preference will apply here to decide between two otherwise substantially equivalent candidates.

**STEP FIVE**

A second three member panel, consisting of the EOIR Director (or his designee), a career member of the SES designated by the DAG, and a non-career member of the SES designated by the DAG, will interview as many of the three candidates as they think appropriate.

The panel will recommend one candidate to the DAG for recommendation to the AG for final approval. Again, any relevant veteran's preference will be considered.

**STEP SIX**

The AG makes his selection. The AG can request additional candidates from the DAG if he does not want to select the candidate recommended by the DAG. Likewise, the DAG can request additional candidates if he does not want to recommend the panel's recommended candidate to the AG.

**STEP SEVEN**

After the AG makes his selection, upon completion of a preliminary background check, the candidate will receive an initial appointment and complete initial training, including the immigration law exam, after which completion he or she can begin hearing cases.

MODIFIED  
LATER; no  
temp appointments  
any more; perm  
appts after  
5/11 B/F.

Concurrence: 3/22/07 EOIR (see attached e-mail message)  
3/23/07 OARM (see attached e-mail message)  
3/26/07 JMD (see attached e-mail message)  
3/22/07 OLC (see attached e-mail message)  
\_\_\_\_ ODAG  
\_\_\_\_ OAG

### Immigration Judge Appointment Process

There are presently 33 existing and 3 imminent immigration court vacancies. Funding for 20 of these was provided originally in the 2006 War Supplemental and the Chief Immigration Judge and the Director of EOIR have reached a final determination as to where these should be allocated. It is important to fill these 36 vacancies by the end of the fiscal year. Funds for an additional twenty immigration judge positions were included in the FY 2007 appropriation and EOIR anticipates filling those next fiscal year. This document sets out a process for filling these and future immigration court vacancies.

This hiring process is subject to revision if the Deputy Attorney General or the Attorney General determines that there are improvements that can or should be made.

#### A. Current Vacancies

##### 1. Current Vacancy Announcement

- In September 2005, EOIR posted a generic vacancy announcement seeking applications for immigration judge positions, noting the cities in which there are immigration courts, and directing applicants to indicate up to 5 cities where they would be willing to serve. This announcement was posted on two DOJ websites, one available to the general public and one available to DOJ employees, as well as on USAJOBS, an OPM website announcing jobs available throughout the government.
- The announcement specifies as qualifications for the position: a law degree, active bar membership, U.S. citizenship, and a minimum of seven years relevant legal experience. It also asks applicants to address in narrative form at least three of five factors: 1) knowledge of immigration laws and procedures; 2) substantial litigation experience, preferably in a high volume context; 3) experience handling complex legal issues; 4) experience conducting administrative hearings; and 5) knowledge of judicial practices and procedures. It also specifies as a quality ranking factor that a candidate demonstrate the appropriate temperament to serve as a judge.
- The announcement also invites applicants to provide information in support of veterans' preference eligibility in their cover letter or resume and to attach supporting documentation. It notes that the Department of Justice considers veterans' preference eligibility as a positive factor in hiring.
  - As applications responding to this posting have been received, EOIR's human resources office has been screening out the applications that do not meet the qualifications. It has a database of slightly over 1,000 qualified applicants.
  - The posting has remained in place and active since that time.
  - On March 14, EOIR revised this posting to state that it expires on March 30.
- Department officials and others who have indicated that they may know of potential candidates have been informed that this posting will close on March 30 and that anyone

who wishes to be considered for one of the current vacancies should submit an application in the manner specified by the vacancy announcement. Such candidates will be considered on the same footing as other applicants.

2. Screening and Updating of Applications Received in Response to Current Announcement and Prioritization of Vacancies

- The Department will seek to fill the current vacancies from the pool of applicants who have filed or file an application in response to this announcement. If it determines that it has an insufficient number of top tier candidates from this pool to make a selection, the Department will readvertise the particular vacancy.
- The Chief Immigration Judge will prioritize the vacancies for purposes of the order in which they should be filled and will prepare a schedule on which the Department will endeavor to fill them.
- After the current announcement has closed, the Executive Office for Immigration Review will separate the applications into three preliminary tiers.
- The first step in this process will consist of a screening panel composed of the Chief Immigration Judge and the Assistant Chief Immigration Judges assigned to Headquarters reviewing all qualified applications. The members of this screening panel will indicate in the file whether they "highly recommend," "recommend," or "do not recommend" each candidate. Applications received to date have already been screened in this manner. On average, some nine Assistant Chief Immigration Judges and Deputy Chief Immigration Judges have been voting on each application, but that number has varied based on duty assignments, leave, and the number of Assistant Chief Immigration Judges and Deputy Chief Immigration Judges assigned to Headquarters at any given time.
  - After the votes of the screening panel have been tabulated, the applications will be separated into three preliminary tiers.
    - Applicants will be preliminarily placed in the first tier if at least half of the members of the screening panel voted to "highly recommend" them. It is estimated that approximately 20% of the more than 1000 applicants will fall into this category.
    - Applicants will be preliminarily placed in the second tier if at least one member of the screening panel voted to "highly recommend" them, but a majority of the screening panel did not. It is estimated that approximately 10% of the applicants will fall into this category.
    - And finally, applicants will be preliminarily placed in the third tier if they only received "recommend" or "do not recommend" votes. It is estimated that approximately 70% of the applicants will fall into this category.

- The next step in this process will consist of the Director of EOIR (or his designee) and the Chief Immigration Judge reviewing the applications preliminarily grouped in the second and third tiers to determine whether some should be included in the first tier.
- After the tiering process is completed, OCIJ will contact all applicants in the first tier, inquiring if they remain interested in being appointed as an immigration judge, and if so, directing them to provide writing samples and, if necessary, updates to their applications and to choose from a list of vacancies as many as five locations where they would be willing to be assigned.
- For all first tier applicants who indicate an interest in a particular vacancy the Department is trying to fill, members of the OCIJ Hiring Committee next will examine the writing samples of the applicants, check their references and, if appropriate, talk to any additional individuals who may have relevant information or experience with the applicant. The members will provide written summaries of these conversations. Based on this additional information, the Director (or his designee) and the Chief Immigration Judge may determine that some of the candidates should be removed from the first tier because of concerns about the appropriateness of having these individuals serve as immigration judges.
  - All references and recommendations will be considered as permitted in 5 U.S.C. § 2302(b). Specifically, the "recommendation or statement" shall not be considered unless it "is based on the personal knowledge or records of the person furnishing it and consists of— (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or (B) an evaluation of the character, loyalty, or suitability of such individual."

### 3. Candidate Interviews

- Three-member panels at the Executive Office for Immigration Review will interview all the candidates who have been assigned to the first tier.
  - These panels will consist of two Deputy or Assistant Chief Immigration Judges designated by the Chief Immigration Judge and a senior manager at EOIR designated to serve by the Director. These senior managers may include any member of the Senior Executive Service, any employee in a Senior Level position, any EOIR Assistant Director, or an EOIR employee at a GS-15 level who has at least 10 years of management experience.
    - After this process has been in place for six months, the Director of EOIR and the Chief Immigration Judge, in consultation with the Deputy Attorney General's office, will review this process and determine whether it is practical and useful to expand the panels to four or more members.

- o The panels will place written interview summaries into the full file for each candidate and will forward the full file to the Chief Immigration Judge and the Director (or his designee). The file will include:
  - cover letters, resumes and application materials
  - writing sample(s)
  - interview summaries
  - reference summaries
  - any documentation of eligibility for veterans' preference.
- o The Chief Immigration Judge and the Director (or his designee) will select at least three candidates they recommend for the vacancy.
  - o At this stage, any relevant veteran's preference will be used as a potentially positive factor, breaking a tie in favor of the veteran if there are two substantially equivalent candidates.
- A three member panel consisting of the Director of EOIR or his designee, a career appointee in the Senior Executive Service designated by the Deputy Attorney General, and a non-career appointee in the Senior Executive Service designated by the Deputy Attorney General will interview as many of these candidates as they determine appropriate.
- If the Chief Immigration Judge and the Director or his designee cannot identify three candidates to recommend, the Director or his designee will consult the Deputy Attorney General's designees on the three member panel as to whether to send forward fewer than three candidates or readvertise the vacancy.

#### 4. Selection

- The three member panel composed of the EOIR Director or his designee and the career and non-career designees of the Deputy Attorney General will determine which candidate to recommend to the Deputy Attorney General, taking into account any relevant veteran's preference in the same manner described above.
- The Deputy Attorney General will determine whether to forward the candidate recommended by the three member panel to the Attorney General.
- The Attorney General will make the final selection.\* If the Attorney General does not want to select the candidate recommended by the Deputy Attorney General, he will request that the Deputy Attorney General send forward an additional or alternative candidate.

\* OLC will review existing personnel authority delegations to ensure that they are consistent with the process envisioned in this memorandum and recommend any revisions they believe appropriate.

- If the Attorney General makes such a request, or if the Deputy Attorney General determines that he does not want to recommend to the Attorney General the candidate initially recommended to him by the three member panel, the Deputy Attorney General will request the three member panel to send forward an additional or alternative candidate. Upon receiving such a request, the three member panel may revisit the applicants it previously reviewed or request additional candidates from the Director of EOIR and the Chief Immigration Judge.

#### 5. Initial Appointment

- Upon approval of the tentative selection by the Attorney General, EOIR, the Office of Attorney Recruitment and Management, and the Security and Emergency Planning Staff of the Justice Management Division will work together to complete the ordinary administrative processes for making initial appointments of individuals to Schedule A positions within the Department, such as an initial background check.
- The selected candidate will then receive an initial appointment but will not hear cases until the candidate successfully completes initial training, including the immigration law exam.

#### B. Future Vacancies

- The process for filling future vacancies will be the same as the process for filling the current vacancies, except that rather than using a generic vacancy announcement, EOIR will post individual vacancy announcements.
- The Chief Immigration Judge, Director of EOIR, Civil Division's Federal Programs Branch, Office of Legal Counsel, Justice Management Division, and ODAG will also consider whether there are ways in which the announcement should be refined.
- In addition to the posted vacancy announcement, EOIR will consider, as appropriate, other measures to make potential candidates aware of the vacancy, such as classified advertisements in local legal newspapers (for example, in the D.C. area, the *Legal Times*), and electronic recruitment notices to appropriate lawyers groups, including lawyers with immigration law expertise, such as the Department of Homeland Security and the American Immigration Lawyers Association.
- If the Director of EOIR (or his designee) and the Chief Immigration Judge, or the three-member panel consisting of the EOIR Director and the Deputy Attorney General's designees, conclude that one or more of the current vacancies should not be filled from an existing pool of candidates because of inadequacies in the available pool of top-tier candidates, the vacancy or vacancies will be re-announced consistent with the process described in this paragraph.

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- In filling future vacancies, EOIR and the Department may also consider first-tier candidates who responded to the current or prior vacancy announcements.
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Concurrence:

3/22/07 EOIR (see attached e-mail message)  
3/23/07 OARM (see attached e-mail message)  
3/26/07 JMD (see attached e-mail message)  
3/22/07 OLC (see attached e-mail message)  
\_\_\_\_ ODAG  
\_\_\_\_ OAG