

**INDIVIDUAL HEARINGS:
PREPARATION AND CONDUCT**

JUDGE JOHN F. GOSSART, JR.

Individual Hearings: Preparation and Conduct

Judge John F. Gossart, Jr.

Objectives:

After this session, you should be able to:

1. Identify the authority of the immigration judge and the source of that authority.
2. Describe actions that should be taken prior to the individual hearing to improve the likelihood that the case will be effectively completed at the individual hearing.
3. Identify who has the burden of proving removability in a removal proceeding and what that burden of proof is.
4. Explain how to conduct an individual hearing.
5. Identify several procedural errors that may negatively impact the ability of the immigration judge to effectively complete an individual hearing.

Dignity, fairness, respect and control are essential in all Immigration Court Proceedings. You should aspire to a reputation as a fair, firm and decisive judge.

I. AUTHORITY OF THE IMMIGRATION JUDGE:

It is of paramount importance that the Immigration Judge knows and understands his/her authority derived from statute, regulations, and case law. This includes a knowledge of burden of proof, standard of proof, and shifting burdens of proof.

It is equally important to recognize and understand that we are the Attorney General's Court. Immigration Judges are agents of the Attorney General of the United States, and our authority comes from him. Thus we speak on his behalf through our decisions.

See INA section 240(b)(1); 8 CFR 1003.1 et sequel; 8 CFR 1240.1; 8 CFR 1240.31; 8 CFR 1240.41.

A. Authority includes

1. Conduct many different types of proceedings
2. Administer oaths

3. Receive evidence
4. Interrogate (question) Respondent/witnesses- (When do we do this?)
5. Examine/cross-examine Respondent/witness
6. Issue subpoenas- (When do we do this?) (See attachment #6)
7. Sanction by civil monetary penalty
8. Determine removability (inadmissability, deportability)
(Should you conduct a bifurcated hearing?)
9. Make decisions (on issues of removability, relief from removal, as well
as other related issues)
10. Issue and sign orders
11. Issue statutory "advisals" (appeal rights, limitations of discretionary
relief, consequences for failure to appear)
12. Exercise discretion where applicable (a balance of favorable and
unfavorable factors)
13. Conduct "in absentia" hearings where appropriate under INA section
240(b)(5).

II. PREPARATION FOR INDIVIDUAL HEARING

A. All pre hearing motions filed and ruled on

1. motions for continuance
2. accept evidence out of time
3. accept witness as expert/ as learned lay person
4. waiver of appearance of minors
5. for forensic testing
6. for subpoena

7. for pretermission of application(s)

H. All applications/documentary evidence filed in advance of merits hearing

Learn, follow, support and enforce the Immigration Court Practice Manual and the national regulations at 8 CFR 1003.9 et sequel. If you do not, you make it difficult for your court and colleagues.

1. evidence/witness list filed timely
2. evidence/witness list filed untimely
3. acceptance of applications, documents, and other materials according to requirements. See 8 CFR 1003.31, 1003.32, 1003.33, and Practice Manual

C. Encourage (require) notice of witness(es) and a brief summary of the purpose of the testimony

1. This is a requirement under the new Immigration Court Practice Manual

D. Prior to Merits Hearing

2. read and review all briefs, pretrial stipulations, documentation and intended evidence.
3. encourage parties to highlight relevant portions of background evidence.
4. require legal briefs where appropriate
5. encourage (require) pre-trial conference(s).
 - a. between parties
 - b. with the Court

See 8 CFR 1003.21 and Attachment #4

E. Pretrial Conference 8CFR 1003.21

1. narrow issues
2. stipulate to facts
3. list of (and acceptance of) proposed evidence
4. list of (and acceptance of) proposed witnesses- to include experts
5. list of (and acceptance of) proffered testimony

F. Filing Deadline/ Call Up System

1. an effective way to resolve motions
2. an effective way to resolve applications
3. an effective way to resolve cases

CONCLUSION:

You have now successfully prepared for the Individual Hearing because the case is ready to go forward as scheduled and you are ready to conduct that "successful" hearing.

III. CONDUCTING THE INDIVIDUAL HEARINGS

Under Removal Proceedings, a Respondent is classified as an "arriving alien", an "alien present without inspection, admission, parole, or an "alien admitted but now deportable". See INA, section 101(a)(13).

An alien classified as an arriving alien, has the burden of proof to show clearly and beyond doubt that he/she is admissable. INA section 240 (c)(2)(A).

An alien present without inspection, admission, parole, has the burden of proof to show time, place, and manner of entry. INA section 291.

When an alien is classified as a deportable alien, the burden of proof is on the government to show by clear and convincing evidence that the alien is deportable as charged. INA section 240 (c)(3)(A).

******* Always avoid procedural error. *******

- . don't forget to rule on all evidence
- . don't forget to make credibility finding
- . don't forget to turn on the tape! the DAR!

(Parties should know what you expect of them - What they can expect of you!)
Make sure parties are ready to go forward and make sure you are prepared to hear the case.

A. Preliminary Matters

1. state case and issue(s) before Court
2. state and rule on stipulation(s)
3. mark evidence
 - a. admitted/ or marked for identification purposes only
 - b. foundation
 - c. 8 CFR 287.6(b)
 - d. use evidence worksheet (Attachment #5)
4. rule on evidence - see Federal Rules, 8 CFR 1003.41, 8 CFR 1287.6(b)

Federal Rules of Evidence may be used as a guideline. Evidence is admissible in Immigration Court proceedings if it is relevant, probative, and material, and not otherwise fundamentally unfair. The importance of the admitted evidence is the weight assigned to it by the judge. 8CFR 1003.41, 8 CFR 1287.6(b).

5. applications - jurat execution and swear Respondent
6. determine case(s) to be presented (case in chief, rebuttal case)
7. witness(es) to be called

8. sequestration!? ask parties if they want ruling on the witness(es)
9. instruct interpreter
10. swear interpreter
11. instruct witness(es)
12. proffer of testimony - how to handle

B. Merits Hearing: Control the Proceedings, Control the Parties

1. presentation of case in chief
2. presentation of rebuttal case
3. adhere to allotted time
4. examination procedure
5. ruling on evidence
6. ruling on objections
7. challenges to the interpreter - how to handle
8. conduct of the court
 - a. treat parties with respect
 - b. make sure attorneys/respondents feel they have been treated fairly, have had the opportunity to be heard, have had their day in court

C. Responsibility of Immigration Judge

1. to represented alien
2. to pro se alien
3. to decision making process

D. Preparation for Decision

1. note taking
2. order of ROP
3. outline of case
4. citations
5. written decision or oral decision
6. delayed bench decision
7. recess before decision - the benefit of appearance

E. Oral Decision

1. statement of the facts
2. statement of the issues
3. credibility findings
4. statement of the law
5. findings of fact
6. conclusions of law
7. discretion
8. order
9. remember your decision is for the alien!

F. Conclusion of Hearing

1. does respondent understand the decision and order
2. advisals
3. notice of appeal rights, See 8 CFR 1003.3(a)
4. issuance of summary order

5. the Court's compassion

G. Miscellaneous Matters

1. build a good record
2. avoid procedural error
3. update/close of record
4. interlocutory decisions and orders
5. judge worksheet
6. statistics

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND**

IN THE MATTER OF IN REMOVAL PROCEEDINGS	CASE #A
NAME OF THE RESPONDENT	(RESPONDENT)

ON BEHALF OF RESPONDENT

ON BEHALF OF DHS

ORDER

(INSERT BODY OF THE ORDER)

DONE AND ORDERED this _____ day of _____, 200_, in Baltimore, Maryland.

Office of the Immigration Judge
Immigration Court
Baltimore, Maryland

ATTACHMENT #1



A# _____

DATE: _____

TO: Clerk of Court

FROM: Judge Gossart

* * * * *

- ___ Send copies of attached order to parties
- ___ Print Order _____ Granted/Denied
- ___ Print Order Change of Venue to _____
- ___ Send ROP to _____
- ___ Print Continuance Order Granted / Denied
- ___ Print Extension of Time Order Granted / Denied
- ___ Send Decision & Order with Notice of Appeal for ___ days.
- ___ Send asylum application and supporting documents to DOS/BHRHA.
- ___ Retrieve file from the Federal Records Center.
- ___ Update case on the computer.
- ___ Put case on call-up for _____. Reason _____
- ___ Schedule case for a hearing. M / I on _____ at _____
- ___ Reschedule case for a hearing. M / I on _____ at _____
- ___ File case. Open / Closed / Other.
- ___ Contact INS / Alien / Respondent's attorney and advise _____

- ___ See Judge Gossart re this case.
- ___ Circulate attached
- ___ Additional instructions
- ___ Cancel interpreter
- ___ Special instructions

ATTACHMENT #2



U.S. Department of Justice
Executive Office for Immigration Review
Immigration Court

*George H. Fallon Building
31 Hopkins Plaza - Room 440
Baltimore, Maryland 21201*

SUBPOENA

To:

In re:

Case #

You are hereby commanded to appear before the Immigration Judge at the Fallon Federal Building, 31 Hopkins Plaza, Room 440, Baltimore, Maryland 21201 on September 10, 2002 at 2:30 p.m. to give testimony in connection with Removal Proceedings being conducted under authority of the Immigration and Nationality Act, against

John F. Gossart, Jr.
U.S. Immigration Judge
Baltimore, Maryland

SERVICE OF SUBPOENA

I hereby certify that on August _____, 2002, I served the above subpoena on the witness by **certified mail** as agreed by counsel for the INS.

Court Clerk

cc: Baltimore DHS

ATTACHMENT #3

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND**

IN THE MATTER OF (RESPONDENT)	Case # Pre-trial Order pursuant to 8 CFR100 3.21 & 1003.31
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CHARGE: Section 237(a)(1)(A), Immigration and Nationality Act, inadmissible at time of entry.

ON BEHALF OF RESPONDENT

ON BEHALF OF DHS

Asst. District Counsel, DHS
100 South Charles Street
Baltimore, MD 21201

Counsels of record for the Respondent/INS are required to file a Pre-Trial Memorandum with a proposed Order no later than 10 days prior to the Individual Calendar hearing. The Pre-Trial Memorandum must include the following, as checked:

- 1. Concise and objective statement of the facts.
- 2. List stipulated facts not requiring proof at trial.
- 3. Statement of disputed issues of law/fact to be tried.
- 4. List of all prospective witnesses, indicating whether an interpreter is needed, and a brief offer as to the nature of their anticipated testimony.
- 5. List of all exhibits and a brief description of each accompanied by the actual exhibits.

REQUIREMENTS OF THE PRE-TRIAL MEMORANDUM MAY NOT BE WAIVED.

* At trial, parties shall be limited to those exhibits and witnesses listed in the Pre-Trial Memorandum. Where a party wishes to enter an exhibit or witness not listed, the party shall immediately, upon discovery of such exhibit or witness, notify the Court and the other party's counsel. Use of exhibit or witness may be allowed where there is good cause shown, and to prevent manifest injustice.

* Pursuant to § 1003.31(c) of the C.F.R., failure to timely file any document required by the Pre-Trial Memorandum shall be deemed a waiver and abandonment of such right.

DONE and ORDERED this _____ day of _____,

ATTACHMENT#4

John F. Gossart, Jr.
U S. Immigration Judge
Baltimore, Maryland

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND**

IN THE MATTER OF

Case #

(RESPONDENT)

Pre-trial Order pursuant to 8 CFR 1003.21
& 1003.31

ON BEHALF OF RESPONDENT

ON BEHALF OF DHS

ORDER

Pursuant to 8 C.F.R. 1003.21 & 1003.31 this Court orders that:

1. The parties file with the Court on/or before _____
a stipulation of all exhibits not opposed for admission into the record;
2. The parties file with the Court on/or before _____
a list of all exhibits opposed for admission into the record and the basis for the
opposition.

DONE and ORDERED this _____ day of _____

John F. Gossart, Jr.
U.S. Immigration Judge
Baltimore, Maryland

ATTACHMENT #4

Worksheet

_____ **Proceedings** **Date:** _____

Respondent Name: _____

Case File # _____

Attorneys of Record: (Respondent) _____
(DHS) _____

Interpreter/Language: _____

Respondent Exhibits:	Ruling	INS Exhibits:	Ruling
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A-admitted NA- not admitted ID- admitted for identification only

ATTACHMENT #5