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ATTORNEY GENERAL ISSUES FINAL RULE REFORMING BOARD OF IMMIGRATION APPEALS PROCEDURES

WASHINGTON, DC – Attorney General John Ashcroft today announced the final rule reforming the procedures of the Board of Immigration Appeals to improve the timeliness and quality of its adjudication. The Board is the appellate body of the immigration court system. In recent years, the Board has developed a massive backlog of pending cases, reaching a peak of more than 56,000 cases in February 2002. Furthermore, 10,000 cases had been pending for three years or more.

"The Board of Immigration Appeals needed a complete overhaul," said Attorney General John Ashcroft. "The Board had become a bottleneck in the system, undermining the enforcement of our country's immigration laws. Aliens' cases were in limbo for years, and the Board did not provide effective guidance on complex issues to the immigration judges, the Immigration and Naturalization Service or the noncitizens. Such delays encouraged unscrupulous lawyers to file frivolous appeals. Even though they could not win, such lawyers could exploit the system to guarantee their clients additional years within the United States."

Under the new regulations, cases will proceed according to reasonable time limits to ensure that they do not languish before the Board for years. In addition, the regulations bring the Board's standards of review into conformity with appellate courts throughout the country, which address legal issues *de novo* (anew) while deferring to the factual findings of lower courts. Prior to these reforms, the Board had routinely addressed factual questions *de novo*, contrary to normal appellate judicial practice. The Board will also utilize its resources more effectively, by acting through a single board member in simple cases. Three-member panels of Board Members will be reserved for those cases that present difficult or novel questions.

After these regulatory reforms were published in February 2002, the Board expanded its use of "streamlining" procedures to resolve more cases with single Board Members. As a result, the Board has made significant improvements in the number of cases completed each month. In fiscal year 2001, the Board completed an average of approximately 2,600 cases per month. However, since March 1, 2002, the Board has been averaging more than 5,000 cases per month.

The new reforms also address the size of the Board. Beginning in 1995, the Department of Justice incrementally expanded the Board from five members to 23 members. However this increase in size had no appreciable impact on the completion of cases. Indeed, the backlog only grew larger. This is because the backlog was not a personnel problem; it was a procedural problem. After a six-month transition period under the new rules, the size of the Board will be reduced from its current 19 members to 11 members. This reduction will permit the Board,

which has grown too large to reach a consensus, to resolve complex legal questions more effectively.

The central provisions of the final rule are as follows:

- Three-member panels will focus their attention on complex cases by allowing more single Board member decisions where there are no novel questions, disagreements or difficult matters of law. This reform expands on the Department's ongoing streamlining initiatives.
- The Board will use the standard of review for factual issues in appeals from immigration judges that most appellate courts use – a "clearly erroneous" standard. The Board will no longer review immigration judge's factual findings "*de novo*" – or anew.
- The rule includes a series of time limits for the adjudication of cases. A single Board member has 90 days either to decide the case or refer it for three-member panel review. A three-member panel must render its decision within 180 days of referral. In limited circumstances, these time limits may be temporarily suspended. All of the time limits are designed to provide a more timely decision to the parties.
- After the six-month transition period, the Board will be reduced to 11 members.

The final rule makes a number of modifications to the proposed rule:

- The standards for referral of cases to a three-member panel have been clarified.
- The "clearly erroneous" standard of review has been clarified. This standard will only be applied to factual findings by immigration judges, not decisions of INS officers.
- The briefing schedules for non-detained cases were changed to a 21-day sequential briefing schedule; detained cases remain on a 21-day simultaneous briefing schedule.
- When the rule takes effect the Board will immediately implement all of the procedural reforms in addressing pending cases, except that the "clearly erroneous" standard will be applied to appeals from immigration judge decisions that are filed *after* the date of publication of the rule.
- A provision regarding the finality of decisions and remands, which was inadvertently overwritten when unrelated changes in the regulations were made in 2000, has been reinserted into this final rule.

- The Attorney General has directed the Chairman of the Board and the Chief Immigration Judge to improve the timing of sending transcripts to the parties, a specific issue raised in comments on the proposed rule.

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