Proposed Rules

Federal Register
Vol. 72, No. 59
Wednesday, March 28, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1003

[EOIR No. 147I; AG Order No. 2876–2007]

RIN 1125–AA52

Jurisdiction and Venue in Removal Proceedings

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of Justice (Department) regulations addressing jurisdiction and venue in removal proceedings. The amendment is necessary due to the increasing number of removal hearings being conducted by telephone and video conference. The proposed rule establishes that venue shall lie at the place of the hearing as identified on the charging document or initial hearing notice, unless an immigration judge has granted a change of venue to a different location. The hearing location is the same whether or not the immigration judge or a party to the proceeding appears at the hearing location in person or participates in the hearing by telephone or video conference. The proposed rule also establishes that removal proceedings shall be deemed to be completed at the location of the final hearing, regardless of whether all parties are physically present at that location. The Department also proposes to amend the regulations to state expressly that, when the Department of Homeland Security (DHS) files a charging document, jurisdiction vests with the Office of the Chief Immigration Judge (OCIJ) within the Executive Office for Immigration Review (EOIR).

DATES: Written comments must be submitted on or before April 27, 2007.

ADDRESSES: Please submit written comments to Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia, 22041. To ensure proper handling, please reference RIN No. 1125–AA52 or EOIR docket number 147I on your correspondence. You may view an electronic version of this proposed rule at *http://www.regulations.gov.* You may also comment via the Internet to the Executive Office for Immigration Review (EOIR) at *eoir.regs@usdoj.gov* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include RIN No. 1125–AA52 in the subject box.

FOR FURTHER INFORMATION CONTACT: Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia, 22041, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This proposed venue rule would revise the existing regulations to clarify the particular location in which venue lies for proceedings before immigration judges. 8 CFR 1003.20(a) is amended to state that, in removal proceedings, venue lies at the hearing location as identified on the charging document as defined in 8 CFR 1003.13 or the initial hearing notice issued pursuant to 8 CFR 1003.18. The designated hearing location is also known as the location where a case is ''docketed for a hearing.''

The rule currently provides that venue shall lie at the immigration court where jurisdiction vests pursuant to 8 CFR 1003.14. As revised, the regulations would more clearly distinguish between (1) the jurisdiction of the immigration judges over proceedings initiated under section 240 of the Immigration and Nationality Act (INA), 8 U.S.C. 1229a, or other provisions of law, and (2) the proper venue or hearing location for particular cases.

In particular, the Department proposes to amend the venue rule to provide greater clarity and consistency of interpretation, in light of the increasing number of removal hearings conducted by telephone and video conference, as well as EOIR's use of administrative control courts for the creation and maintenance of records of proceedings as described in 8 CFR 1003.11. This rule makes clear that the use of telephone or video conferencing or the use of administrative control courts for maintaining records does not alter or affect the designated hearing location where the hearing itself takes place. In addition, in response to requests from federal courts, the Department is amending the rule to specify that, for purposes of judicial review of final orders of removal, pursuant to section 242(b)(2) of the INA, 8 U.S.C. 1252(b)(2), removal proceedings will be deemed to be completed at the location of the final hearing.

Congress has expressly authorized the immigration judges to conduct merits hearings in removal proceedings through telephone or video conference, although an evidentiary hearing may be conducted by telephone conference only if the alien consents, after being advised of the right to proceed in person or through video conference. See section 240(b)(2) of the INA; see also 8 CFR 1003.25(c). For more than 10 years, immigration judges have conducted hearings by video conference. More than one-half of the immigration courts in the United States are equipped with the technology to conduct video conferences.

Due to improved technology, and encouraged by the proven success of video conferencing, EOIR has established a Headquarters Immigration Court (HQIC) based at EOIR Headquarters in Falls Church, Virginia. The immigration judges assigned to the HQIC conduct hearings through video conference to assist various immigration courts throughout the United States by hearing cases on their dockets. The HQIC provides OCIJ with a flexible tool for responding to short-term resource needs that may arise.

Although a useful tool in docket management, the increased use of telephone and video conferencing to conduct hearings complicates questions regarding where venue properly lies and where proceedings are completed. When telephone and video conferencing are used to conduct hearings, the parties, representatives, and immigration judge need not gather in a single physical location. As a result, the hearing may involve persons in different places, and in some cases these multiple geographic locations may be in different judicial circuits.

OCIJ's use of administrative control courts also increases the number of

cases that involve more than one location. Administrative control courts are used to create and maintain records of proceedings for immigration courts within an assigned geographic area, including established immigration courts in different cities, as well as hearing locations in detail cities, in DHS detention facilities, or in federal, state, or local correctional facilities. See 8 CFR 1003.11; 1003.13.[1] All documents and correspondence in a particular case are filed with the administrative control court (sometimes called the ''base city court''), even if the hearings themselves are held at a different location within the assigned geographic area.

For instance, Dallas, Texas (in the Fifth Circuit), is currently the administrative control court for immigration cases being heard at the immigration court in Oklahoma City, Oklahoma (in the Tenth Circuit), and Arlington, Virginia (in the Fourth Circuit) is currently the administrative control court for immigration cases being heard at the detail location in Cleveland, Ohio (in the Sixth Circuit). When a hearing is held at a detention facility, documents related to the case may be filed with the immigration court having administrative control over that hearing location and not at the detention facility. Thus, one removal proceeding may involve more than one geographic location, with documents being filed in one place even though the hearings themselves are held at another place, often in a city or detention facility in a different state and sometimes in a different judicial circuit.

Due to the increased number of cases that involve more than one geographic location—both because of the use of telephone or video conferencing and because of the use of administrative control courts—the Department has concluded that it is essential to clarify the existing regulations relating to venue to provide more specific guidance. Under this rule, the designated hearing location remains unaffected even if an immigration judge from a different location is conducting the hearing by video conference, or if the records in the case are filed with, and maintained by, an administrative control court in a different city. An immigration judge from a different city who is conducting a hearing by telephone or video conference is deemed to be conducting the hearing at the designated hearing location, just as if the immigration judge had been assigned to conduct the hearing at that location in person.

This proposed rule is consistent with longstanding EOIR practice with respect to the use of administrative control courts, and is also consistent with previous guidance provided by OCIJ regarding hearings conducted by telephone or video conference. See Memorandum from Chief Immigration Judge Michael Creppy, Interim Operating Policies and Procedures Memorandum No. 04–06: Hearings Conducted through Telephone and Video Conference at 2 (Aug. 18, 2004) (''The immigration judge's participation in the hearing through video conference d[oes] not change the hearing location.'') (available on the EOIR Web site).

The following example illustrates the increased complexity of venue determinations and the operation of the new venue rule in a case involving multiple geographic locations. With respect to an alien being detained at the Nebraska Department of Corrections, DHS would institute removal proceedings against the alien by filing an NTA with the immigration court in Chicago, Illinois (the administrative control court or ''base city court''). The NTA or a subsequent hearing notice would identify the Nebraska Department of Corrections in Lincoln, Nebraska, as the hearing location. OCIJ may then decide to assign an immigration judge at the HQIC or in some other city to hear cases that are on the docket at that correctional facility, conducting the hearing by video conference rather than traveling to Nebraska to hear the case in person.

In the above scenario, under this rule, venue would lie in Lincoln, Nebraska, the designated hearing location, i.e., the place where the case was docketed to be heard, not in Chicago, Illinois, or in Falls Church, Virginia. The hearing location and thus venue would remain unchanged, even if other events occurred. For instance, Lincoln would remain the hearing location, even if an immigration judge in Chicago (or Denver, Colorado) is substituted to conduct the hearing by video conference instead of an immigration judge at the HQIC in Falls Church. Similarly, the hearing location and thus venue would remain unchanged even if one of the parties or representatives participated in the hearing by telephone or video conference (for example, the alien's attorney who is located in Cleveland, Ohio). Unless the immigration judge grants a party's motion for a change of venue, the hearing location would remain constant, in this case at Lincoln.

The regulations authorize an immigration judge to change venue only when one of the parties moves for a change of venue and the opposing party is given notice and the opportunity to respond. See 8 CFR 1003.20(b); see also *Jian* v. *INS*, 28 F.3d 256 (2nd Cir. 1994). The immigration judge may not sua sponte transfer venue.[2] Furthermore, in the case of a detained alien, venue does not automatically change when the DHS moves the alien to another detention facility. See *Jian* v. *INS*, supra. To secure a change of venue, DHS must make a motion before the immigration judge in the location where venue already lies. A notice of hearing is issued for all hearings, so if an immigration judge grants a motion for a change of venue, a new hearing notice will be issued that reflects the new hearing location.

The Department's proposed amendments to 8 CFR 1003.20(a) also respond to recent decisions issued by two United States Circuit Courts of Appeals. See *Georcely* v. *Ashcroft*, 375 F.3d 45 (1st Cir. 2004); *Ramos* v. *Ashcroft*, 371 F.3d 948 (7th Cir. 2004) (Ramos I). Each of these cases involved more than one geographic location, either because of the use of an administrative control court or the use of video conferencing.[3] These courts had to determine which court of appeals had authority for judicial review of the order of removal under section 242(b)(2) of the INA, which states that a petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge ''completed the proceedings.'' Both courts noted that the proceedings could be deemed to have been completed in a variety of places, including the place where the immigration judge was physically located, where the alien was physically located, where the final order was issued, or where the final order was

[1] A list of administrative control courts with their assigned geographic areas is available to the public at any immigration court. See 8 CFR 1003.11.

[2] The only exception involves a ''clerical transfer,'' which occurs when two courts have administrative control over the same area. Typically, this sharing occurs when two courts—one a detention setting and the other a non-detained setting—are located in the same geographic area. A case may be transferred between the paired courts with an administrative notation. For example, if a detained alien who has a hearing scheduled at the DHS detention facility in Lancaster, California, is released from custody, the alien's case may be clerically transferred from the Lancaster Immigration Court to the Los Angeles Immigration Court. The public list of administrative control courts contains information about which courts are subject to clerical transfers. See *http://www.usdoj.gov/eoir/vll/pairedcourts.htm#NOTE.*

[3] In *Georcely*, the hearing was held in St. Thomas, U.S. Virgin Islands, within the jurisdiction of the Third Circuit, but the record of proceedings was maintained by the administrative control court in Puerto Rico, which is within the jurisdiction of the First Circuit. In *Ramos*, the hearing was held in Council Bluffs, Iowa, located within the Eighth Circuit, but an immigration judge physically located in Chicago presided over the Iowa hearing via video conference.

formally entered. Both courts found that they could review the cases, but suggested that the Department provide guidance for future cases involving multiple geographic locations. See also *Ramos* v. *Gonzales*, 414 F.3d 800, 803 (7th Cir. 2005) (Ramos II) (noting the instruction from the Chief Immigration Judge that venue is not determined by the physical location of an immigration judge who is conducting the hearing by teleconference, but adhering to the court's contrary conclusion in Ramos I as the law of the case).

In accord with the rule that venue lies at the location where the hearing is scheduled to occur, as identified in the NTA or a subsequent hearing notice (or as the immigration judge may change venue pursuant to a motion filed for that purpose), the Department is further amending the rule to state that a case is deemed to be completed at the final hearing location. The final hearing location can readily be identified as the place of the hearing identified on the notice for the final hearing. The ''final hearing'' is the last hearing for which a notice was issued. As previously stated, a hearing notice is issued for each hearing and identifies the hearing location. The hearing location remains unchanged throughout a proceeding, unless an immigration judge grants a change of venue. If venue has been changed, all hearing notices issued after the change of venue will correctly list the new hearing location. As a result, the hearing notice related to the final hearing in a case will identify the location where the hearing is completed. Even if an immigration judge reserves a decision rather than issuing a decision during the final hearing, the hearing will be deemed completed at the hearing location listed on the last hearing notice issued in the case.

The previous hypothetical involving the hearing location at the Nebraska Department of Corrections in Lincoln, Nebraska, illustrates the operation of the rule to determine the place where the immigration judge completed the proceedings for purposes of judicial review. The administrative control court where documents are filed is in Chicago, within the Seventh Circuit, and the immigration judge is based at the HQIC in Virginia, located in the Fourth Circuit, conducting the Lincoln hearing through video conferencing. In this scenario, venue would lie at the final hearing location, Lincoln, Nebraska. In turn, the immigration judge would be deemed to have completed the proceedings at the final hearing location in Lincoln, within the jurisdiction of the Eighth Circuit. The immigration judge, although physically located in Virginia, is deemed to be appearing and conducting the proceedings in Nebraska via video conference, as if assigned to conduct the hearing in person at the Nebraska location. Thus, for purposes of section 242(b)(2) of the INA, a petition for review should be filed in the Eighth Circuit, and not in the Seventh Circuit or the Fourth Circuit.

Finally, this proposed rule would amend the jurisdiction rule at 8 CFR 1003.14(a) to state that when DHS files an NTA and thereby institutes removal proceedings, jurisdiction over the proceedings vests with OCIJ within EOIR. This amendment is necessary to avoid any possible and unintended implication that jurisdiction over a case is limited to a particular immigration court. This amendment to the jurisdiction rule complements the revision to the venue rule, since it is the venue rule that determines the particular hearing location.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individual aliens and does not affect small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year and also will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been submitted to the Office of Management and Budget for review. This rule merely clarifies and restates preexisting principles relating to the venue of immigration proceedings and does not alter existing legal principles or impose new obligations on aliens, their representatives, or the Department of Homeland Security (which represents the government in removal proceedings).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised record keeping or reporting requirements.

List of Subjects in 8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and Function (Government Agencies).

Accordingly, chapter V of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 1003 is revised to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat.

2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Section 1003.14 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1003.14 Jurisdiction and commencement of proceedings.

(a) When DHS files a charging document with an immigration court, proceedings commence and jurisdiction vests with the Office of the Chief Immigration Judge within the Executive Office for Immigration Review. * * * * * * * * * *

3. The section heading and paragraph (a) of section 1003.20 are revised to read as follows:

§ 1003.20 Venue; change of venue.

(a) Venue lies at the designated place for the hearing as identified by the Department of Homeland Security on the charging document. If the charging document does not identify the place of the hearing, venue shall lie at the place of the hearing identified on the initial hearing notice, issued by the immigration court in accordance with § 1003.18(b).

(1) Venue remains at the designated hearing location unless an immigration judge has granted a motion for change of venue as provided in this section, except that the Office of the Chief Immigration Judge may provide for administrative transfers of proceedings from one hearing location to another hearing location in the same vicinity, with proper notice to the parties, if such a transfer is appropriate because the alien is released from custody, is taken into custody, or, upon release from a federal or state correctional facility, is transferred into DHS custody.

(2) Venue lies at the designated hearing location, even if the immigration judge or any party or representative is not physically present at the hearing location and participates in the hearing through telephone or video conference. In that circumstance, the immigration judge shall clearly identify on the record the hearing location and the location of the immigration judge and the parties or representatives, if different.

(3) The use and location of an administrative control court for the filing of documents and the creation and maintenance of records of proceedings, as described in § 1003.11, does not affect the venue of the case or the hearing location as provided in this section, nor does the venue of the case or the hearing location affect the use or location of the administrative control court.

(4) For purposes of judicial review of a final order of removal, as provided in section 242(b)(2) of the Act, the immigration judge is deemed to complete the proceedings at the final hearing location, without regard to whether the immigration judge, or any party, representative, witness or other person participates in the final hearing through telephone or video conference. For purposes of this provision, the final hearing location refers to the place of the hearing identified on the notice for the final hearing.

* * * * * * * * * *

Dated: March 22, 2007.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E7–5629 Filed 3–27–07; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27715; Directorate Identifier 2006–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and A340–642 airplanes. The existing AD currently requires operators to revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new information. This information includes, for all affected airplanes, decreased life limit values for certain components; and for Model A330–200 and -300 series airplanes, new inspections, compliance times, and new repetitive intervals to detect fatigue cracking, accidental damage, or corrosion in certain structures. This proposed AD would revise the ALS, for all affected airplanes, by adding new Airworthiness Limitations Items (ALIs) to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage or corrosion in certain structures, in accordance with the revised ALS of the ICA. This proposed AD results from the issuance of new and more restrictive service life limits and structural inspections based on fatigue testing and in-service findings. We are proposing this AD to detect and correct fatigue cracking, accidental damage, or corrosion in principal structural elements, and to prevent failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by April 27, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer International Branch, ANM–116, FAA, International Branch, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–27715; Directorate Identifier 2006–NM–140–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://*