LOCAL OPERATING PROCEDURES UNITED STATES IMMIGRATION COURT BUFFALO & BATAVIA, NEW YORK

These rules are adopted pursuant to the authority of 8 C.F.R. § 1003.40 for the purpose of facilitating the convenient, efficient, and orderly conduct of the business of the Immigration Courts in Buffalo and Batavia, New York.

PROCEDURE 1. PRE-TRIAL MOTIONS PRACTICE

- A. In addition to complying with 8 C.F.R. § 1003.23(a), all written pre-hearing motions shall be accompanied by a proposed order in duplicate for signature by the Immigration Judge. Proposed orders must conform to the format contained in Appendix E. All written pre-trial motions will be decided on the basis of the written record unless the Immigration Judge determines that oral argument is necessary.
- B. A written motion under this procedure or pursuant to 8 C.F.R. § 1003.23(a) must be responded to by the opposing party within ten (10) days of being served in person, or within thirteen (13) days if served by mail, by filing the response with the Immigration Court and upon service to the opposing party. Upon order of the Immigration Court, for good cause shown, a different time may be set for responses to pre-trial motions. **PRE-TRIAL MOTIONS NOT RESPONDED TO WILL BE DEEMED UNOPPOSED PURSUANT TO 8 C.F.R.** § 1003.23(a).
- C. Pursuant to 8 C.F.R. § 1003.32(a), the parties must use a certificate of service that conforms to the format in Appendix D.

D. Motion to Withdraw/Substitute Representation

- 1. Motions for withdrawal of representation shall be made in writing to the assigned Immigration Judge setting forth:
 - a. The reason(s) for the withdrawal;
 - b. That a good faith effort was made to locate alternate representation with a recitation of the specific efforts made, including referral to appropriate bar associations or other organizations.
 - c. That the client was notified of the date, time, and place of any scheduled hearing(s) before the Immigration Judge; of the necessity of appearing at such hearing; and of the consequences of failure to appear.
- 2. Such motion must be filed no later than thirty (30) days prior to the next <u>Individual</u>

<u>Calendar</u> hearing date. No time limitation applies to <u>Master Calendar</u> hearings. Motions not timely filed will only be granted by the Immigration Judge for good cause shown.

3. Substituted counsel or representative shall forthwith file with the Immigration Court a properly completed Form EOIR-28, Notice of Entry of Appearance As Attorney or Representative Before Immigration Judge.

E. Motions for Change of Venue

In addition to complying with 8 C.F.R. §§ 1003.20 and 1003.23(a), all written motions for change of venue shall contain Respondent's plea to the allegation(s) and charge(s) contained in the charging document; a designation of a country in the event of removal or a refusal to designate such a country; the relief from removal, if any, to be sought by Respondent; the date and time of the scheduled hearing before the Immigration Judge; and the name of the Immigration Judge if any hearings have occurred prior to the filling of the motion to change venue. Please note that a request for a change of venue does not toll the 1 year filing deadline for asylum applications.

PROCEDURE 2. CONTINUANCES

Parties seeking a continuance of any scheduled hearing before an Immigration Judge shall file a written motion for continuance no less than fifteen (15) calendar days prior to the scheduled hearing. The motion shall set forth the reason(s) that a continuance is requested. Unless notified by the Immigration Judge that a motion for continuance has been granted, all parties must attend the hearing and be prepared to proceed. Motions for continuance within the fifteen (15) day period prior to the hearing will be considered only in the discretion of the Immigration Judge for good cause shown.

PROCEDURE 3. TRIAL PREPARATION

- A. At the <u>Master Calendar</u> hearing, the parties shall be prepared as follows:
 - 1. Respondent shall be prepared to respond to the allegation(s) contained in the charging document, and designate a country of removal.
 - 2. Respondent shall be prepared to indicate all relief applications to be made, if any.
 - 3. Respondent shall submit any motions for subpoenas in accordance with Procedure 1 of these Rules and 8 C.F.R. §§ 1003.35(b) and 1287.4.
 - 4. Both parties shall be prepared to state (in hours) the estimated time needed to present the case and request, if needed, the presence of an interpreter at the

Individual Calendar hearing.

- 5. The Department of Homeland Security (DHS) shall be prepared to state its position on all issues and applications for relief.
- 6. <u>Time of Arrival</u>: All aliens/attorneys must timely appear at the court and signify their presence by signing in at the Immigration Court reception window. If counsel wishes to have his/her appearance waived, in addition to the alien's, he/she may indicate as such on any proposed order submitted to the Immigration Court. As a matter of courtesy, if <u>attorneys</u> appear at the Immigration Court and <u>personally</u> sign in prior to the time set for their hearing, their cases will be called first in the order of counsel appearance. Attorneys arriving later than the time of the scheduled hearing will be called in the normal order of arrival as reflected by the sign-in sheet posted at the Immigration Court reception window.
- B. In lieu of a personal appearance at the <u>Master Calendar</u> hearing, appearance may be entered as follows:
 - 1. A written pleading by counsel for the respondent may be filed with the Immigration Court. The written pleading must be in compliance with the written pleading format at Appendix B and be coupled with a Motion to Waive Presence at the Master Calendar hearing, pursuant to 8 C.F.R. § 1003.25(a). The pleading and the Motion to Waive Presence must be filed no less than ten (10) calendar days prior to the scheduled Master Calendar hearing. The motion must be accompanied by a proposed order in compliance with the order format approved by this Immigration Court. UNLESS SUCH ORDER IS SIGNED BY THE IMMIGRATION JUDGE, THE RESPONDENT'S PRESENCE IS NOT EXCUSED.

Additional matters may be set forth in the written pleading, supplementing the written pleading format, in the discretion of the submitting party.

For the approved formats for the written pleadings, the waiver of presence at the <u>Master Calendar</u> hearing, and the proposed order, see the attached Appendix of the Local Operating Procedures.

2. A <u>telephonic hearing</u> request may be made in lieu of a personal appearance. Such requests must be filed no less than ten (10) calendar days prior to the scheduled <u>Master Calendar</u> hearing, and must be coupled with a Motion to Waive Presence at the <u>Master Calendar</u> hearing, pursuant to 8 C.F.R. § 1003.25(a). The motion must be accompanied by a proposed order in compliance with the order format approved by the Immigration Court. **UNLESS SUCH ORDER IS SIGNED BY THE IMMIGRATION JUDGE, THE RESPONDENT'S PRESENCE IS NOT EXCUSED.**

C. At the <u>Individual Calendar</u> hearing, both parties shall be prepared to present all remaining testimony and evidence on all issues, including rebuttal.

PROCEDURE 4. GENERAL

All matters shall proceed at the time and date scheduled for hearing. Parties shall be prepared to go forward with their cases.

PROCEDURE 5. FILING PROCEDURE

- A. In addition to complying with 8 C.F.R. § 1003.32, all documents and applications submitted for consideration by the Immigration Judge shall be two-hole punched at the top of the page with holes 2 3/4 inches apart. Where there are more than one exhibits and documents in support of a motion or claim, they shall be paginated and shall have as the first page a table of contents with page number identification. The use of bottom-aligned exhibit tabs with letter designations is required for multiple documents. SUBMISSIONS NOT IN COMPLIANCE WILL NOT BE ACCEPTED NOR WILL THEY BE CONSIDERED.
- B. Except for asylum applications, which must be filed in open court, in addition to complying with 8 C.F.R. §§ 1003.31 and 1003.32, all proposed exhibits, applications and briefs must be filed with the Immigration Court no later that fifteen (15) calendar days prior to the scheduled <u>Individual Calendar</u> hearing, unless otherwise authorized or directed by the Immigration Judge. The Immigration Court may refuse to accept late-filed documents by any party.
- C. Attorneys shall name all proposed witnesses they intend to present at Immigration Court and provide a brief offering as to each witness' testimony. All proposed witness lists, along with the offer, must be filed with the Immigration Court no later than fifteen (15) days prior to the scheduled <u>Individual Calendar</u> hearing, unless otherwise directed by the Immigration Judge, or where good cause is shown. Failure to comply with this procedure may result in the Immigration Court rejecting the witnesses and returning the documents to the originating party.

PROCEDURE 6. PRE-HEARING STATEMENT OF POSITION

Pursuant to 8 C.F.R. §§ 1003.21 and 1003.31, at the Immigration Judge's discretion, parties may be required to provide a pre-trial memorandum.

APPENDIX TO LOCAL OPERATING PROCEDURES

TABLE OF CONTENTS

- (A) Written Pleading in Removal Proceedings
- (B) Motion to Waive Presence at Master Calendar Hearing
- (C) Order Waiving Appearance, Setting Due Date for Applications, and Setting Trial Date
- (D) Certificate of Service
- (E) Proposed Order Format

Note: The formats provided in these appendices should be adapted as appropriate to suit the particular circumstances of the proceeding.

UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW UNITED STATES IMMIGRATION COURT BUFFALO, NEW YORK

In the Matter of:		of:) File No:	
Resn	ondent) In Removal Proceedings	
)	
		WRITTEN PLEADING	
1.	Respondent, through counsel, concedes proper service of the Notice to Appear, Form I-862 , dated		
2.	Attor	ney for the respondent has explained:	
	a.	the rights set forth in 8 C.F.R. § 1240.10(a);	
	b.	the consequences of failing to appear in Court as set forth in the Immigration and Nationality Act (INA) § 240(b)(5); and	
	c.	the consequences of filing/making a frivolous asylum application as set forth in the INA §§ $208(d)(4)(A)$ and $208(d)(6)$.	
		ondent concedes the following allegation(s):	
	and d	lenies the following allegations(s):	
4.	Respondent concedes the following charge(s):and denies the following charge(s):		
5.	In the event removal is ordered, Respondent designates as the country to which removal should be directed.		
6.	As re	As relief from removal, Respondent will be filing application(s) for:	
	Court other applic Respo	pt for asylum applications, the application(s) shall be filed with the Immigration t no later that 15 days prior to the scheduled <u>Individual Calendar</u> hearing, unless wise directed by the Immigration Judge or where good cause is shown. Asylum cations must be filed in open court in the presence of an Immigration Judge. ondent acknowledges that if the application(s) are not timely filed, the application(s) be deemed abandoned pursuant to 8 C.F.R. § 1003.31(c).	
7.	Coun case.	sel for Respondent estimates that hour(s) shall be required to present the	

8.	It is requested that a	language interpreter be provided.
	Date	Attorney/Representative for Respondent
rights		, attest to my full knowledge and understanding of my . I waive a further explanation of such rights by this
	been advised of, and understand to INA §§ 208(d)(4)(A) and	nd, the consequences of filing a frivolous asylum application 208(d)(6).
in INA		es of failing to appear for a removal proceeding as set forth te of departure. I knowingly and voluntarily waive the oral
•	notify the Immigration Court w	ice with 8 C.F.R. § 1003.15(d)(2), if my address changes I ithin 5 days of such change by completing and mailing Form
	 Date	Respondent

UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION COURT UNITED STATES IMMIGRATION COURT BUFFALO, NEW YORK

In the Matter of:)	File No:
)	In Removal Proceedings
Respondent))	
<u>Motion</u>	to waive appearance	at Master Calendar Hearing
1 1	at for this Immigration	the Written Pleading Statement, consistent with a Court, Respondent, through counsel, requests a adar hearing scheduled
		Attantion (Decrease de vive for Decrease de vi
Date		Attorney/Representative for Respondent

UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW UNITED STATES IMMIGRATION COURT BUFFALO, NEW YORK

In the Matter of:)	File No:	
Respondent))))	In Removal Proceedings	
ON BEHALF OF DHS:		ON BEHALF OF RESPONDENT:	
	<u>ORDER</u>		
Local Operating Procedure 3, R	Respondent's Motion to W	I the Written Pleading consistent with aive Appearance at Master Calendar filed by	
	_	e will be deemed an abandonment of of removal may then be entered.	
The hearing is set for th at a.m./p.m., at (location)	e day of on)		
DONE AND ORDERE United States Immigration Cou	D this day of rt, Buffalo, New York.	, 200, at the	
		U.S. Immigration Judge	

CERTIFICATE OF SERVICE

CASE NAMI	E:				
CASE NUMBER:					
I HER	REBY CERTIFY that on this day of	, 200,			
I caused	(Indicate who is being served)				
to be served t	he (Describe the documents being	ng served)			
(Check one)					
	by placing a true copy thereof enclosed in a sealed enfully prepaid and depositing the same with the Unite person at the address set forth below.	1 1 0			
	by causing to be personally delivered a true copy the address set forth below.	reof to the person at the			
	by (specific either Federal Express, United Parcel Se the address set forth below.	rvice, etc.) to the person at			
	by certified mail, return receipt requested, to the persbelow.	son at the address set forth			
	(ADDRESS OF THE PERSON BEING SER	RVED)			
I decla	are under penalty of perjury that the foregoing is true a	and correct. Executed on			
	, 200				
		Signature			

UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW UNITED STATES IMMIGRATION COURT BUFFALO, NEW YORK

In the Matter of:	File No:
Respondent)	In Removal Proceedings
ON BEHALF OF DHS:	ON BEHALF OF RESPONDENT:
	<u>ORDER</u>
(INSERT BODY O	OF THE PROPOSED ORDER)
DONE AND ORDERED this Buffalo, New York.	_ day of, 200, at
	U.S. Immigration Judge