

Submitted via www.regulations.gov

March 28, 2020

Lauren Alder Reid
Assistant Director
Office of Policy
Executive Office for Immigration Review, Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

RE: EOIR Docket No. 18-0101, RIN 1125-AA90; Fee Review

Dear Assistant Director Reid:

Klein Immigration, A Law Corporation, respectfully submits this comment on the proposed Executive Office for Immigration Review (EOIR) Fee Review, published on February 28, 2020. We are concerned about the proposed fee changes in the published notice, and request that EOIR withdraw these proposals that make appeals, applications, and motions less accessible to respondents.

Klein Immigration is a full service immigration law firm, and some of our clients are asylum seekers who have escaped horrendous situations in their home countries and who often leave behind everything. They come to the United States with nothing and are supported by family members and merger jobs just to survive long enough to have their cases heard.

Klein Immigration opposes these sudden and dramatic increases in EOIR fees associated with filings for appeals to the Board of Immigration Appeals (BIA), applications for cancellation of removal or suspension of deportation, applications for asylum, and motions to reopen or reconsider before the immigration courts or the BIA. The proposed fee increases for most applications are unconscionably high. The greatest increase is nearly 800 percent, from \$110 to \$975, to appeal the decision of an immigration judge, placing it outside the grasp even of families with a moderate income. Likewise, motions to reopen or reconsider before the BIA would rise to \$895. The proposed fee levels are unreasonably and disproportionately high compared to fees in Federal courts.

EOIR should ensure that appeals, applications, and motions remain accessible and affordable. These filings are essential to upholding the principles of access to justice and the right to due process. Those who cannot afford these fees may be unable to apply for relief or appeal erroneous decisions. Respondents have only 30 days after an immigration judge decision to file an appeal; this is a very short timeframe to obtain the \$975 fee. It is not uncommon for

immigration judges to make errors, and these changes would significantly hinder the respondent's ability to seek justice to correct them. Additionally, new facts may arise after the decision, and the increase in filing a motion to reconsider would also hinder a respondent's ability to seek a redress.

We are concerned that such significant changes are being proposed with only a 30-day comment period rather than the traditional 60 days.¹ EOIR acknowledges that it has not conducted a fee study in 33 years. Since EOIR has not changed its fees in over three decades, it is imperative that the public be granted sufficient time to understand the reasons and methodology EOIR used to arrive at such substantial increases, and how EOIR plans to ensure that vulnerable, low-income noncitizens will be able to assert their rights in immigration court and before the BIA.

Further, EOIR has historically drawn the majority of its funding from congressional appropriations.² Unlike USCIS, EOIR is not a fee-funded agency. The rulemaking never explains why EOIR needs this additional money, nor does it state that it cannot cover its operating costs through congressional appropriations, or that it must be self-sustaining and why.

While the proposed rulemaking states that current EOIR fee waiver policies would remain available, it does not acknowledge that with fees rising as much as 800% that the number of fee waiver requests will also increase dramatically. Respondents' increased reliance on fee waivers under this proposal would heighten the burden on judges to adjudicate fee waiver requests. The increasing number of fee waiver requests would divert valuable judicial resources to adjudicating fee waivers rather than substantive claims at a time when the court already has a backlog of more than a million cases.

Klein Immigration urges EOIR to withdraw its proposed fee increases and maintain its current fee levels for appeals, applications, and motions.

Thank you for the opportunity to submit comments on the proposed fee schedule. Please do not hesitate to contact robert@kleinimmigration.com to provide further information.

Robert R. Klein
Managing Immigration Attorney
Klein Immigration, A Law Corporation

¹ See, e.g., Executive Order 12866 (Sept. 30, 1993) (stating that agencies should allow “not less than 60 days” for public comment in most cases, in order to “afford the public a meaningful opportunity to comment on any proposed regulation”); see also Executive Order 13563 (January 18, 2011) (stating that “[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days”).

² See, e.g., Executive Office for Immigration Review, Department of Justice, *FY 2020 Budget Request*, www.justice.gov/jmd/page/file/1142486/download.