Model BIA Sua Sponte Certification Order

Operational Policy and Procedure Memorandum

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

To: All BIA Personnel & Interested Practitioners
From: The Chairman
Date: [TBD]
Subject: Standing Sua Sponte Certification for Fraud Appeals
Authority: 8 C.F.R. § 1003.1(a)(2)(i); 8 C.F.R. § 1003.1(d)

I. PURPOSE

This memorandum establishes a standing order for sua sponte certification and presumptive expedited review of certain *Fraud Appeals* filed under BIA Practice Manual § 9.3(c)(2). These appeals seek review of previously approved I-130 petitions based on newly discovered evidence of marriage fraud. The order implements uniform operational procedures under the Chairman's authority to direct and supervise the Board's internal processes.

II. BACKGROUND

Marriage fraud undermines the integrity of the U.S. immigration system. In the Immigration Marriage Fraud Amendments of 1986, Congress recognized this danger and codified a categorical bar under INA § 204(c). However, newly discovered evidence of fraud often emerges long after the initial adjudication. Without a formal process for post-approval review, victims—including U.S. citizens—lack recourse to protect themselves from immigration-related harm.

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This memorandum formalizes a procedural mechanism for reviewing such fraud claims when they are timely pursued and credibly supported. It affirms the Board's commitment to ensuring that marriage-based petitions comply with federal law and to protecting petitioners from fraud-induced misuse of immigration benefits.

III. LEGAL AUTHORITY

Pursuant to 8 C.F.R. § 1003.1(a)(2)(i), the Chairman is authorized to "issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities." This order is issued under that authority and in coordination with amendments to the BIA Practice Manual and Form EOIR-29.

IV. STANDING CERTIFICATION AND EXPEDITED REVIEW ORDER

The Board hereby institutes a standing order that it will automatically certify *sua sponte* and grant presumptive expedited review to any appeal that satisfies all of the following criteria:

1. **Filing Basis**: The appeal is filed using Form EOIR-29 and identified as a *Fraud Appeal* under Section 1, consistent with BIA Practice Manual § 9.3(c)(2).

2. **Certification by Counsel**: The practitioner has signed the mandatory certification under § 9.3(d)(5)(ii), attesting under penalty of perjury that:

    a. They have carefully reviewed the evidence of fraud submitted with the appeal;

    b. The evidence is credible and materially relevant to an INA § 204(c) determination; and

    c. The petitioner has acted with diligence in pursuing their rights upon discovery of the evidence.

3. **Timeliness and Tolling**: The appeal was filed after the 30-day deadline and invokes equitable tolling based on newly discovered evidence of marriage fraud under applicable standards.

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4. **Evidence Submission**: The newly discovered evidence of fraud is submitted concurrently with Form EOIR-29 and reviewed by DHS prior to transmittal to the Board. No separate motion to remand is required.

All such certified *Fraud Appeals* shall be docketed for expedited review under BIA Practice Manual § 6.4(b)(1) unless:

- The certification is materially deficient;
- The fraud evidence is prima facie not credible or material;
- The appeal is frivolous or brought for an improper purpose;
- Extraordinary docket management constraints apply.

V. EFFECTIVE DATE AND IMPLEMENTATION

This order shall take effect immediately upon issuance. It shall apply prospectively to all appeals filed on or after the effective date and retroactively to any pending appeals that satisfy the criteria set forth herein.

VI. COORDINATION

This operational order shall be read in conjunction with:

- Revised BIA Practice Manual §§ 6.4 and 9.3;
- Revised Form EOIR-29 and instructions;
- Applicable provisions of 8 C.F.R. §§ 1003.1, 1003.3, and 1003.8.

Staff are instructed to identify eligible appeals during intake and to ensure priority docketing consistent with this order. Questions regarding implementation may be directed to the Office of the Chairman.

[Signed]
Chairman
Board of Immigration Appeals

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