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Office of the Inspector General  
U.S. Department of Justice



# **Report Regarding Investigation of Improper Hiring Practices by Senior Officials in the Executive Office for Immigration Review**

Oversight and Review Division 15-02

November 2014

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## **EXECUTIVE SUMMARY**

In July 2012, the Department of Justice (DOJ or Department) Office of the Inspector General (OIG) issued a public report on improper hiring practices in the Justice Management Division (JMD). Shortly thereafter, Director Juan Osuna of the DOJ Executive Office for Immigration Review (EOIR) ordered an internal review of the hiring practices at EOIR, including in its leadership offices. Senior Officials in EOIR also put in place a new anti-nepotism policy consistent with the OIG's recommendations in the JMD report. To our knowledge, EOIR was one of the first DOJ components to do so.

The General Counsel of EOIR subsequently informed the OIG that the internal review conducted by EOIR revealed that numerous students hired into EOIR through the Student Temporary Employment Program (STEP) had relatives at EOIR when they were hired. The OIG decided to open an investigation into possible violations of the federal nepotism prohibition and other personnel rules arising from the hiring of four students who were relatives of the three most senior officials in the organization – EOIR Director Osuna, Chairman of the Board of Immigration Appeals (BIA) David Neal, and Chief Immigration Judge Brian O'Leary. The OIG recognized that an internal inquiry by EOIR employees into the conduct of these three senior officials might create real or apparent conflicts of interest, as well as inherent pressure on the subordinate employees who would be investigating their own supervisors.

Although our investigation was focused on these three senior officials, we learned during the course of this review that the practice of hiring relatives of employees into STEP positions in EOIR was widespread over a period of years. From 2007 to 2012, 32 students with relatives working at EOIR were hired out of a total of approximately 200 total student hires. Multiple EOIR officials told the OIG that hiring relatives for paid student positions was a standard practice or commonplace. At least 7 of the 19 current temporary and permanent board members of the BIA had children working in paid student positions in EOIR at some point between 2005 and 2012.

We found that in April 2008, Director Osuna conveyed his niece's interest in a paid student position at EOIR to a direct subordinate, passed along his niece's resume to that subordinate, and then more likely than not participated in the decision to place his niece in a position at EOIR that put her below him in the chain of command. We also found that in January 2009, Osuna took steps to secure his niece's return to EOIR by indicating her interest to return to a direct subordinate and asking "can we get the paperwork moving." We concluded that this involvement violated several statutes and regulations, including the federal nepotism statute and the Standards of Ethical Conduct for Employees of the Executive Branch.

David Neal's daughter was hired as a paid intern in EOIR under the STEP program in 2007 and was re-hired in the position in 2008. We determined that Neal contacted then-Acting BIA Chairman Osuna to explore the possibility that

his daughter could work at the BIA for the summers of 2007 and 2008. Neal told the OIG that he sent his daughter's resume to Osuna with the expectation that Osuna would then pass it on to his subordinates in the BIA who handled student hiring. However, we could not determine the specifics of what Neal said to Osuna in those conversations or specifically how the decision was made to hire Neal's daughter for those summers. As a result, there was insufficient evidence to conclude that Neal advocated for his daughter's appointment in violation of the federal nepotism statute, or that he violated the [REDACTED] Standards of Ethical Conduct. Nevertheless, we found Neal exercised poor judgment in connection with his daughter's interest in working at EOIR. Neal should have known, given his and Osuna's statuses as senior officials in EOIR, that having his daughter's resume sent by Osuna to subordinates would inevitably create pressure on those subordinate employees (even those outside of Neal's direct chain of command) to take action on his daughter's behalf.

Additionally, we determined that, in 2010, Neal approached Chief Immigration Judge O'Leary and a Deputy Chief Immigration Judge to inquire about summer job opportunities for Neal's son, a high school student. Neal described his son's interest in the law and his desire to get a paid or unpaid position in a court setting. Shortly thereafter, Neal's son was selected for a paid summer internship in an immigration court. We found that Neal's comments to other senior officials in EOIR, however brief and informal, conveyed the clear message that he wanted their help to find his son a position, and constituted impermissible advocacy under the federal nepotism statute. In EOIR, where employees' children have so commonly been hired into summer jobs, a more forceful form of advocacy was unnecessary. Neal's expression of interest in a summer job for his son was sufficient for others in EOIR to take action on his behalf. We did not, however, find sufficient evidence to conclude that Neal violated the Standards of Ethical Conduct or the federal conflict of interest statute in connection with his efforts to help his son.

We also determined that, in 2009, Chief Immigration Judge O'Leary told Mary Jane Graul, who was the Chief of EOIR's facilities management unit, that his daughter would be applying to a vacancy announcement for STEP positions. Graul and O'Leary were close friends. Graul told us she selected O'Leary's daughter for the position because she was qualified and had an interest in architecture. When someone from another unit in EOIR expressed interest in hiring O'Leary's daughter, O'Leary discouraged her from doing so because it might have prevented his daughter from being hired into Graul's unit. We did not find sufficient evidence to conclude that O'Leary's discussion with Graul violated the federal nepotism statute. However, we found that by intervening in the hiring process in an effort to ensure his daughter would be selected for Graul's unit rather than somewhere else, O'Leary violated the Standards of Ethical Conduct, which prohibit an employee from using his public office for the private gain of relatives.

We found that the hiring decisions described in this report were emblematic of a pervasive culture of nepotism and favoritism in EOIR's student hiring under the STEP program – namely, that students who were related to or referred by EOIR employees enjoyed a considerable advantage in securing paid student positions with the organization. As this report found, the culture of improper hiring started from the top, with judges and other senior officials openly advocating for the hiring of their relatives, to other EOIR employees. It also included the organization's most senior administrative officers, who, in the matters we reviewed, provided no guidance to its leadership, let alone raised an objection, regarding the impropriety of the proposed hiring. We further observed that some EOIR employees aggressively sought positions for their children, other relatives, or friends. In that environment, candidates with no connections to EOIR employees were rarely considered for STEP positions in some EOIR components and therefore stood little chance of securing such a position.

In our view, changing the culture at EOIR needs to start at the top, and we are encouraged that EOIR's leadership has begun taking steps to eradicate these practices from its student hiring. Director Osuna himself initiated the review that led to the referral of this matter to the OIG. Additionally, EOIR adopted new policies requiring an applicant's relative to certify that he or she has not participated in any manner related to the component's consideration of the application, and requiring the hiring official to acknowledge the prohibition on the granting of unauthorized preferences and to certify compliance with the Merit System Principles. EOIR has also informed the OIG that it intends to provide agency-wide training regarding nepotism. Such steps are commendable and reflect a commitment to promptly address these issues. We note, however, that it will not be sufficient for EOIR employees to merely abstain from advocating explicitly on behalf of their own relatives if other employees continue giving illegal preferences to the relatives of EOIR personnel. The OIG therefore recommends that EOIR's training focus not only on the need to avoid improper "advocacy" for the hiring of relatives, but also the broader provisions of the Merit Systems Principles and Prohibited Personnel Practices that prohibit the granting of unauthorized preferences to relatives of EOIR employees, regardless of whether the employee has engaged in any "advocacy" on his or her relative's behalf.

On September 16, 2014, the Deputy Attorney General issued a memorandum directing all Department components to adopt hiring disclosure procedures similar to those adopted by JMD in response to the OIG's 2012 JMD report. Thereafter, JMD revised its procedures to include the requirement that, in the case of an applicant who is a relative of a DOJ employee, the selecting official must certify that the relationship between the applicant and the DOJ employee did not influence the selection decision. EOIR's compliance with these procedures will help prevent the granting of unauthorized preferences in the future.

The conduct that we saw in this report infected the entire organization from the highest levels down, and only through a concerted effort and continued vigilance will it be eradicated and hiring returned to the principles of fair competition that are rightly expected of a component of the Department.

## **I. INTRODUCTION**

This report summarizes the results of an investigation by the Department of Justice (DOJ or Department) Office of the Inspector General (OIG) into potential misconduct related to the hiring of four relatives of three senior officials in the DOJ Executive Office for Immigration Review (EOIR).<sup>1</sup>

### **A. Initiation of this Investigation**

In April 2013, the General Counsel of EOIR sent a memorandum to the OIG concerning certain hiring practices at EOIR. According to the memorandum, EOIR officials had reviewed the OIG's July 2012 report revealing improper hiring practices, including nepotism and preferential treatment for relatives, in the Justice Management Division (JMD). Shortly after that report was issued, Director Juan Osuna ordered an internal review of hiring practices in EOIR. The EOIR memorandum stated that there was common knowledge within EOIR that "a number of relatives of EOIR employees had been hired through the years" and, based on the OIG's recommendation that JMD conduct its own review of certain appointments to determine whether they involved misconduct, EOIR officials had elected to conduct an informal survey of its practices regarding hiring of relatives.

The EOIR memorandum stated that its informal survey, covering the preceding 5 years, identified 57 employees who had relatives at EOIR at the time they were hired, and the memorandum noted that "it is unlikely that this is an exhaustive list."<sup>2</sup> EOIR's informal inquiry found that in the preceding 5 years, of the more than 200 students hired at EOIR, 32 had relatives working at EOIR. Among these students were relatives of three of the most senior officials in the organization – EOIR Director Juan Osuna, Chairman of the Board of Immigration Appeals (BIA) David Neal, and Chief Immigration Judge Brian O'Leary. The memorandum concluded that although "[i]t appears that there was widespread misunderstanding of the law regarding hiring of relatives," the conduct uncovered in EOIR's informal review "did not rise to the same level" as the misconduct described in the OIG's JMD report.

The memorandum also stated that in light of the OIG's recommendations in the JMD report, EOIR was taking several remedial steps, including creating a policy relating to nepotism, requiring mandatory annual training for all employees, and providing counseling to certain EOIR employees whose conduct was questioned over the course of its inquiry. According to the memorandum, EOIR informed the OIG of its inquiry at the recommendation of the Office of the Deputy Attorney General.

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<sup>1</sup> The public version of the final report contains information that the OIG has redacted to protect the privacy interests of individuals.

<sup>2</sup> For comparison's sake, we note that during this period EOIR typically had a total of approximately 1,400 employees at any one time.



To our knowledge, EOIR was one of the first DOJ components to put in place a new anti-nepotism policy consistent with the OIG's recommendations in the JMD report. On September 16, 2014, the Deputy Attorney General issued a memorandum directing all Department components to adopt hiring disclosure procedures similar to those adopted by JMD in response to the OIG report. Thereafter, JMD revised its procedures to include the requirement that, in the case of an applicant who is a relative of a DOJ employee, the selecting official must certify that the relationship between the applicant and the DOJ employee did not influence the selection decision.

After reviewing the EOIR memorandum, the OIG opened an investigation in May 2013 into possible violations of the federal nepotism prohibition and other personnel rules arising from the hiring of the relatives of EOIR Director Osuna, BIA Chairman Neal, and Chief Immigration Judge O'Leary. The OIG determined that an internal inquiry by EOIR employees into the conduct of its most senior officials (Osuna, Neal, and O'Leary) might create real or apparent conflicts of interest, as well as inherent pressure on the subordinate employees who would be investigating their own supervisors. As a result, the OIG concluded that it should conduct an independent investigation into potential misconduct associated with the hiring of the relatives of Osuna, Neal, and O'Leary. Over the course of this investigation, the OIG interviewed 14 current and former DOJ employees, including Osuna, Neal, and O'Leary; reviewed hundreds of e-mails from selected employees; and examined over 3,000 documents.<sup>3</sup>

## **II. BACKGROUND**

### **A. The Executive Office for Immigration Review**

EOIR was created in 1983, through an internal DOJ reorganization that combined the BIA with the Immigration Judge function previously performed by the former Immigration and Naturalization Service (INS). EOIR is responsible for administering the nation's immigration court system. Through the interpretation and administration of federal immigration laws, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings to determine whether foreign-born individuals charged with violating immigration law should be ordered removed from the United States or should be granted relief from removal and permitted to remain in the country.

#### **1. Organization**

EOIR is organized into eight offices: the BIA; the Office of the Chief Immigration Judge (OCIJ); the Office of the Chief Administrative Hearing Officer;

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<sup>3</sup> Neal and O'Leary declined to provide a voluntary interview in the OIG's investigation. [REDACTED], the OIG compelled Neal and O'Leary to provide an interview pursuant to Department procedures. Osuna gave a voluntary interview to the OIG.

the Office of General Counsel; the Office of Management Programs; the Office of Planning, Analysis, and Technology; the Administration Division; and the Office of the Director. For the purposes of this review, the OIG focused primarily on OCIJ and BIA, the EOIR components in which Osuna, O'Leary, and Neal worked during the relevant time period.

The BIA is the highest administrative body for interpreting and applying immigration laws, and is consequently responsible for evaluating appeals of immigration judge decisions. The BIA has approximately 250 employees, including up to 15 permanent board members. The Chairman and Vice Chairman of the Board share responsibility for BIA management. The Director of EOIR may also designate immigration judges, retired board members, retired immigration judges, and current or retired EOIR administrative law judges to act as temporary board members.

The OCIJ provides overall program direction, articulates policies and procedures, and establishes priorities for more than 260 immigration judges in 59 immigration courts throughout the country. Immigration judges are primarily responsible for conducting administrative court proceedings, called removal proceedings, to determine the removability of foreign-born individuals. The OCIJ has approximately 1,000 employees and is headed by a Chief Immigration Judge, who coordinates with Deputy and Assistant Chief Immigration Judges to carry out OCIJ responsibilities and supervise the management and operation of the immigration courts.

## **2. Senior Officials**

EOIR's current Director, Osuna, was appointed in May 2011. Since joining EOIR in 2000, Osuna has served as a Board Member, Acting Vice Chairman, and Acting Chairman of the BIA. In September 2008 he was appointed BIA Chairman, a position he held until May 2009 when he left EOIR to serve as a Deputy Assistant Attorney General in the Civil Division's Office of Immigration Litigation. Starting in June 2010, he served as an Associate Deputy Attorney General working on immigration policy, before returning to EOIR in December 2010 to serve as Acting Director. As Director, Osuna oversees all EOIR employees and is responsible for the supervision of the Deputy Director, the Chief Immigration Judge, the BIA Chairman, and the Chief Administrative Hearing Officer.

David L. Neal was appointed BIA Chairman in March 2012, after serving as Acting Chairman from June 2009. Since joining EOIR as an Attorney Advisor for BIA in 1996, Neal has served as a Special Counsel to the Director of EOIR, an Immigration Judge at the headquarters immigration court, an Assistant Chief Immigration Judge, as well as Chief Immigration Judge from 2007 to 2009. In January 2009, he moved to the BIA to serve as Vice Chairman, before becoming Acting Chairman in June 2009, and then BIA Chairman in March 2012.

Brian M. O'Leary was appointed Chief Immigration Judge in July 2009. Since joining EOIR in 1994, O'Leary has worked as both an Assistant Chief Immigration Judge and Deputy Chief Immigration Judge. From May 2006 until May 2007 he also

served as a temporary Board Member with the BIA, before returning to OCIJ in May 2007 to serve as an Immigration Judge with the Arlington Immigration Court. He remained in that position until July 2009, when he was appointed Chief Immigration Judge.

## **B. Applicable Statutes and Regulations**

Several statutes and regulations are potentially applicable to the allegations raised in this case.

### **1. Merit System Principles and Prohibited Personnel Practices**

The Merit System Principles listed in 5 U.S.C. § 2301 represent the fundamental undergirding of the entire Federal Human Resources Management system. The statute sets forth nine principles and directs the president to issue "all rules, regulations, or directives . . . necessary to ensure that personnel management is based on and embodies" such principles. Among the laws implementing the Merit System Principles are the 12 "Prohibited Personnel Practices" enumerated in 5 U.S.C. § 2302 and referenced, in part, below. Sections 2301 and 2302 were therefore intended to work in tandem.

#### **a. 5 U.S.C. § 2301(b)(1)**

Section 2301(b)(1) of Title 5 of the U.S. Code requires that employee recruitment, selection, and advancement be based on merit, after fair and open competition. 5 U.S.C. § 2301(b)(1) states:

Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

As the Merit Systems Protection Board has stated:

Hiring even the best qualified person for the job must be accomplished through competitive means consistent with law and merit system principles. Thus, an agency may not grant a preference even to the best qualified person, unless it is authorized "by law, rule, or regulation."<sup>4</sup>

#### **b. 5 U.S.C. § 2302(b)(6)**

Section 2302(b)(6) of Title 5 of the U.S. Code prohibits the granting of unauthorized preferences or advantages to job applicants. It provides that:

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<sup>4</sup> *Special Counsel v. Byrd*, 59 M.S.P.R. 561 at 571 n.9 (1993).

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

An employee with hiring authority may give only those preferences authorized by law, rule, or regulation. For example, preferences in recruitment and selection are given by Congress to veterans, Native Americans in the Bureau of Indian Affairs, persons with reemployment rights, and handicapped individuals.<sup>5</sup> Section 2302(b)(6) is directed at purposeful discrimination to help or hinder particular individuals in obtaining employment without regard to their merit.<sup>6</sup> Among the actions that have been held to constitute Prohibited Personnel Practices in violation of Section 2302(b)(6) are defining the scope and manner of competition to facilitate selection of a particular candidate, causing the title and series of a position to be changed for the purpose of improving a particular candidate's chances for appointment, and creating an unnecessary position for the sole purpose of benefiting a particular applicant.

**c. 5 U.S.C. § 2302(b)(7)**

Nepotism is a Prohibited Personnel Practice. Section 2302(b)(7) of Title 5 of the U.S. Code provides that:

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official.

As referenced in this section and described below, nepotism is also addressed in 5 U.S.C. § 3110.

**2. Federal Nepotism Statute – 5 U.S.C. § 3110(b)**

The federal nepotism statute, 5 U.S.C. § 3110(b), provides that:

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<sup>5</sup> See *Special Counsel v. Byrd*, 59 M.S.P.R. 561 at 570 (1993).

<sup>6</sup> See *Dep't of Treasury v. Fed. Labor Relations Auth.*, 837 F.2d 1163, 1170 (D.C. Cir. 1988).

A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

The statute defines a "relative" as a "father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister." 5 U.S.C. § 3110(a)(3).

The statute defines a "public official," in part, as an employee "in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency." 5 U.S.C. § 3110(a)(2).

A government official improperly "advocates" for the hiring of a relative by speaking in favor of, recommending, commending, or endorsing that relative to another official. See *Alexander v. Dep't of Navy*, 24 M.S.P.R. 621, 625 (1984).

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**4. Conflict of Interest Regulation – 5 C.F.R. § 2635.502**

Conflicts of interest for federal employees are also addressed directly in the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), 5 C.F.R. Part 2635, at § 2635.502. Section 502, relating to “Personal and business relationships,” provides:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

5 C.F.R. § 2635.502(a). Section 2635.502(d) provides a procedure for the agency designee to authorize participation where the designee makes a determination that the interest of the government in the employee’s participation in a particular matter outweighs the concern that a reasonable person might question the integrity of the programs and operations.

The regulation states that “covered relationships” include persons with whom the employee has a financial relationship, persons who are members of the employee’s household, and persons who are relatives with whom the employee has a “close personal relationship.” 5 C.F.R. § 2635.502(b). The “agency designee” for

EOIR employees is the EOIR Director, and the agency designee for the EOIR Director is the Deputy Attorney General.<sup>7</sup>

The regulation further states:

Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality.

5 C.F.R. § 2635.502(e).

### **5. Use of Public Office for Private Gain – 5 C.F.R. § 2635.702**

Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, states, in part: "An employee shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity." In addition to the general prohibition set forth above, Section 702 sets forth four "specific prohibitions" that "are not intended to be exclusive or to limit the application of this section," including 702(a), which states:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

## **III. STUDENT HIRING IN EOIR**

### **A. Student Temporary Employment Program**

The positions at issue in this report were part of the Student Temporary Employment Program (STEP), which provided paid, federal positions to students enrolled in high school, college, or graduate school. STEP employees were paid relatively low salaries, in the General Schedule (GS)-2 to GS-4 range, commensurate with their lack of experience. STEP appointments were temporary, expiring when the student completed school. However, some students appointed in EOIR under STEP later succeeded in obtaining permanent career positions in EOIR.

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<sup>7</sup> DOJ Order 1200.1, Chapter 11-1, *Procedures for Complying with Ethics Requirements* (September 12, 2003), <http://www.justice.gov/jmd/hr/hrorder/chpt11-1.htm> (accessed February 18, 2014).

EOIR officials told the OIG that STEP was the only program used to hire students during the period at issue in this review.

The STEP positions at issue in this report were made pursuant to Schedule B appointing authorities, one of several "excepted" appointing authorities. Agencies filling excepted service vacancies like Schedule B appointments need not include notice to the public, open competition, or competitive examining procedures, all of which are required to fill "competitive service" positions.<sup>8</sup> In other respects, however, the excepted service hiring procedures closely parallel those in the competitive service and such agencies are required to follow the Merit System Principles and avoid Prohibited Personnel Practices.<sup>9</sup>

With regard to the hiring of relatives into an employee's agency, the federal regulations governing the STEP at the time provided as follows: "[A] student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency."<sup>10</sup> 5 C.F.R. § 213.3202(a)(7); *see also*, Office of Personnel Management, *Student Educational Employment Program, Questions and Answers*, <http://archive.opm.gov/employ/students/QSAS.asp> (accessed March 4, 2014).

The federal government replaced the STEP with the Pathways Internship Program in July 2012. *See* U.S. Office of Personnel Management website, *Hiring Authorities, Students & Recent Graduates*, <http://www.opm.gov/policy-data-oversight/hiring-authorities/students-recent-graduates/> (accessed February 10, 2014).

## **B. EOIR's Student Hiring Procedures**

EOIR employed two processes for hiring students into STEP positions. One process followed a formal track in which EOIR would post a vacancy announcement seeking student candidates. EOIR human resources personnel would receive the applications, determine which candidates met the necessary qualifications, sort the qualified candidates into specified grade levels, and compile those qualified candidates into a Certificate of Eligible Candidates, which was commonly called a "cert" or "cert list."

According to three EOIR human resources specialists interviewed by the OIG, EOIR human resources personnel would attach the resumes and other application

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<sup>8</sup> Public notice is a statutory requirement under 5 U.S.C. §§ 3327 and 3330 only when filling positions through the competitive examining process.

<sup>9</sup> Sections 2301 and 2302 of Title 5 of the U.S. Code provide that federal personnel management in Executive agencies be implemented in a manner consistent with 9 Merit System Principles and 12 Prohibited Personnel Practices, respectively, which essentially seek fair competition for all applicants. These principles and prohibitions are discussed in detail in Part II.C. of this report.

<sup>10</sup> These regulations were later deleted when the STEP was replaced in July 2012. *See* 77 C.F.R. § 28194-01, 2012 WL 1639689 (F.R.), (May 11, 2012).



materials, if any, to the cert list and then circulate those materials to EOIR managers who might be interested in hiring one or more students. These human resources personnel, two of whom were supervisors, also stated that EOIR human resources personnel would attach application materials for all of the candidates deemed qualified. Human resources personnel would not rank individual applicants within each grade or identify one applicant as more qualified than others.

Upon receiving the cert list and attached application materials, EOIR managers would review the cert list and determine which, if any, candidates they wanted to hire. According to EOIR witnesses, managers had considerable discretion in selecting students and employed different practices to make selections, including reviewing resumes and sometimes interviewing candidates. The managers would then indicate their selections on the cert list and return the document to Human Resources personnel, who would then initiate the necessary paperwork.

In addition to this formal process, EOIR employed a second, more informal, track for hiring students into STEP positions. According to relevant witnesses and documentary evidence, this process had no prescribed structure and occurred in a variety of ways. In many cases, EOIR personnel would inform administrative officials in EOIR components, such as the Executive Officer of the BIA, that a relative or friend was interested in working at EOIR in a student position, and the administrative personnel would then reach out to managers within their respective components to determine whether they needed student employees and circulate the student's resume for their consideration. In other cases, EOIR managers informed administrative personnel that they intended to hire a pre-selected student and forwarded the student's resume to the human resources personnel for processing. Some pre-selected students also submitted applications through the EOIR vacancy announcement and, therefore, their names also appeared on the relevant cert lists as well.

Many students who were hired for the summer and returned to school in the fall came back during subsequent school vacations to work. EOIR human resources personnel told the OIG that, for student employees who were returning to school but wanted to work at EOIR in the future, EOIR's general practice would be to change those students from a full-time to an intermittent schedule. As an intermittent employee, the students remained on EOIR's employee rolls, but were not paid. The students could then return to work at EOIR during vacations and other breaks.

### **C. The Prevalence of Hiring of Employees' Relatives in EOIR**

Although our investigation was focused on just three senior officials, we learned during the course of this review that the practice of hiring the relatives of employees into STEP positions in EOIR was widespread over a period of years. We present some of this information as context for the actions of the three senior officials whose conduct was at the center of our investigation.

The evidence obtained by the OIG established that the hiring of relatives was routine in EOIR; that judges, senior executives, and senior administrators were

actively involved in placing their relatives in paid student positions; and that EOIR employees openly advocated for EOIR to hire their relatives. At the outset, we note that EOIR's own review found that numerous relatives of EOIR personnel were hired into STEP positions in the 5 years preceding its inquiry. EOIR's informal inquiry found that in the preceding 5 years, 32 students with relatives working at EOIR had been hired during this period, out of a total of approximately 200 total student hires.<sup>11</sup> Multiple EOIR officials, including a senior human resources manager, an EOIR administrative executive, and Deputy Chief Immigration Judge Michael McGoings, told the OIG that hiring relatives for student positions was a standard practice or commonplace. The EOIR administrative executive described the hiring process in EOIR headquarters as one employee asking another employee "My son would like to work – do you have a position?" and then the other employee would prepare the required paperwork and find them an available position in EOIR. Likewise, two BIA administrative supervisors told the OIG that they believed placing candidates referred by EOIR employees (who often included employees' relatives) in student positions was one of their job responsibilities.

EOIR's student hiring related to one 2009 cert list is illustrative of the prevalence of hiring employees' relatives into these positions. In March of that year, EOIR posted Vacancy Announcement EOIR-09-0034, which solicited applications for student positions at the EOIR headquarters in northern Virginia. EOIR human resources personnel later circulated a cert list containing 35 eligible candidates to certain EOIR managers located in the headquarters facilities. The OIG's review of relevant evidence established that at least 5 of the 35 eligible candidates were related to EOIR employees, and that all of them were selected for EOIR student positions. Two additional students on this 2009 cert list were hired into EOIR, but the OIG could not determine whether those students were related to or referred by an EOIR employee.<sup>12</sup>

The hiring of relatives involved EOIR employees at all levels, ranging from administrative staff to the most senior executives in the organization. As discussed in detail in this report, close relatives of three of EOIR's senior-most officials (the current Director, BIA Chairman, and Chief Immigration Judge) were appointed to positions in EOIR. The OIG's review determined that at least 7 of the 19 current temporary and permanent board members of the BIA had children working in student positions in EOIR at some point between 2005 and 2012.<sup>13</sup> One of those

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<sup>11</sup> We note that these 32 students appear to have been hired over the course of three years, not five, as there was no hiring of students during the latter 2 years of that period (2011-2012) due to a Department-wide hiring freeze. In addition, this figure likely understates the scope of the hiring of relatives for several reasons. First, the EOIR memorandum stated that the 32-student figure excluded students whose relatives were formerly employed at EOIR but had left the office by the time of the review. Second, as EOIR's General Counsel noted in the memorandum, EOIR's review was based on an informal survey of some current employees and largely relied on employee self-reporting.

<sup>12</sup> We note that the memorandum from EOIR to the OIG identifies one of those two students as the daughter of a board member of the BIA, but the OIG could not confirm that relationship.

<sup>13</sup> This figure does not include Juan Osuna, who was a Board Member at the time his niece worked at EOIR, but is now the EOIR Director.

children was hired during his father's tenure as Chief Administrative Hearing Officer. Likewise, at least five students were hired into EOIR when one of their parents was a sitting Immigration Judge, including two children of Deputy Chief Immigration Judge Michael McGoings. In addition, our review of documents, witness interviews, and EOIR's April 2013 memorandum established that the children of at least several other senior managers in EOIR were hired into paid student positions in the organization.

Although the hiring of children, other relatives, and familial acquaintances into student positions appears to have occurred throughout EOIR, we found that such appointments were particularly prevalent in the BIA. For instance, we identified as many as 41 students that the BIA hired between 2005 and 2010, of whom at least 27, or over 65%, were related to or referred by EOIR employees.<sup>14</sup>

We found evidence that EOIR employees openly advocated for agency managers to hire their children, including some EOIR employees who aggressively sought positions for their children, other relatives, or friends. For instance, in an effort to secure a position for her son, EOIR's then-Human Resources Officer sent an e-mail to an administrative officer in the BIA in 2009 stating:

Is BIA hiring any more students soon? My son is attending [university name redacted] and I am trying to get him a job here. I am checking with components to see which are interested in hiring students. I remembered that BIA was releasing a student as of 9/30. Please let me know if there is [sic] any plans to hire more students. I can send my son's resume but he has no government experience but is a quick learner.<sup>15</sup>

Similarly, a senior administrative manager in the Office of the Chief Immigration Judge wrote to a BIA manager in 2009:

My daughter [name redacted] is looking for a student position. We've submitted her resume to HR already, but I was wondering if you were in need of another great employee!!!! I guess everyone's kids are looking for summer jobs and the pickings are slim in the agency. I've talked to several other folks and most of them already have someone else in the pipeline. Having received several calls myself, I figured it still doesn't hurt to keep asking around. You definitely wouldn't be disappointed. ☺

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<sup>14</sup> The OIG was unable to determine whether the remaining 14 students were related to or referred by EOIR employees, so the actual numbers and percentage may be even higher.

<sup>15</sup> As reflected in her e-mail, the Human Resources Officer also pursued a position for her son with other EOIR components. Her son was hired into a student position in December 2009. According to the EOIR memorandum to the OIG, his supervisor at the time reported performance issues with this student and told his mother that he had to be moved to a different division or he would be terminated. The student was later moved to another division within EOIR, and subsequently moved again to a third EOIR division, where he continues to work.

Days later, the OCIJ manager sent e-mails to two administrative managers in the BIA stating:

Is the Board in need of additional students? Still on the hunt for a job for [daughter's name redacted] (just finished her freshman year in college). If you don't have anything or know someone who's looking, please let me know? Anything you could do to assist would be greatly appreciated!

The manager's daughter was subsequently hired into a student position at the OCIJ, and entered on duty less than 2 months later.

Similarly, a temporary board member of the BIA wrote an e-mail to Chief Immigration Judge O'Leary, requesting assistance in securing a job for her child in an immigration court, stating:

My son [name redacted] is a sophomore in the Honors College at [college name redacted]. He worked here at the Board this summer and has been wondering if there is any way he could work part-time as a student in the Immigration Court in [location redacted]. How would he go about this and is there someone he (or I) could talk to about trying to make this happen? Any help or advice you could offer would be very much appreciated.

The temporary board member later sent a second message to Chief Immigration Judge O'Leary and Deputy Chief Immigration Judge McGoings, stating:

Actually, just to clarify, he is looking for part-time work now, while he is in school – though summer could be great, too! Thanks, Brian, and Michael. P.S. [Son's name redacted] is very energetic and a quick learner (he really did not have enough to do here this past summer).<sup>16</sup>

In short, it appears that the practice of EOIR officials seeking and obtaining STEP appointments for their student relatives was widespread in the office over a period of years, including during the years in which the relatives of Osuna, O'Leary, and Neal were hired.

#### **IV. THE APPOINTMENT OF JUAN OSUNA'S NIECE TO AN EOIR STUDENT POSITION**

In April 2008, Juan Osuna assisted his niece in obtaining a STEP position in the BIA. Osuna later facilitated his niece's return to a STEP position in 2009.

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<sup>16</sup> Although subsequent e-mails establish that senior OCIJ officials sought to secure a position for this board member's son at the requested immigration court, it appears that the son was not ultimately hired into that location because of a summer hiring freeze.

## **A. Facts**

### **1. Discussion Between Osuna and His Niece Regarding a Student Position**

In early 2008, Juan Osuna was Acting Chairman of the BIA and his niece Nancy was a sophomore enrolled at a public university in Virginia.<sup>17</sup> Osuna told the OIG that he had known Nancy all of her life, and that they enjoyed a close relationship. Nancy likewise stated that her relationship with Osuna and his wife was very close and friendly, that she considered them tantamount to parental figures, that she had traveled with them in the past, and that she had socialized with them periodically.

Nancy told the OIG that because her parents lived in a different state, she took steps in 2008 to establish her residency in Virginia in order to qualify for in-state tuition at her university, which was substantially lower than out-of-state tuition. Nancy and Osuna told the OIG that during a conversation in which Nancy mentioned her need to find a summer job, Osuna told her that EOIR hired students for summer positions.

Osuna told the OIG that while he did not remember exactly what he told Nancy in that conversation, he recalled hearing that she was interested in securing a summer job and suggesting to her that she might be interested in working at the Department. According to Osuna, he probably mentioned working at EOIR in particular and that he probably offered to pass her resume along to someone who might be interested or to the employees who handled the student program.

Osuna also stated that he did not know what the rules governing summer hiring were, but "as a matter of common sense" he probably would have offered to pass along a resume, "but not necessarily advocate for . . . somebody or put in a good word, or things like that." Accordingly, Osuna stated to the OIG, he would have offered to facilitate the transmission of Nancy's resume, but would not have offered to put in a good word for her. Osuna stated that he was also careful to not promise Nancy anything or to suggest that he could assure her of a job.

According to Osuna, he was aware at that time of Nancy's desire to establish her residency in Virginia in order to secure a lower tuition at her university. He stated, however, that securing a summer job was not linked in his mind to establishing residency in order to reduce her tuition and he did not believe there was any discussion to that effect. Osuna told the OIG that he believed Nancy wanted to obtain a summer position in the Washington, D.C. area to be near her university and her friends, and that she would stay in that area over the summer regardless of the tuition issue.

On April 28, 2008, Nancy e-mailed a copy of her resume to Osuna, with a message stating: "Here's my resume, thank you so much for the opportunity!"

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<sup>17</sup> "Nancy" is a pseudonym.

Nancy told the OIG that she did not remember whether she took any steps to apply to a position at EOIR other than sending her resume to Osuna. Nancy said that she did not recall Osuna mentioning a vacancy announcement or an application. Osuna told the OIG that he believed he suggested Nancy send him a resume, so that he could pass her resume along to EOIR personnel. Osuna stated that he did not recall why he suggested that she send him her resume rather than apply directly to EOIR for a position, but he believed that it was probably because sending it to him would be the easiest path. Osuna also stated that he was not sure whether EOIR had posted a vacancy announcement for student positions at the time, that he was not sure of the relevant processes, and that he had previously forwarded resumes of other students to EOIR administrative personnel.

## **2. Discussion Between Osuna and BIA Executive Officer Violet Cromartie Regarding Hiring His Niece**

On April 29, 2008, the day after receiving Nancy's resume, Osuna spoke with the BIA Executive Officer Violet Cromartie (GS-15) about Nancy's interest in a summer position. Later that day, Cromartie sent an e-mail to her subordinate Monica Betts, stating: "Juan and I chatted this morning, and concluded that we would place [Nancy] in the Board, as far from him as possible, and she is to be treated as just another student."<sup>18</sup>

As BIA Executive Officer, Cromartie supervised staff responsible for coordinating the BIA's administrative needs, such as staffing, budget, contracts, and space and facilities. With regard to student hiring, Cromartie stated that she had two subordinates who coordinated with EOIR's Human Resources staff on BIA's personnel needs, so she primarily saw her role as providing them guidance and resolving potential problems. Cromartie stated that she "knew all about the STEP program" from her previous work as a Deputy Staff Director with JMD. Cromartie added that although she initially did not have much involvement in student hiring in the BIA, it later became necessary to learn about hiring practices when the management structure at the BIA was realigned.

Betts told us that she was involved in the normal hiring practice for the STEP program. She added that she did not influence selections, and decisions to interview or hire were left up to managers. When asked if she received any guidance from Human Resources, Cromartie, or the Office of General Counsel about how hiring should be implemented, Betts stated that the only guidance she got was from Cromartie.<sup>19</sup>

Cromartie told the OIG that she did not recall discussing Nancy with Osuna, but had no reason to believe that the statements in her e-mail to Betts were inaccurate or mischaracterized her conversation with Osuna. When asked who

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<sup>18</sup> "Monica Betts" is a pseudonym.

<sup>19</sup> The second subordinate who worked under Cromartie on personnel matters is now deceased.

"concluded that we would place her in the Board, as far from [Osuna] as possible," Cromartie stated that she did not recall, but she thought it referred to both Osuna and herself. Cromartie stated that she did not remember whether Osuna had mentioned that Nancy was his niece in their conversation, but she assumed that he did. Cromartie also stated that she did not remember seeing Nancy's resume.

Cromartie told us that other EOIR officials also referred their relatives to her for student positions. Cromartie said she assumed that the officials who referred their relatives for student positions understood what kind of work was done by the EOIR support staff and were therefore implicitly indicating that their relative would be a good fit and could do that work. She also stated, however, that she thought it would be presumptuous of her to assume that those officials were vouching for the students' work ethic or intelligence and did not know what the officials were thinking in that regard.

Osuna told the OIG that he recalled having a conversation with Cromartie about Nancy's interest in a student position. Osuna stated to the OIG that he was sure that he asked Cromartie whether they were planning to hire students for that summer, told her that Nancy was interested in working at EOIR as a student, and gave her Nancy's resume. Osuna said he was sure that he told Cromartie that Nancy was his niece, but did not specifically recall doing so.

Osuna also stated that he likely told Cromartie that she should take Nancy's application through whatever process she would normally take student applications and not do anything special for Nancy's application. According to Osuna, he wanted to be extra careful because Nancy was a family member, and he did not want anyone to think that she was receiving special treatment. Osuna told the OIG that he would typically make comparable statements about other candidates he referred for employment in EOIR – namely, that they should not receive special treatment.

According to Osuna, he probably told Cromartie that Nancy was enrolled in college or identified the school she was attending, but he did not recall whether he discussed anything else about Nancy. Osuna told the OIG that he probably did not discuss Nancy further because he was unsure of the rules and regulations governing hiring. He stated that he believed passing along a resume was acceptable, but added: "as a matter of common sense, I think that I would have felt that advocating or, you know, putting pressure on [Cromartie] or saying I want this person hired would have crossed some line."

Osuna told the OIG that he did not recall agreeing with Cromartie or concluding that Nancy should be hired into the BIA and placed in an office as far away from him as possible. When shown Cromartie's April 29 e-mail to Betts, in which Cromartie stated, "Juan and I chatted this morning, and concluded that we would place her in the Board, as far from him as possible," Osuna told the OIG that he doubted that part of the discussion actually occurred.<sup>20</sup> Osuna also stated that

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<sup>20</sup> In comments submitted after reviewing a draft of this report, Osuna stated that the discussion described in the April 29 e-mail "was absolutely not a conversation about whether to hire

(Cont'd.)

he would not have been comfortable discussing, having input, or deciding where Nancy should be placed because she was a family member and he did not participate in the placement of other students or full-time employees. Osuna said he thought he deferred to Cromartie and the typical student hiring processes regarding Nancy's placement. Osuna also stated that in general terms he was focused on other tasks as Acting Chairman of the BIA and was not concerned about student hiring and paid very little attention to the student hiring program.

### **3. Discussion Between Cromartie and BIA Chief Clerk Donna Carr Regarding Placing Osuna's Niece**

In her April 29 e-mail to Betts, in addition to referencing her conversation with Osuna, Cromartie stated: "I asked [BIA Chief Clerk] Donna Carr to consider taking her, and she agreed. So, she will be going to the Clerk's Office." As Chief Clerk (GS-15), Carr reported to the BIA Director of Operations, who in turn reported to the BIA Chairman, who at the time was Osuna.<sup>21</sup> Cromartie and Carr both told us that they did not recall the conversation or circumstances described in the e-mail, but neither told us there was any reason to believe this e-mail was inaccurate.

When asked about her practices regarding student hiring, Cromartie told the OIG on multiple occasions that she became involved in the student hiring process or in the placement of student hires only rarely when unique situations or problems arose, such as when a manager would not want to retain a student due to performance deficiencies.<sup>22</sup> Cromartie stated that other EOIR personnel routinely asked her about BIA student hiring, and her general practice was to urge them to contact her staff and then possibly follow up with her staff about those applications. Cromartie stated that on the occasions when an EOIR employee gave her a resume or an application for a student position, her general practice was either to give those applications to her staff and have them look into a potential placement in the BIA, or Cromartie herself would contact some of the BIA managers to see whether they needed a student. Cromartie told the OIG that she did not recall a situation in which she ever received a resume referred by an EOIR employee and then "personally spearheaded" the effort to place the applicant in the BIA. When shown her April 29 e-mail described above, Cromartie stated that she was sure that she

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my niece. It could not have been, as I understood that decision to have already been made, by Ms. Cromartie or others. Instead, my best recollection of the conversation was that Ms. Cromartie was letting me know where she felt it was most appropriate to place my niece." For the reasons stated below, and based in substantial part on our reading of Cromartie's e-mail, we concluded that it was more likely than not that Osuna participated in the decision to hire his niece into EOIR.

<sup>21</sup> Carr told us that the Director of Operations was the rating official for her performance evaluations and the BIA Chairman (Osuna) was the reviewing official. Osuna likewise indicated to the OIG that he was aware that Carr reported to him through the Director of Operations and that he may have played a role in Carr's performance evaluations, such as serving as a reviewing official.

<sup>22</sup> Cromartie told the OIG that her staff insisted that she meet potential hires on one or two occasions to determine whether or not she believed they would be a good fit for their office.



treated Osuna's request as routine and reached out to Carr and other BIA managers to see whether someone could take another student.

Betts told the OIG that, although she did not believe it was odd for Cromartie to reach out to BIA managers to place an individual student, she had no independent recollection of any other instances in which Cromartie had a conversation with a manager to place a specific student with that manager.

Carr told the OIG that she did not recall the circumstances surrounding Nancy's hiring, but confirmed that the decision to hire Nancy into the Chief Clerk's Office would have been hers and that no one else would have to approve the hiring of a student into her office. Carr described two processes for student hiring, one for students who applied through an EOIR vacancy announcement and another for student applicants referred to her by Cromartie and her staff, which she called "unsolicited applications." For applications received through an EOIR vacancy announcement, Carr stated that her staff in the Chief Clerk's Office would typically review their grade-point average and, if there were more applicants than available positions, her staff would interview the applicants and make recommendations to her, which she would then consider. For the so-called "unsolicited" applicants referred by EOIR officials, however, Carr told the OIG that Cromartie or her staff would call or e-mail Carr to say that they had someone for Carr to consider and she would hire them without conducting interviews or reviewing their resumes.<sup>23</sup> Documentation provided by EOIR showed that most or all of the students hired into the Chief Clerk's Office since 2008 were relatives of EOIR employees or other "unsolicited" applicants referred by EOIR officials.<sup>24</sup>

With regard to hiring Nancy in the Clerk's Office, Carr stated that she believed the consideration of Nancy's application was probably similar to the typical practice for other unsolicited applications, and that she did not recall ever seeing Nancy's resume. Carr told the OIG that she did not recall whether she knew that Nancy was referred by Osuna when she decided to take Nancy. She said that she knew Nancy was Osuna's niece, but was unsure when or how she came to learn that. Carr told EOIR officials that she never felt pressured to hire anyone. Carr also stated in her OIG interview that she did not recall having any conversation with Osuna about hiring Nancy, that she did not believe Osuna inserted himself in the process regarding Nancy's hiring, and that Osuna did not cause her to hire Nancy.

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<sup>23</sup> Three of Carr's relatives (two daughters and one niece) worked at EOIR in a STEP position at some point between 2005 and 2013. Carr's niece worked for the Chief Clerk's Office prior to Carr's promotion to Deputy Chief Clerk, and her daughters worked for the BIA Library and a BIA Screening Panel.

<sup>24</sup> According to EOIR records, at least 11 of the 12 students hired into the Chief Clerk's Office since 2008 were either related to EOIR personnel or were "unsolicited" applicants referred to Carr by Cromartie's staff. In 2008, the year that Nancy was hired, all four of Carr's student hires were related to or referred by EOIR personnel.

#### **4. Carr Receives Nancy's Resume**

On April 30, 2008, Cromartie e-mailed Betts, asking her to send Carr a copy of Nancy's resume and to "tell her that this is the student that she and I discussed – Juan's referral. Is this the usual practice." This e-mail suggests that sometime on or before April 30, Cromartie told Carr that Nancy had been referred by Osuna.

As noted above, the April 29 e-mail indicates that Carr had already agreed to take Nancy the day before. Carr told us that it appeared from the e-mails that she agreed to hire Nancy before she received Nancy's resume. Carr also told us it was standard practice for her to hire applicants (like Nancy) who had been referred by EOIR officials without reviewing their resumes. However, Cromartie stated that she did not remember any instances in which Carr hired students before even receiving their resume, as it appeared that Carr did with respect to Nancy.<sup>25</sup>

#### **5. Nancy Accepts a Student Position at EOIR**

On May 6, 2008, 1 week after Carr agreed to hire Nancy, Carr submitted a request for a personnel action to authorize Nancy's hiring. On May 15, 2008, Cromartie's office formally approved Carr's request to hire Nancy and, 4 days later, EOIR human resources personnel formally offered Nancy a student position, which she accepted. Nancy entered on duty as a student clerk in the BIA Chief Clerk's Office on June 30, 2008. According to EOIR, Osuna was Nancy's fifth-line supervisor. We found no evidence that Nancy ever worked directly for Osuna. Nancy worked in the BIA Chief Clerk's Office for roughly 6 weeks, and on August 17, 2008, her work schedule was changed from full-time to intermittent.

#### **6. Osuna Facilitates Nancy's Return to EOIR as a Student Employee in 2009**

On January 16, 2009, Osuna e-mailed Cromartie, stating: "[Nancy], the student who worked here last summer, has asked if she can return. Can we get the paperwork moving? Does she need any additional documentation?" Cromartie responded later that morning, informing Osuna that Nancy was on an intermittent schedule and therefore no additional paperwork was necessary, other than an updated background investigation.

Three months later, on April 14, 2009, Osuna asked Cromartie and Betts for an update on "the status of various students/interns that we are planning to bring on this summer," naming Nancy and three other students.<sup>26</sup>

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<sup>25</sup> Cromartie speculated that the only other possible scenario was that she or someone else read Nancy's resume to Carr over the phone and then Cromartie subsequently asked Betts to send a hardcopy version to Carr. Cromartie told the OIG, however, that she did not recall ever receiving Nancy's resume, reading Nancy's resume to Carr, or directing Betts to do so.

<sup>26</sup> Among the students Osuna mentioned by name were the son of a BIA member and the daughter of a former General Counsel for the U.S. Immigration and Naturalization Service.

Osuna told the OIG that he believed in 2009 that the decision to hire Nancy had been made in 2008, and therefore her return for the summer of 2009 was solely a procedural matter, depending on whether EOIR had vacancies and wanted Nancy to return. When asked why Osuna, as opposed to Nancy herself, inquired about the possibility of returning to EOIR, Osuna stated, "because I'm her uncle, I guess," and stated that he did not know why Nancy did not approach Carr or her supervisor directly. Osuna told the OIG that he recognized that "there's obviously a difference" if he, rather than a lower-level employee, inquired about the possibility of Nancy returning, but stated that he believed her return was essentially automatic and he was not involved to ensure that her return was authorized. Osuna stated that Nancy's initial hiring in 2008 was "sensitive" and he wanted to be careful not to cross lines, but that he was "more comfortable" about being involved in the details of her 2009 return because the actual hiring decision was made a year earlier.

Osuna also stated that the question in his January 19 e-mail to Cromartie, "Can we get the paperwork moving?", could be viewed as a directive to a subordinate, but reiterated that he believed there was no personnel action necessary. He also stated that based on Cromartie's knowledge of personnel and ethics rules, he was confident that she would identify anything that was improper or inappropriate. However, Cromartie told us: "Not being an ethics expert, I used to tell people, 'My son never had a job because I didn't want him working anywhere near where I worked.'"

On May 24, 2009, EOIR human resources personnel changed Nancy's work schedule from intermittent to full-time. Nancy started working for her second summer with the BIA on June 1, 2009. According to EOIR personnel records, Nancy resigned her appointment in August 2009, indicating that she was returning to New York to attend school and pursue a career in her academic major.

## **B. Analysis of the Conduct of Juan Osuna**

We concluded that Juan Osuna's participation in the appointment of his niece violated several statutes and regulations.

### **1. Nepotism - 5 U.S.C. § 3110(b)**

We found that Osuna violated the federal nepotism statute, 5 U.S.C. § 3110(b), in connection with the employment of his niece. As detailed above, the nepotism statute prohibits a "public official" from appointing, employing, promoting, advancing, or advocating for appointment, employment, promotion, or advancement of his "relative" to a civilian position in the official's agency.

Osuna, who was serving as Acting Chairman of the BIA during the period in question, had authority to make or affect employment decisions and therefore qualified as a "public official" under the nepotism statute. Moreover, the beneficiary of Osuna's acts was his niece, which falls within the statutory definition of "relative." See 5 U.S.C. § 3110(a)(3). Our analysis therefore hinges on whether Osuna's conduct constituted appointing, employing, promoting, advancing, or

advocating for appointment, employment, promotion, or advancement of his niece to a civilian position in EOIR within the meaning of 5 U.S.C. § 3110(b).

Neither the statute nor the relevant regulatory provisions define the term "advocate" or delineate what type of conduct would be deemed advocacy. Few cases examine the scope of the term "advocate"; those that do indicate that the term should be assigned its common meaning, which would include speaking in favor of, recommending, commending, or endorsing a relative for employment. See *Alexander v. Dep't of Navy*, 24 M.S.P.R. 621 (1984). Violations of the nepotism statute require some affirmative action beyond submitting or mentioning a relative's employment application. See, e.g., *Wallace v. Dep't. of Commerce*, 106 M.S.P.R. 23 (2007). The public official need not advocate directly to the person who would ultimately hire or promote the relative. See *Welch v. Dep't of Agric.*, 37 M.S.P.R. 18 (1988). Courts have also accounted for an official's seniority in evaluating his conduct and determining whether he should have known about nepotism prohibitions. See *Rentz v. U.S. Postal Serv.*, 19 M.S.P.R. 35, 39 (1984) (stating "As a high level supervisor, with many years experience, appellant should have been aware of the seriousness and prohibition against acts of nepotism."); *Welch v. Dep't of Agric.*, 37 M.S.P.R. 18 (1988).

As discussed in our July 2012 report regarding hiring practices in JMD, the nepotism prohibition is not limited to advocacy to persons within the official's own chain of command. The prohibition applies to advocacy directed at anyone in the same *agency* as the official. In this case, the relevant agency is DOJ.

We concluded that Osuna's conduct in connection with Nancy's initial hiring in 2008 constituted a violation of the anti-nepotism provision. In particular, we found that Osuna more likely than not participated in the decision to hire Nancy to an EOIR student position in his April 29, 2008, discussion with EOIR Executive Officer Cromartie. As described above, Cromartie wrote an e-mail to her subordinate on April 29, 2008, summarizing her conversation with Osuna earlier that day and stated: "Juan and I chatted this morning, and *concluded that we would place her in the Board*, as far from him as possible, and she is to be treated as just another student." (Emphasis added.) The conclusion Cromartie described had three component decisions: *whether* Nancy would be hired into the BIA ("we would place her in the Board"); *where* she would be placed ("as far from [Osuna] as possible"); and *how* she would be treated ("as just another student"). We believe that by joining in the first decision, to hire Nancy, Osuna violated the nepotism statute.

We recognize that in his OIG interview Osuna expressed doubt about whether he discussed Nancy's placement with Cromartie and suggested that her statement that someone had "concluded" that Nancy should be placed as far from Osuna as possible could be construed to refer to Cromartie alone.<sup>27</sup> We believe, however, that a plain reading of Cromartie's contemporaneous message, as well as

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<sup>27</sup> As noted above in footnote 20, Osuna reiterated essentially this interpretation in comments submitted to the OIG after he reviewed a draft of this report.

her testimony about that statement, support a conclusion that Osuna did “conclude” with Cromartie that Nancy would be placed somewhere into the BIA, regardless of the ultimate location of her placement or how she was treated thereafter. When asked who “concluded that we would place her in the Board, as far from [Osuna] as possible,” Cromartie – the author of the e-mail – stated that she did not recall, but she thought it referred to both Osuna and herself. We believe that this is the most logical interpretation of the e-mail, which is the best evidence of Osuna’s participation in the matter.

Even crediting Osuna’s claim that he did not advocate for Cromartie’s “conclusion” about where Nancy would be placed, the contemporaneous evidence establishes that he had a conversation with his subordinate Cromartie about Nancy and that, at the end of that conversation, Cromartie clearly understood from Osuna at a minimum that Osuna wanted Nancy to be hired and wanted Cromartie to help accomplish it.<sup>28</sup> We believe that even if the words Osuna spoke to Cromartie did not convey an *order* or *decision* that his niece be selected, they surely conveyed a desire that this take place. We also believe that such words conveyed by a senior official, having this purpose and effect, constitute advocacy within the meaning of the nepotism statute. This conclusion is also supported by the undisputed facts that Osuna took affirmative steps beyond simply submitting or mentioning his niece’s employment application – namely, conveying her interest in a position to a direct subordinate official, forwarding her resume to that subordinate, engaging in at least one discussion about her appointment with that subordinate, and indicating which university she was attending.

Osuna said that he took steps to ensure that Nancy did not appear to receive preferential treatment, such as instructing Cromartie to process Nancy’s application like any other application and to treat Nancy like any other student. Cromartie told us that she did not recall the conversation, but Osuna’s claim is contradicted by Cromartie’s e-mail, which states that, after a single conversation, she and Osuna concluded Nancy would be hired. This treatment was not available to other applicants. In any event, the efforts Osuna claimed he made to ensure that Nancy was treated like other applicants are not defenses to a violation of the nepotism statute. The statute prohibits advocacy for employment, and the evidence establishes that Osuna at a minimum advocated for Nancy’s hiring in 2008 within the meaning of 5 U.S.C. § 3110.<sup>29</sup>

We also concluded that Osuna’s actions regarding Nancy’s returning to EOIR the following year violated the nepotism prohibition. As noted above, Osuna e-

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<sup>28</sup> As head of the BIA and Cromartie’s supervisor, and given the commonplace hiring of many other employees’ relatives in EOIR at the time, Osuna certainly could expect that his expressed desire to obtain a job for his niece would be accommodated.

<sup>29</sup> The same facts also support a conclusion that Osuna committed a Prohibited Personnel Practice when he advocated for his niece’s appointment to an EOIR position in 2008. As noted above, Section 2302(b)(7) of Title 5 of the U.S. Code prohibits any employee with the authority to affect hiring decisions from advocating for a relative’s appointment to a civilian position in the employee’s agency.

mailed Cromartie in early 2009, stating: “[Nancy], the student who worked here last summer, has asked if she can return. Can we get the paperwork moving?” Although Osuna posed it as a question, we believe his statement was in essence an instruction to Cromartie, a direct subordinate, to begin the paperwork necessary to reactivate the employment of his niece, Nancy. At a minimum, we found this question amounted to an impermissible prod to Cromartie to advance the process of reactivating Nancy. We therefore believe Osuna’s e-mail – particularly his question “Can we get the paperwork moving?” – constituted improper advancement or advocacy for advancement on behalf of Nancy in violation of 5 U.S.C. § 3110.

Osuna told the OIG that he believed Nancy’s return was automatic, and therefore he could get more involved in such personnel actions without running afoul of personnel rules. Although we did not have reason to challenge Osuna’s description of his mindset at the time, we found his reasoning unpersuasive.

The evidence establishes that EOIR had a general practice of retaining students after their initial tenure, but it was not automatic. According to witness statements and EOIR documents, some student employees were not invited to return to EOIR due to performance deficiencies. In fact, Donna Carr, the BIA official for whom Nancy worked, told the OIG that she terminated at least three student employees due to poor performance. Osuna also stated in his OIG interview that he believed students could return, *if* EOIR had available positions and wanted students to return.<sup>30</sup>

Osuna also told the OIG that he believed Cromartie would know whether his request was improper and would inform him of such a problem. While high ranking officials certainly can and should seek advice from their human resources and personnel experts, we found no support in relevant case law for a contention that such an official can advocate improperly with them for someone’s employment and then rely on his or her subordinate’s failure to point out the impropriety of such conduct to prevent a violation by the supervising official.

## **2. Participation in a Matter Affecting the Financial Interest of a Person in a Covered Relationship - 5 C.F.R. § 2635.502**

We also concluded that Osuna did not adhere to the guidelines set forth in Section 502 of the Standards of Ethical Conduct in connection with EOIR’s decision to retain Nancy in 2009. Section 502 applies to the participation in a “particular matter” (such as a hiring decision for a federal position) by an employee who knows that such a matter “is likely to have a direct and predictable effect on the financial interest of someone in a “covered relationship.” Section 502 further states that,

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<sup>30</sup> The same facts also support a conclusion that Osuna committed a Prohibited Personnel Practice when he advanced or advocated for his niece’s re-appointment to an EOIR position in 2009. As noted above, Section 2302(b)(7) of Title 5 of the U.S. Code prohibits any employee with the authority to affect hiring decisions from advocating for a relative’s appointment to a civilian position in the employee’s agency.

"[w]here the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter," the employee should obtain authorization from an agency designee before participating in the matter. Covered relationships include persons who are members of the employee's household, and persons who are relatives with whom the employee has a close personal relationship.

We found that Osuna had a "covered relationship" with his niece. Osuna told the OIG that he had known Nancy all of her life, and that they enjoyed a close relationship. Likewise, Nancy stated that her relationship with Osuna and his wife was very close and friendly, that she considered them tantamount to parental figures, that she had traveled with them in the past, and that she would socialize with them periodically. Nancy also lived in Osuna's house for some periods during her college years, which would have been of some financial cost to him and substantial financial benefit to her.

We found that through his participation in the decision to hire Nancy and his advocacy for her application in 2008, as well as his e-mail directing Cromartie to move forward with Nancy's rehiring in 2009, Osuna improperly involved himself in "particular matters" likely to have a direct and predictable effect on his niece's financial interest. Such circumstances would therefore cause any reasonable person with knowledge of the relevant facts to question Osuna's impartiality in the hiring of his niece. Section 502 therefore clearly obligated Osuna to secure agency designee authorization prior to participating in this matter. The evidence establishes that Osuna neither sought nor received such authorization.<sup>31</sup>

### **3. Use of Public Office for Private Gain - 5 C.F.R. § 2635.702**

We concluded that Osuna also violated Section 702 of the Standards of Ethical Conduct, which prohibits an employee from using his public office for his friends' or relatives' private gain. We believe that Osuna violated this regulation when he "concluded" with Cromartie that his own niece would be placed somewhere in EOIR. Section 702(a) also specifically prohibits the use of a public office "in a manner intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise" to friends or relatives. Even if one were to credit Osuna's denial that he joined with Cromartie in "concluding" that Nancy would be placed in a position in the BIA "as far from [Osuna] as possible," we believe that at a minimum he "induced" her to make the decision to hire Nancy and place her somewhere. Osuna also told Cromartie in 2009 that Nancy wanted to return to EOIR for a second summer and asked: "Can we get the paperwork moving?" We concluded that, even though EOIR's standard practice permitted eligible students to return, Osuna's comments constituted impermissible inducements of Cromartie to act on behalf of Nancy, thereby violating Section 702.

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#### 4. STEP Regulations – 5 C.F.R. § 213.3202(a)(7)

We found that Nancy's placement as a student clerk in the BIA Chief Clerk's Office, while her uncle was the Acting BIA Chairman, created a violation of federal regulations. As noted above, the federal regulations governing the STEP at the time provided that a student may work in the same agency with a relative in accordance with the nepotism prohibition "when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency."<sup>32</sup> 5 C.F.R. § 213.3202(a)(7).

According to EOIR, Osuna was his niece's fifth-line supervisor during her tenure at the BIA. As head of the BIA, Osuna was in a position to influence or control Nancy's appointment, employment, promotion or advancement within the agency. Nancy's placement in the BIA therefore violated 5 C.F.R. § 213.3202(a)(7). Osuna was obviously aware of his niece's appointment and as head of BIA was responsible for complying with this requirement.

In sum, we found that Osuna's conduct in connection with the initial appointment and subsequent rehiring of his niece to an EOIR student position violated various personnel laws. Although we recognize that EOIR had a permissive and misguided culture at the time in terms of hiring relatives into student positions, Osuna held an extremely senior position in EOIR at the time and as such should have known of the seriousness of and prohibition against such conduct. See *Rentz v. U.S. Postal Serv.*, 19 M.S.P.R. at 39 ("As a high level supervisor, with many years experience, appellant should have been aware of the seriousness and prohibition against acts of nepotism."); *Welch v. Dep't of Agric.*, 37 M.S.P.R. at 23 (affirming lower court's ruling, which included that the official "is a high level supervisor with many years of [agency] experience, and he should have been aware of the seriousness of and prohibition against acts of nepotism by the statute and [agency policy]"). In addition, he should have expected that any effort or inquiry on his part on behalf of his niece would have a significant effect on the decisions of his subordinates regarding her. Osuna should have recused himself entirely from his niece's application for employment, and should have realized that she could not work in his component because he was in a position to influence or control his niece's appointment, employment, promotion or advancement within the agency. At a minimum, Osuna should have consulted with authorized ethics officials – not his own subordinate who was not a designated agency ethics official – for guidance and, if appropriate, a waiver.<sup>33</sup>

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<sup>32</sup> As noted above, these regulations were later deleted when the STEP was replaced in July 2012. See 77 F.R. 28194-01, 2012 WL 1639689 (F.R.), May 11, 2012.

<sup>33</sup> In comments submitted after reviewing a draft of this report, Osuna stated that although he disagreed with some of the OIG's findings, "in retrospect I do agree that I should have handled this matter differently in 2008. First, before passing along my niece's resume for consideration as a summer student, I should have consulted with the ethics office to make sure doing so was not improper. Second, I should have recused myself from any conversations, in person or otherwise,

(Cont'd.)



### **C. Analysis of the Conduct of Violet Cromartie and Donna Carr**

We also assessed the roles of Violet Cromartie and Donna Carr in accommodating Osuna's efforts to obtain employment for his niece. In making this assessment, we note that Osuna, as the Acting BIA Chairman at the time, was at the top of the chain of command for both Cromartie and Carr. Although both Cromartie and Carr denied that this influenced their actions in connection with Nancy's appointment, we believe that Osuna's intervention on behalf of his niece imposed inherent pressures on them to assist Nancy and at a minimum likely influenced their actions in relation to Nancy's application and rehiring.<sup>34</sup> Osuna should have known that discussing his niece's interest in a job would likely put lower-ranking employees in the uncomfortable position of either taking action to help his niece secure a position (thereby potentially violating preferential treatment prohibitions) or risking adverse consequences. We believe that it would have been awkward at best for Cromartie or Carr to decline to hire Nancy, especially in light of the fact that it was common practice for officials in EOIR to seek STEP positions for their relatives.<sup>35</sup> Thus, we believe that it was primarily the responsibility of senior officials like Osuna to avoid violations of the Merit System Principles with respect to their own relatives and to avoid pressuring others, intentionally or otherwise.

Nevertheless, the fact that primary responsibility for the conduct at issue here lay with Osuna, or that there was inherent pressure on Cromartie and Carr as a result of Osuna's conduct, does not excuse senior officials like Cromartie or Carr from doing their jobs. Indeed, we found it particularly concerning that neither Cromartie nor Carr raised even the slightest bit of concern about Osuna's efforts on behalf of his niece. Even if it they had found it difficult to object or say no to Osuna because of his position of authority, Cromartie and Carr had several other options available to them, including, for example, advising Osuna about the federal hiring rules in an effort to alert him to the issue and dissuade him from proceeding with the request, or raising the issue with another senior official in EOIR such as the General Counsel, or going to the Department ethics office, or contacting the OIG, either directly or anonymously through the OIG Hotline. Any of these options would have been an appropriate response. What was not appropriate was doing nothing other than trying to fulfill Osuna's clearly inappropriate request. Accordingly, we concluded that Cromartie and Carr's conduct in relation to the appointment of Nancy violated the Merit System Principles. As noted above,

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about any matters relating to my niece. That was particularly important given my position at the time as Chairman." We agree.

<sup>34</sup> In comments submitted after reviewing a draft of this report, Osuna denied that Cromartie felt pressured by him, stating that "Ms. Cromartie would not have hesitated to raise concerns if she felt something was improper, regardless of her position as my subordinate." Even if true, that would not excuse Osuna's conduct because he was not seeking Cromartie's professional opinion about the appropriateness of supporting his niece's job application (which in any event would have been appropriately directed to the ethics officer, not Cromartie) but rather was contacting her, as we conclude above, to arrange or advocate for his niece's hiring and to discuss her placement.

<sup>35</sup> Indeed, as noted above, Carr herself had three relatives who were hired into EOIR under the STEP program.

Section 2301(b)(1) of Title 5 of the U.S. Code requires that employee recruitment, selection, and advancement be based on merit, after fair and open competition.<sup>36</sup> Section 2302(b)(6) prohibits the granting of unauthorized preferences or advantages to job applicants.<sup>37</sup>

As the Executive Officer of the BIA, Cromartie had the authority to take, direct others to take, recommend, or approve personnel actions and was therefore prohibited from granting any preference or advantage not authorized by law, rule, or regulation to any applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment. We found that Cromartie's conduct with regard to Nancy's appointment violated this prohibition.

Cromartie stated multiple times in her OIG interview that she became involved in the hiring of students or in the placement of student hires only in exceptional circumstances, such as when her staff requested that she meet a student candidate for her Executive Office staff. However, Cromartie was actively involved in the hiring process for Nancy – based primarily on her contemporaneous April 29 e-mail, we found that she decided, jointly with Osuna, to hire Nancy into the BIA and actively arranged the office where Nancy would work. Cromartie's assistant, Monica Betts, told the OIG that she had no independent recollection of any other instance in which Cromartie had a conversation with a manager to place a specific student with that manager.

We concluded that Cromartie took these additional steps on behalf of Nancy because she was Osuna's niece, rather than due to any unique qualifications on Nancy's part. In fact, we found that Cromartie decided to hire Nancy and place her in the BIA without *any* apparent consideration of her qualifications. Cromartie stated in her OIG interview that she did not recall seeing Nancy's resume. Thus, the evidence establishes that Cromartie gave Nancy an advantage in the process that other applicants, particularly those who did not have a relative or friend working at EOIR and applied through an EOIR vacancy announcement, did not receive. This amounted to granting Nancy an unauthorized preference in violation of Section 2302(b)(6).

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<sup>36</sup> Section 2301(b)(1) of Title 5 of the U.S. Code states:

Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

<sup>37</sup> 5 U.S.C. § 2302(b)(6) provides:

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

Carr's actions in connection with Nancy's appointment also violated the Merit System Principles. As BIA Chief Clerk, Carr had authority to take, direct others to take, recommend, or approve personnel actions and was therefore prohibited from granting any preference or advantage not authorized by law, rule, or regulation to any applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment. The evidence establishes that Carr agreed to hire Nancy before she received Nancy's resume (though there is a possibility it was read to her at some point) and without conducting an interview. Carr knew at the time that Nancy had been referred by Osuna. Carr told the OIG that she became aware that Nancy was Osuna's niece at some point, but she was unsure when she learned that fact. We believe that it is likely Carr learned that Nancy was Osuna's niece when Cromartie suggested that Carr hire Nancy. Even if she did not, however, the evidence is clear that Carr agreed to take Nancy without knowing anything about her other than that she was the boss's referral.

Even though STEP positions were in the excepted service and therefore the processes for filling such vacancies did not need to comply with competitive service requirements, EOIR was nevertheless required to follow the Merit System Principles and avoid Prohibited Personnel Practices.<sup>38</sup> We found Carr's actions in connection with Nancy's appointment put a thumb on the scale in favor of Nancy to the detriment of other students who applied through the EOIR vacancy announcement and did not have a highly placed relative or friend working at EOIR.<sup>39</sup> As a result, we found that Carr's conduct violated the Merit System Principles, namely 5 U.S.C. §§ 2301(b)(1) and 2302(b)(6).

As noted above, we believe it would have been difficult for Cromartie or Carr to refuse to hire Nancy because of Osuna's position at the top of the chain of command. However, lesser steps than outright defiance were available, such as

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<sup>38</sup> As described earlier, Sections 2301 and 2302 of Title 5 of the U.S. Code provide that federal personnel management in Executive agencies be implemented in a manner consistent with 9 Merit System Principles and 12 Prohibited Personnel Practices, respectively, which essentially seek fair competition for all applicants.

<sup>39</sup> Although our review did not focus on other hiring decisions made by Carr, we believe that the hiring practices she described likely resulted in the granting of improper preferences in violation of Sections 2301(b)(1) and 2302(b)(6) on many occasions. As noted above, Carr employed two quite different processes for student hiring, one for students who applied through an EOIR vacancy announcement and another for "unsolicited" applications, including referrals of students by EOIR employees who were related to them. For applications received through an EOIR vacancy announcement, Carr stated that her staff in the Chief Clerk's Office would typically review their GPA, conduct an interview (if there were more applicants than positions available), and make recommendations to her, which she would then consider. For the unsolicited applications from EOIR relatives, however, Carr would hire them, based solely on a reference from Cromartie or her staff without conducting interviews or reviewing their resumes. This process likely resulted in the granting of improper preferences to the friends and relatives of EOIR employees.

We are not suggesting that hiring people on the basis of referrals of friends and acquaintances is per se inappropriate. Such referrals may be a useful source of qualified candidates for employment. Where the hiring decision is based not on the relevant qualifications of the candidate, however, but solely on the candidate's relationship with a current employee, we believe that the Merit System Principles are violated.

raising concerns with Osuna about the appearance of his involvement or consulting with an ethics official. Osuna's status in the agency does not constitute a defense to the conduct of Cromartie and Carr in granting an unauthorized preference. We believe, however, that it should be a mitigating factor for the Department to consider in imposing any administrative discipline on Carr.<sup>40</sup>

## **V. THE APPOINTMENT OF DAVID NEAL'S CHILDREN TO EOIR STUDENT POSITIONS**

In this section we address the appointment of David Neal's daughter Janine and his son Barton to positions in EOIR.<sup>41</sup>

### **A. The Appointment of Neal's Daughter**

In June 2007, the daughter of current BIA Chairman David Neal entered on duty into EOIR in a student position under the STEP program. In this section, we examine the circumstances of her initial appointment to a BIA position, her reinstatement in 2008, and her 2009 transfers to another position in the BIA and later to the OCIJ.

#### **1. Facts**

##### **a. 2007 Hiring**

In 2007, David Neal was the Chief Immigration Judge, which is the head of the Office of the Chief Immigration Judge (OCIJ). Neal's daughter Janine, who was a high school student living at home at the time, joined EOIR's BIA in a STEP position in June 2007. Janine worked as a paid student clerk in one of the BIA's legal panels for the summer of 2007 and then returned to high school in the fall. As described below, the circumstances surrounding her appointment, such as who made the decision to hire her and place her in the BIA, remain unclear.

David Neal told the OIG that at some time during the spring of 2007, he asked Juan Osuna, a longtime personal friend who at the time was Acting Chairman of the BIA, whether the BIA would be hiring students for the upcoming summer.<sup>42</sup> Neal stated that although he did not recall the specific conversation, he believed he asked whether BIA was hiring and how Janine could apply. Neal said that he believed he did not need to give Osuna more information about his daughter because Osuna had known her for her entire life and had seen her on social occasions involving the two families. Neal stated that he believed Osuna was aware that Janine was a good student, that she had a general interest in immigration

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<sup>40</sup> We note that Cromartie is no longer employed with the Department and therefore is not subject to administrative discipline.

<sup>41</sup> "Janine" and "Barton" are pseudonyms.

<sup>42</sup> There was no supervisory or reporting relationship between Neal and Osuna at the time, as the OCIJ and BIA are parallel components in EOIR's organizational structure.

issues, and that she had previous work experience from a position on Capitol Hill. Neal told the OIG that although he did not specifically recall Osuna's response, he believed Osuna told him that he should give him Janine's resume, and that Osuna would then pass it on to the BIA personnel who handled student hiring. Neal stated that he recalled that he gave Osuna a copy of Janine's resume following their conversation.<sup>43</sup>

Neal told the OIG that he believed at the time that Janine should not be hired into his own component (OCIJ) because he assumed there were laws prohibiting him from hiring his own children and because he believed the "optics" of such an appointment would not be good. He also said that one of the reasons he approached Osuna – aside from their personal relationship – was that Osuna did not work in OCIJ. Neal told the OIG that he did not recall discussing with Osuna where Janine should be placed in EOIR or making suggestions in that regard because he did not want to be too involved in the process so that his daughter could succeed on her own. Neal also stated that other than his conversation with Osuna and giving Osuna a copy of Janine's resume, he did not recall taking any further action related to Janine's initial appointment into EOIR in 2007, including discussing with anyone else at EOIR her interest in working at EOIR, her application for a position, or forwarding her resume to anyone other than Osuna.<sup>44</sup>

Osuna told the OIG that although he probably spoke with Neal about Janine's hiring into EOIR, he did not recall doing so. He said that he was not involved in her hiring and that he did not recall seeing Janine's resume at the time or forwarding it to anyone at EOIR.<sup>45</sup> When the OIG showed him Neal's description of the events surrounding Janine's hiring, Osuna reiterated that he did not recall speaking with Neal about it or forwarding Janine's resume, but added that he had no reason to believe Neal's statements were incorrect. Osuna also told the OIG that he did not recall taking any other action related to Janine's employment at EOIR at any time.

Osuna told the OIG that his general practice when he received a resume for student candidates was to forward the resume to Cromartie, the Executive Officer of the BIA. Cromartie, however, told the OIG that she had no recollection of playing any role in the hiring of Janine to EOIR.

Mary Standish, the senior BIA attorney who supervised the panel on which Janine worked in 2007, told the OIG that she did not know how Janine was hired

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<sup>43</sup> According to EOIR, Janine also submitted an application to EOIR vacancy announcement EOIR-07-0044, a nationwide advertisement for student clerk positions. Personnel records indicate that EOIR received 198 applications in response to that announcement, but EOIR reported that none of the cert lists generated in connection to that announcement were retained.

<sup>44</sup> According to Neal, he had conversations with at least two EOIR employees concerning Janine, but those occurred after her appointment. Neal said that those conversations were brief and casual interactions, in which the other EOIR employee complimented Janine to him and he responded by saying "proud papa things."

<sup>45</sup> Osuna told the OIG that he received Janine's resume years later when he wrote a reference for her graduate school application.

into EOIR and was not involved in any way.<sup>46</sup> Standish told the OIG that she never went through the process of selecting a student. According to Standish, the general practice was that Cromartie or her staff would ask at meetings who needed students for the upcoming summer, Standish would indicate that she needed students, and the Executive Office would assign someone to her staff. Standish told the OIG that she and her staff were not given an opportunity to choose which students were hired or assigned to them and that she would not conduct interviews of students assigned to her. Standish stated that she did not recall speaking with Osuna, David Neal, Cromartie, or anyone on Cromartie's staff about hiring Janine before her appointment. Standish stated further that she doubted that she received Janine's resume before the selection was made.

Although we were unable to determine who made the ultimate decision to hire Janine, EOIR records show that she began work in the BIA June 18, 2007, at an annual rate of pay of \$19,722. Janine resigned from the Department on August 18, 2007, to return to high school.<sup>47</sup>

#### **b. 2008 Rehiring**

On April 24, 2008, Osuna e-mailed Cromartie, stating: "David Neal asked whether we would be willing to take his daughter back this summer as a student hire. In principle, yes, as she did a good job last year." Cromartie responded to Osuna's e-mail noting that despite facing budget issues, they had received clearance to hire a few students for the upcoming summer. Osuna responded to Cromartie, asking: "[C]an you let David know that [Janine] needs to get the process going again and any potential time-frame? That way they can decide whether to go ahead with it." Later that day, Cromartie responded to Osuna that she had spoken with Standish and Standish had said that she would be happy to take Janine back. Four days later, Cromartie e-mailed her staff concerning Janine, stating: "Let's proceed. I forewarned David Neal that she would likely have to repeat everything."<sup>48</sup>

On June 30, 2008, EOIR rehired Janine as a paid clerk at the BIA. She worked at the BIA until late August 2008, when her work schedule was changed from part-time to intermittent.

David Neal told the OIG that he did not play any role in Janine's return to EOIR in 2008. Neal stated that he did not recall speaking with Osuna, Cromartie,

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<sup>46</sup> "Mary Standish" is a pseudonym.

<sup>47</sup> As noted above, witnesses told the OIG that when student employees returned to school, EOIR had a general practice of converting their work schedule from full- or part-time to intermittent status, and then returning them to a full- or part-time schedule when the student returned in subsequent summer and holiday vacations. In contrast with this general practice, Janine resigned from the Department following her first summer with EOIR and, as discussed below, was reinstated the following summer.

<sup>48</sup> When asked what the phrase "repeat everything" in her e-mail meant, Cromartie stated that she believed it referred to security paperwork.

or her staff about Janine's return in 2008, adding that he did not believe there would have been any need to speak with Osuna or anyone else at the BIA about Janine's return. After seeing Osuna's April 24, 2008, e-mail, in which Osuna wrote to Cromartie, "David Neal asked whether we would be willing to take his daughter back this summer as a student hire," Neal stated he had no recollection of such a conversation, but he had no reason to question the accuracy of the e-mail. As noted above, Osuna told the OIG that he did not recall taking any action related to Janine's employment at EOIR at any time.

Cromartie told the OIG that she did not recall a conversation with Osuna or David Neal about Janine's return in 2008 or the e-mail exchanges on April 24 and 28. She stated that her April 24 exchange with Osuna regarding Janine's return was a typical e-mail exchange regarding the hiring and placement of students. Cromartie told the OIG that she never felt any pressure to take any action with regard to Janine from either David Neal or Osuna, and would have taken the same steps for any other EOIR employee, regardless of grade or title.

Standish told the OIG that she was not involved in Janine's return in 2008. When shown Cromartie's e-mail of April 24, 2008, which refers to a conversation in which Standish reportedly stated that she would be glad to take Janine back for that summer, she said that she did not recall such a conversation, although she said that it probably occurred. Standish also stated that the fact that Janine was the daughter of David Neal, a senior EOIR official, did not enter her mind in deciding whether she should take Janine back in 2008 and did not come up in any conversations with Cromartie. Standish stated further that there were a lot of children of powerful people working in EOIR, and therefore in her view Janine was like other student employees. Standish also told the OIG that she would have taken Janine back even if she was not related to an EOIR employee because she performed well.

### **c. 2009 Reappointment**

Following the completion of Janine's summer job in 2008, she did not resign from EOIR (as she had done in 2007). Instead, she retained her status as an EOIR employee on an "intermittent schedule," which enabled her to return to EOIR during the summer of 2009 without reapplying.

In January 2009, David Neal left the OCIJ to serve as Vice Chairman of the BIA, the second-highest official in the BIA. Roughly 6 months later, in June 2009, he was named Acting Chairman of the BIA. While it is not clear who initiated the dialogue, evidence obtained by the OIG established that in the weeks leading up to the announcement that Neal would become Acting BIA Chairman, he, Cromartie, and other BIA personnel discussed in which EOIR office Janine would be placed for the upcoming summer.

For instance, on May 20, 2009, Betts e-mailed Cromartie, asking "What did we finally decide on [Janine] Neal's summer assignment?" Cromartie responded, stating: "Need to speak with David and [a BIA senior attorney]." Later that day, Cromartie e-mailed Betts again, stating: "I spoke to David Neal this evening, and

he is ok with the [Janine] thing.” Cromartie then spoke with Standish and arranged for Janine to be assigned to the BIA library staff, rather than the BIA legal panel where she had worked for the previous two summers. When the OIG asked David Neal about Janine’s assignment to the BIA library in 2009, he stated that he recalled Cromartie raising a concern that if Janine worked in the BIA panel while he served as Vice or Acting Chairman of the BIA, she would be in her father’s chain of command and they might interact in the workplace on a day-to-day basis. According to Neal, Cromartie recommended to him that Janine be reassigned from the BIA panel to the BIA library because she thought it would look better to have Janine further removed from him and that if Janine were reassigned to the BIA’s library, then he would have had no reason to interact with her.

Neal stated that although he did not recall the specific exchange with Cromartie, he remembered that she presented the idea to him of moving Janine to the library, and he told her that he was fine with the move. He stated that he did not recall being involved in any formal decision making and instead deferred to Cromartie because it was related to student hiring and he was trying not to be involved in it. According to Neal, student employees were so far down in the BIA hierarchy in comparison with his managerial responsibilities that he did not focus on where Janine worked. Neal told the OIG that he trusted Cromartie’s judgment because he believed she was an expert and he relied on her to fix the issue, but added that he might react differently now upon further reflection and in light of the OIG’s questioning.

Cromartie told the OIG that she did not recall the specific concern that precipitated Janine’s move to the BIA library, but stated that Janine’s placement in her father’s line of supervision seemed like the logical reason and she could not think of any other concern that would have generated that type of movement.

From late May or early June 2009 through July 19, 2009, Janine worked as a student clerk in the BIA library.<sup>49</sup> Throughout that period, David Neal was either Vice Chairman or Acting Chairman of the BIA. In both of those positions, David Neal supervised Cromartie, who in turn supervised the chief librarian, who supervised Janine. Therefore, for roughly 7 weeks in the summer of 2009, David Neal was in a position to influence or control Janine’s appointment, employment, promotion or advancement within the agency.

#### **d. 2009 Transfer to OCIJ and 2012 Expiration of Appointment**

On July 15, 2009, Cromartie e-mailed her staff, stating Janine had to be transferred to OCIJ, effective July 19, 2009. According to Cromartie’s e-mail, the transfer had been requested by the EOIR senior leadership. When asked about this e-mail, Cromartie said she recalled someone – she did not recall who – raising the issue that David Neal was coming back, and that this person mentioned that it

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<sup>49</sup> As described in section V.A.1.d. below, Janine was transferred from the BIA to the OCIJ on July 19, 2009, at the request of EOIR leadership.



would be advisable to move Janine. David Neal stated that it's possible the direction came from the Deputy Director's Chief of Staff, who he believed was looking at putting children and parents into different components. Neal told us he believed the Chief of Staff brought the issue straight to Cromartie as opposed to straight to him, but that he wasn't sure.

Janine was transferred to a position in the OCIJ on that date and worked there for roughly 1 month. Janine's transfer to OCIJ put her outside Neal's chain of command. The OIG obtained no evidence that David Neal was involved in the transfer of his daughter from the BIA library to OCIJ. Janine continued to work at the OCIJ intermittently through the expiration of her appointment in September 2012.

## **2. Analysis of the Conduct of David Neal in the Placement of His Daughter**

We concluded that David Neal's conduct violated at least one federal regulation and that he exercised poor judgment by participating in the placement of his daughter, Janine, in his direct chain of command.

### **a. Nepotism - 5 U.S.C. § 3110(b)**

We did not find sufficient evidence to conclude that Neal violated the federal nepotism statute, 5 U.S.C. § 3110(b), in connection with the initial appointment of his daughter in 2007 or her reinstatement in 2008. As detailed above, the nepotism statute prohibits a "public official" from appointing, employing, promoting, advancing, or advocating for appointment, employment, promotion, or advancement of his "relative" to a civilian position in the official's agency.

Neal, who was serving as EOIR's Chief Immigration Judge during the time period in question, had authority to make or affect employment decisions and therefore qualified as a "public official" under the nepotism statute. In addition, his daughter falls within the statutory definition of "relative." See 5 U.S.C. § 3110(a)(3). Therefore, our analysis turns on whether Neal's conduct constituted appointing, employing, promoting, advancing, or advocating for appointment, employment, promotion, or advancement of his daughter to a civilian position in EOIR within the meaning of 5 U.S.C. § 3110(b).

The evidentiary record regarding both Janine's initial hiring in 2007 and her 2008 reinstatement is thin, largely because the relevant witnesses told the OIG that they could not recall the events at issue. It is clear that Neal contacted then-Acting BIA Chairman Osuna to explore the possibility that Janine could work at the BIA for the summers of 2007 and 2008. However, the specifics of what Neal said to Osuna in those conversations and how the decision was made to hire Janine for those summers is not clear. Neal told the OIG that although he did not recall the 2007 conversation, he believed he asked Osuna whether BIA was hiring, how Janine could apply, and later sent Osuna a copy of Janine's resume. With regard to Janine's 2008 reinstatement, the only evidence obtained by the OIG regarding the conversation between Osuna and Neal is Osuna's subsequent e-mail to Cromartie,

in which he stated: "David Neal asked whether we would be willing to take his daughter back this summer as a student hire." As noted above, Osuna told us he did not recall any conversation with Neal about Janine's appointment. The OIG obtained no evidence that Neal made any other statements in his conversations with Osuna or took any other action beyond those conversations in connection with the 2007 or 2008 appointments. We therefore determined that there is insufficient evidence to conclude that Neal advocated for his daughter's appointment in violation of the nepotism statute.

Nevertheless, we found Neal exercised poor judgment in connection with his daughter's interest in working at EOIR. Neal told the OIG that he sent Janine's resume to Osuna with the express understanding that Osuna would then pass it on to his subordinates in the BIA who handled student hiring. Neal should have known that given his and Osuna's status as senior officials in EOIR, that process would inevitably create pressure on subordinate employees (even those outside of Neal's direct chain of command) to take action on Janine's behalf. He should have known that circulating his daughter's resume for a job within the organization would likely put lower-ranking employees in the position of either taking action to help his daughter secure a position (and thereby potentially violating preferential treatment prohibitions) or declining to secure a position for her (and risking adverse consequences from Osuna or Neal, both senior EOIR officials). Senior government officials, particularly judges like Neal, should not put other employees in such a position and should take every precaution to avoid any appearance of impropriety. Neal should have recused himself entirely from Janine's application for employment or should have consulted with authorized ethics officials for guidance before participating in any manner.

#### **b. STEP Regulations – 5 C.F.R. § 213.3202(a)(7)**

We found that Janine's placement in the BIA library in 2009 while her father was the Acting Chairman of the BIA created a violation of federal regulations. As noted above, the federal regulations governing the STEP at the time provided that a student may work in the same agency with a relative in accordance with the nepotism prohibition "when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency."<sup>50</sup> 5 C.F.R. § 213.3202(a)(7).

In 2007 and 2008, while Neal was working in OCIJ, Janine was placed in a unit of the BIA that was outside of Neal's chain of command. When Neal moved to BIA in 2009, Janine's placement became an issue because her prior position could put her into frequent contact with Neal as her ultimate supervisor. However, the solution proposed by Cromartie and approved at least informally by Neal – assigning Janine to the BIA library – did not solve the problem because the BIA library position was still in Neal's chain of command and Neal was in a position to

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<sup>50</sup> As noted above, these regulations were later deleted when the STEP was replaced in July 2012. See 77 F.R. 28194-01, 2012 WL 1639689 (F.R.), May 11, 2012.

influence or control Janine's appointment, promotion, or advancement in the BIA. As a result of this arrangement, Janine's assignment for roughly 7 weeks that summer violated 5 C.F.R. § 213.3202(a)(7).<sup>51</sup>

In making this finding, we note that Neal and Cromartie understood that having Neal's daughter in his direct chain of command would be improper. In his OIG interview, Neal told the OIG that he understood at the time of Janine's initial hiring into EOIR in 2007 that she should not be hired into his own component (which was OCIJ at that time) because he assumed there were laws prohibiting him from hiring his own children and because he believed the "optics" of such an appointment would not be good. In addition, Neal told the OIG that Cromartie identified this very problem in 2009 – namely, if Janine worked for the BIA legal panel in the upcoming summer, she would be in her father's chain of command. Cromartie stated repeatedly in her interview that she understood that federal regulations did not permit employees to supervise their relatives. It is unclear why Cromartie or Neal expected that moving Janine from one BIA office to another would address the chain of command problem when Neal, as Acting Chairman of the BIA, would have the same ability to control his daughter's potential advancement in the organization. It is especially puzzling that Cromartie, who several witnesses told us is a personnel "expert" with long experience in hiring and the STEP positions in particular, would have recommended a solution, regardless of any decrease in the anticipated interaction that Neal would have with his daughter, since that so obviously would not cure the violation at issue.

At the same time, we do not believe that either Neal or Cromartie were acting in bad faith. To the contrary, the evidence indicated that they were attempting to solve an ethics problem. Their solution, however, perpetuated the very problem they sought to avoid. Considering that both Neal and Cromartie appreciated that Janine's placement in the BIA could implicate ethics and personnel rules, we believe Neal should have recused himself from all discussions and decision-making regarding his daughter's employment, and Cromartie should have sought guidance from agency ethics officials in dealing with the situation.

**c. Conflict-of-Interest – [REDACTED] and 5 C.F.R. § 502 – and Use of Office for Private Gain – 5 C.F.R. § 2635.702**

We also determined that Neal's conduct did not violate the conflict-of-interest [REDACTED] regulations (5 C.F.R. § 502). Those provisions state in general terms that an employee should not participate personally and substantially in a particular matter involving specific parties that is likely to have a direct and predictable effect on the financial interest of a member of his household. See [REDACTED], 5 C.F.R. § 2635.502(a). In this case, however, the evidence was insufficient to establish that Neal participated substantially in any of the decisions to

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<sup>51</sup> We note that Janine's position in her father's chain of command was relatively short-lived, as she was transferred to OCIJ after approximately 7 weeks. That transfer, however, was initiated by the EOIR senior leadership, not Neal or Cromartie.

hire his daughter. The evidence was thin regarding precisely what Neal said to Osuna in support of his daughter's application for employment. On this record, it is impossible to conclude that Neal's participation in the decision to hire Janine was "substantial." Neal also approved Cromartie's recommendation to transfer his daughter from the BIA panel to the library in 2009. However, this change had no impact on his or Janine's financial interest, as Janine received the same salary from both of those positions.

We also found insufficient evidence to conclude that Neal violated the misuse-of-office regulations (5 C.F.R. § 2635.702) in connection with his daughter's employment. That provision prohibits an employee from using his public office for the private gain of relatives. We found that while Neal's discussions with Osuna about Janine in 2007 or 2008 may have reflected poor judgment, they did not evince an intent to use his authority to coerce or induce Osuna to provide a benefit to his daughter. With regard to Neal's approval of his daughter's transfer in 2009, we did not find that Janine received a "gain" within the meaning of the regulation, as her salary and benefits remained the same. As such, we did not conclude that he violated the misuse-of-office regulation in connection with his daughter's employment.

### **3. Analysis of the Conduct of Juan Osuna and Violet Cromartie**

We considered whether Osuna or Cromartie violated any statutes or regulations in connection with the appointment or placement of Janine. As noted above, the evidentiary record regarding the hiring and reinstatement of Janine in 2007 and 2008, respectively, is thin. The fact that the daughter of a senior EOIR official was appointed to a STEP position suggests at least the possibility that an improper preference was granted in violation of the Merit System Principles. However, we could not ultimately determine who made the decisions to hire and reinstate Janine. Both Osuna and Cromartie told us they did not do it and they did not know who did.

However, we believe that Osuna placed his subordinates in a difficult position when, at Neal's request, he distributed Janine's resume in 2007 and made inquiries about her being rehired in April 2008. As Acting Chairman of the BIA, Osuna should have known that subordinates might interpret actions of this type to convey the message that he wanted to help Neal obtain employment for his daughter. This gave Janine an advantage that other applicants obviously did not have and could have put Osuna's subordinates in a very difficult position if Janine were not the best qualified candidate for the job. He had alternatives, such as instructing Neal whom Janine should contact about the job or the process of being rehired for it.

#### **B. The Appointment of Neal's Son**

David Neal's son, Barton, worked in EOIR as a paid student clerk in the Arlington Immigration Court during the summer of 2010. In this section, we examine the circumstances surrounding Barton's appointment.

## 1. Facts

On February 18, 2010, EOIR's Human Resources Officer e-mailed all of the EOIR component heads, along with the components' senior executive personnel, about the agency's plans for hiring students for the upcoming summer.<sup>52</sup> In that e-mail, the Human Resources Officer requested an estimate of the number of student hires for each office by February 26, 2010, and stated: "If you have a specific student(s) you wish to hire, please identify the name(s) of the student(s) on Part D of the recruit SF 52. Students who meet the criteria and qualifications will be listed on the referral lists and forwarded to the requested offices for consideration."

The evidence established that, within a few days of the human resources e-mail concerning student hiring for 2010, three senior EOIR officials contacted Chief Immigration Judge O'Leary or Deputy Chief Immigration Judge McGoings to inquire about student positions for their sons. One of those executives was David Neal, the Acting Chairman of the BIA at the time.<sup>53</sup>

According to Neal, he approached O'Leary and asked whether any of the local immigration courts were hiring students for the upcoming summer. Neal stated in his OIG interview that he told O'Leary that his son Barton had just taken a law class in high school and was interested in the law. Neal told the OIG that he also informed O'Leary that Barton was eager for experience in a court setting and was interested in a court-related position, paid or unpaid.<sup>54</sup> Neal also stated that he recalled telling O'Leary that he had promised Barton just that he would ask about available positions, so O'Leary should not worry about it if there were none.

According to Neal, O'Leary told him that although he could not guarantee it, positions might be available and that he should send Barton's resume to his

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<sup>52</sup> The evidence obtained by the OIG established that the Human Resources Officer, who has since left DOJ, apparently violated personnel laws in connection with EOIR's hiring of her own son. In particular, she wrote multiple e-mails to other EOIR personnel in a sustained effort to secure a paid position for her son. Her son was ultimately hired into a STEP position and remains at EOIR in a paid capacity. EOIR's memorandum summarizing its internal review of student hiring practices stated: "The most serious evidence uncovered relates to EOIR's former [Human Resources] Director [name redacted] who appears to have been involved in multiple personnel actions related to her son, though the depth of her involvement is unclear." We also note that the employee responded to EOIR's request for information about the hiring of relatives in an e-mail as follows: "To the best of my recollection, I don't recall communicating with anyone involved in the hiring process about the hiring of my relative. My relative was hired almost 3 years ago and I don't recall any communications." This employee is currently employed with a different federal agency, and the OIG has referred the matter to the relevant OIG for its consideration.

<sup>53</sup> The other two judges were the Chief Administrative Hearing Officer and a board member of the BIA.

<sup>54</sup> Neal made similar representations in an e-mail to EOIR's General Counsel in connection with its internal review, stating:

For my son, in 2010, I asked Chief Immigration Judge Brian O'Leary whether he had any summer student opportunities in the Arlington or Headquarters courts. . . . I remember explaining that my son was taking a Law class in high school, was eager for experience in a court setting, and was interested in court experience, paid or unpaid.

Executive Officer. Neal told the OIG that the context in which the conversation arose was before the OIG released its report on nepotism in JMD, stating: “[It was] really sort of low-profile, you know, you [could] hand a resume to somebody and they’ll take a look and let you know. It was very casual, and so, I did similarly.”

O’Leary told the OIG that he did not recall ever discussing with David Neal the possibility of Barton coming to work at EOIR and that he was not involved in the hiring of Barton into EOIR. When informed of Neal’s account of the conversation with him, O’Leary stated that he had no reason to believe that Neal’s statements were wrong or inaccurate, but he did not recall such a conversation or taking any action in regard to Barton’s interest in working at EOIR.

Although O’Leary did not recall communicating with Neal about his son, McGoings told the OIG that he recalled having such a conversation. McGoings told the OIG that shortly after the February 18, 2010, e-mail from human resources concerning student positions, O’Leary designated him as the coordinator for OCIJ’s summer hiring. Within a few days, McGoings stated, Neal and two other senior EOIR judges approached him to inquire about student positions for their sons.

According to McGoings, Neal approached him directly and told him something to that effect that he was looking for a summer job for his son.<sup>55</sup> McGoings told the OIG that although he could not recall exactly what Neal told him about his son, he recalled discussing something about Barton with his father, specifically Barton’s interest in the position, his desire to get firsthand experience, and that it would be his first job.<sup>56</sup>

Following this conversation, on February 24, 2010, McGoings sent David Neal an e-mail requesting a copy of Barton’s resume. Neal responded: “Will do, Mike. Hope you’re not afraid of another Neal!!” McGoings replied to Neal’s message: “Bring ‘em on. The more the merrier.” When the OIG asked about this e-mail exchange with Neal, McGoings stated that the nature of these messages established in his mind that the decision to hire Barton had already been made at that time, before he received Barton’s resume.

The next day, February 25, 2010, David Neal e-mailed McGoings, stating: “Here is [Barton’s] resume. Thanks for looking at this!” Neal told the OIG that he did not recall talking with McGoings about the possibility of his son working at EOIR, sending him Barton’s resume, or either of the e-mail exchanges that occurred on February 24 and 25. Neal stated that based on his review of the e-mails during the OIG interview, he believed it was clear that O’Leary put him in touch with McGoings, since McGoings was in charge of student appointments.

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<sup>55</sup> McGoings stated that he believed that O’Leary did not refer David Neal to him. McGoings stated further that he believed the first time he heard about Barton in the context of a summer position was from David Neal and that he did not recall ever discussing Barton with O’Leary.

<sup>56</sup> We learned about the conversation between McGoings and Neal after we completed our interview of Neal, so we did not ask Neal about it specifically.

Twelve minutes after Neal's February 25 e-mail, McGoings e-mailed the EOIR Human Resources Officer, copying O'Leary and O'Leary's Executive Officer, stating: "Attached is the resume of student applicant [Barton] Neal. OCIJ is interested in placing him in the Arlington Immigration Court for the summer of 2010. I will advise him of the need to provide a transcript which I will forward to you. Please let me know if you need any additional information." McGoings had sent similar messages to the EOIR Human Resources Officer placing the other two EOIR judges' sons at other immigration courts the previous day.

O'Leary's Executive Officer told the OIG that she believed the e-mail from McGoings to the EOIR Human Resources Officer was unusual because the selection of students for the individual immigration courts around the country was generally conducted by the courts themselves, not the OCIJ leadership. She also said that to her knowledge the only instances in which the OCIJ front office picked students for immigration courts were for the summer of 2010, specifically Barton and the sons of the two other senior judges, and added that she would "absolutely" know if it had happened at other times.

According to O'Leary's Executive Officer, she approached her supervisor after receiving McGoings's e-mails regarding Barton and the two other children to express her concern that OCIJ was hiring students into individual immigration courts without the court administrators' knowledge. She told the OIG that she called the Court Administrator in Arlington to inform him that Barton had been hired into his court.<sup>57</sup> According to the Executive Officer, the administrator was not aware of Barton's placement in his court before she e-mailed him.

In the two months following the e-mail exchanges on February 24 and 25 regarding the hiring of Barton, there were several additional exchanges among EOIR Human Resources personnel, OCIJ administrative personnel, McGoings, and David Neal about procedural questions. In one of the e-mail exchanges, EOIR Human Resources personnel e-mailed McGoings to request that Barton submit a statement certifying that he could type at a rate of 40 words per minute or more (a required qualification for EOIR STEP positions), and McGoings forwarded this request to David Neal.

On June 28, 2010, Barton entered on duty at the Arlington Immigration Court as a GS-2 clerk receiving a salary at the annual rate of \$24,865. He worked at the court for roughly 6 weeks, resigning on August 15, 2010, to return to his senior year of high school.

McGoings told the OIG that he did not recall who made the decision to hire Barton for the summer job at the Arlington Immigration Court. McGoings stated that he interpreted the EOIR Human Resources e-mail on February 18, 2010, to

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<sup>57</sup> O'Leary's Executive Officer also e-mailed the Court Administrator for Arlington Immigration Court on February 26, 2010, the day after McGoings's e-mail to EOIR Human Resources, stating: "I left you a voice message this morning regarding this. If you have any questions please contact Judge McGoings."

say: "Come one, come all. If you've got somebody, you know, if you know somebody or you want somebody, let us know," and "There were vacancies, and if you had - they could be filled from anywhere. So if you had a kid who wanted to work, then you could, you know, you could get them on." McGoings stated that based on the e-mail from EOIR Human Resources to the component heads regarding student hiring and his understanding of EOIR's prior student hiring, he believed that the student hiring process was "automatic," in that managers would inform Human Resources personnel of students they wanted to hire and submit the necessary paperwork, and then EOIR would automatically hire the student. As a result, McGoings stated, he believed there was not much decision-making involved in hiring students.<sup>58</sup>

With regard to Barton, McGoings stated that his review of the relevant e-mails led him to believe that either he or O'Leary decided to hire Barton, but he did not recall who. McGoings also told the OIG, however, that he believed he did not make that decision and was not involved in that decision, based on the manner in which the appointment occurred. In particular, McGoings stated that he did not supervise the Arlington court at the time and therefore he would have contacted the Court Administrator of the Arlington court to determine whether they needed a student for that summer. McGoings stated that he would not have placed a student in a court if the local personnel did not indicate that they needed a student, adding that he would have checked to make sure they needed a student because "you shouldn't be placing people in a - in a position simply because you know them or that they're related to somebody else." McGoings pointed to the fact that he took such steps - namely, contacting the Court Administrator for the Chicago court - in connection with one of the other students referred to him by a BIA member during that time frame. According to McGoings, he did not contact the Arlington court officials with regard to Barton, and therefore he believed he was not involved in Barton's placement there.

O'Leary told the OIG that he did not recall playing any role in the hiring or decision to hire Barton as a student into EOIR, although he noted that he may have signed related paperwork. O'Leary said that it was his understanding that the personnel in the various immigration courts around the country would identify students to be hired in their respective courts and that the Deputy Chief Immigration Judge and the Chief Immigration Judge would normally not be involved in the direct hire of students in those field offices. O'Leary told the OIG that the hiring of Barton and the other two students in 2010 was "not the norm" because the OCIJ senior leadership was involved in the direct hire of students into

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<sup>58</sup> In comments submitted after reviewing a draft of this report, McGoings reiterated that the e-mail of February 18, 2010, "did not preclude the children or relatives of employees from obtaining summer employment with the agency." However, the question is not whether children or relatives of employees were *precluded* from getting summer jobs -- it is whether senior employees impermissibly participated in hiring or advocating for their own relatives and whether the relatives were given an unfair advantage in contravention of merit system principles. Nothing in the February 18 e-mail suggested that merit principles or prohibitions on nepotism or favoritism were inapplicable to student hiring.



immigration courts. O'Leary stated that he did not know why Barton would be placed in the Arlington Immigration Court with the involvement of the OCIJ leadership and did not know whether the fact that Barton's father was the Acting Chairman of BIA at the time and previously the Chief Immigration Judge played a role in his son's appointment.

O'Leary's Executive Officer told the OIG that the hiring for the summer of 2010 was unusual and that she did not know what "went wrong" with regards to those appointments, although she did not believe those appointments were conducted in bad faith or intentionally improper. She also stated that she initially thought it was peculiar, but then it was later explained to her that such appointments were permissible as long as students were not working in the same office as their parents, though she stated that she could not remember how she came to that understanding.

## **2. Analysis of the Conduct of David Neal**

We concluded that David Neal violated the federal nepotism prohibition, 5 U.S.C. § 3110(b), in connection with the appointment of his son to an EOIR student position.

### **a. Nepotism - 5 U.S.C. § 3110(b)**

As described above, the nepotism statute prohibits a "public official" from appointing, employing, promoting, advancing, or advocating for appointment, employment, promotion, or advancement of his "relative" to a civilian position in the official's agency.

Neal, who was serving as EOIR's Acting Chairman of the BIA during the relevant time, had authority to make or affect employment decisions and therefore qualified as a "public official" under the nepotism statute. In addition, his son falls within the statutory definition of "relative." See 5 U.S.C. § 3110(a)(3). Our analysis therefore turns on whether Neal's conduct constituted appointing, employing, promoting, advancing, or advocating for appointment, employment, promotion, or advancement of his son to a civilian position in DOJ within the meaning of 5 U.S.C. § 3110(b).

As noted above, the nepotism statute requires some affirmative action beyond submitting or mentioning a relative's employment application. See, e.g., *Wallace*, 106 M.S.P.R. at 23. The case law further indicates that the term "advocating" should be assigned its common meaning, which would include speaking in favor of, recommending, commending, or endorsing a relative for employment. See *Alexander*, 24 M.S.P.R. at 621.

Although the available evidence suggests that Neal's comments about his son to O'Leary and McGoings were limited and informal, we believe that they constituted advocating for his son's appointment in violation of 5 U.S.C. § 3110(b). Neal's own statements to the OIG and EOIR's General Counsel's Office made clear that he was speaking in favor of, recommending, commending, or endorsing his

son. In particular, Neal told the OIG and EOIR's General Counsel's Office that he informed O'Leary that Barton had just taken a law class, that he was interested in the law for the first time, and that he was eager for experience in a court setting. We recognize that Neal's comments about his son could be interpreted as merely explaining the reason for his inquiry about the availability of summer jobs in the immigration courts, rather than "recommending" his son. In EOIR, where employees' children have so commonly been hired into summer jobs, a more forceful form of advocacy was unnecessary. Neal's expression of interest in a summer job for his son was sufficient for others in EOIR to take action on his behalf.

According to McGoings, Neal approached him about Barton and said something to the effect that he was trying to secure a job for Barton, his son was interested in a student position and wanted to get firsthand experience, and it would be Barton's first job. Coupled with the comments in Neal's e-mails to McGoings – specifically, "Hope you're not afraid of another Neal!!" and "Here is [Barton's] resume. Thanks for looking at this!" – we found that Neal's comments to McGoings conveyed the clear message that he desired McGoings to help find a position for Neal's son. We believe that this conduct constituted advocacy within the meaning of the nepotism statute.<sup>59</sup>

It does not matter that Neal advocated for the appointment of his son to a position in the immigration courts, which were not under his supervision or subject to his hiring authority as Acting Chairman of the BIA. As we stated in our report on hiring practices in JMD, the nepotism statute prohibits advocacy in connection with the employment within one's *agency*. The relevant agency here is the Department. The prohibition is not limited to advocacy for positions in the same office, division, or other component where the official works or has hiring authority, or to positions in the official's chain of command.

**b. Conflict of Interest – [REDACTED]  
[REDACTED] Regulation, 5 C.F.R. §  
2635.502)**

[REDACTED]

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<sup>59</sup> The above facts also support a conclusion that David Neal committed a Prohibited Personnel Practice when he advocated for his son's appointment to an EOIR position. As noted above, Section 2302(b)(7) of Title 5 of the U.S. Code prohibits any employee with the authority to affect hiring decisions from advocating for a relative's appointment to a civilian position in the employee's agency.

Moreover, even if the comments that Neal made fell short of illegal "advocacy," we believe that he should not have involved himself at all in his son's application for employment at EOIR and that his successful effort to assist his son helped perpetuate the culture of nepotism and favoritism in EOIR.

[REDACTED]

[REDACTED]

[REDACTED]

Section 502 does not explicitly contain a requirement that the participation be in one's "official capacity." However, we believe that the regulation is generally focused on official acts. By the same token, there is a question of whether Neal "participated" within the meaning of Section 502. We acknowledge that Neal's brief and informal conversations with O'Leary and McGoings on behalf of his son started the ball rolling on his son being hired. However, it is clear that the hiring decision was made by other EOIR employees who did not report to Neal. The question of whether someone else gave Barton an improper preference is different from the question of whether David Neal participated in a meaningful way in the decision within the ambit of Section 502. We did not find the available evidence to be sufficient to support a conclusion that he did.<sup>60</sup>

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<sup>60</sup> As noted above, we found that Neal's brief and informal comments did constitute advocacy on behalf of his son in violation of the nepotism statute. Unlike Sections 208 or 502, that statute has no requirement that the advocacy be made in one's "official capacity" or that it play so significant a role in the decision made in the matter that it is deemed "substantial."

### **3. Analysis of the Conduct of Brian O’Leary and Michael McGoings**

Because of the involvement of Judges O’Leary and McGoings in the decision to hire Barton, we considered whether they violated any ethics rules. We found the evidence concerning the involvement of Judges O’Leary and McGoings to be inconclusive.

The evidence was not sufficient for us to conclude who made the decision to hire Barton and place him in the Arlington court. It is clear that that decision was made on or about February 24, 2010, before David Neal had provided his son’s resume.

The evidence clearly shows that Judge McGoings was involved in the hiring of Barton. In particular, his conversation and e-mail exchanges with David Neal, as well as his e-mail to EOIR Human Resources that forwarded Barton’s resume and stated, “OCIJ is interested in placing him in the Arlington Immigration Court for the summer of 2010,” place Judge McGoings squarely in the middle of the hiring process. The evidence does not show, however, whether McGoings made the decision to hire Barton. We found McGoings’s testimony that he would have acted differently if the decision had been his – namely he would have contacted the Arlington court first to determine whether they needed a student – to be credible, particularly in light of the fact that he appeared to have done so with the student placed in the Chicago court at the same time.

The evidence is not sufficient to conclusively establish that O’Leary made the ultimate decision to hire Barton or directed McGoings to do so. We found no evidence that O’Leary communicated with McGoings concerning Barton. Notably, McGoings told the OIG that he did not recall a conversation with O’Leary about Barton. O’Leary told the OIG that he did not recall any involvement in Barton’s appointment or any discussion concerning Barton with either Neal or McGoings, and we found his testimony credible.

In fact, the only evidence obtained by the OIG connecting O’Leary to the appointment is Neal’s recollection of a single conversation, in which O’Leary purportedly told Neal that a position might be available and that he should send Barton’s resume to the OCIJ Executive Officer. Whether Neal’s recollection is mistaken and he was thinking of a conversation with McGoings we cannot know, but there is insufficient evidence to support a finding that O’Leary was involved in the hiring of Barton.

Therefore, in light of the scant record before us, we did not find sufficient evidence to conclude that McGoings or O’Leary violated any laws or regulations in connection with Barton’s appointment. Nevertheless, we were troubled by McGoings’s actions in the appointments of Barton and the two sons of other senior EOIR judges in 2010. According to witness testimony and the available evidence, those appointments departed from OCIJ’s general hiring practices in that OCIJ leadership was directly involved in the hiring of students into local immigration courts. The involvement of the Deputy Chief Immigration Judge in the hiring of a

fellow EOIR judge's child, particularly when such involvement is at odds with OCIJ's normal student hiring practices, at a minimum created an appearance of nepotism and favoritism and could have resulted in Barton receiving an unauthorized preference or advantage in violation of 5 U.S.C. § 2302(b)(6).

Moreover, it appears that these students were offered positions based largely, if not exclusively, on the fact that their fathers were EOIR employees. The evidence established that the decision to appoint Barton to a student position was made before receiving his resume, which strongly suggests that he was hired on the basis of something other than his merits.

Given that McGoings held a senior executive position in the organization, he should have been aware that the appointment of another employee's relative at the request of the employee could give the appearance of nepotism or favoritism and could violate merit principles. We believe that it would have been better practice for McGoings to seek guidance from an appropriate ethics official before taking any action at the request of a colleague related to the application of the colleague's relative for a position within his organization.<sup>61</sup>

## **VI. THE APPOINTMENT OF BRIAN O'LEARY'S DAUGHTER TO EOIR STUDENT POSITION**

In 2009, the daughter of Chief Immigration Judge Brian O'Leary was hired into EOIR under the STEP program. In this section, we examine the circumstances of this appointment.

### **A. Facts**

In March 2009, O'Leary was a sitting judge in the Immigration Court in Arlington, Virginia, and his daughter Louise was an architecture major at a Virginia state school.<sup>62</sup> At that time, Mary Jane Graul was the Chief (GS-15) of the EOIR unit that manages the agency's nationwide court facilities, called Space and

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<sup>61</sup> In comments submitted after reviewing a draft of this report, McGoings stated that the "Former Assistant Director for Administration . . . made it clear over the years that agency leadership and component heads need only supply the name(s) of students, relatives or not, and their resume in order for them to be hired for summer employment." However, any such instructions did not relieve EOIR employees from their obligations to avoid nepotism and favoritism and observe merit principles. We recognize that there is no evidence that the appointment of Barton deprived a particular applicant with superior qualifications of a position in EOIR. However, we believe that the manner by which Barton was selected, including McGoings's communications with Neal, created the appearance that the children of senior officials received preferential treatment in summer hiring. We are not suggesting that there is any rule precluding the appointment of employee's relative to a position in the agency – especially if the applicant is hired on the merits in a fair process, without the intercession of his or her relative. However, when (as here) the employee takes an active role in seeking the position for his relative, the appearance of nepotism or favoritism is created. We believe that senior officials such as McGoings should have recognized this appearance problem and sought ethics advice.

<sup>62</sup> "Louise" is a pseudonym. O'Leary told the OIG that he was paying for half of Louise's college expenses, including tuition, housing expenses, and the campus meal plan.

Facilities Management (SFMS). Both O'Leary and Graul told the OIG that during the relevant time period, they were very close friends who socialized outside of work and knew each other's families. Graul told the OIG that she had known Louise for years by the spring of 2009, and that she knew Louise was majoring in architecture.

On March 17, 2009, EOIR posted a vacancy announcement seeking qualified students for STEP positions. The vacancy announcement described the relevant duties as "provid[ing] clerical support to their assigned offices . . . produc[ing] documents through the use of personal computers or typewriter[s]; answer[ing] phones and greet[ing] visitors; sort[ing] and distribut[ing] mail; maintain[ing] files, logs and manuals; [and] duplicat[ing] files and cases." The announcement stated that the employment opportunities need not be related to the students' academic field of study and that the basic "qualification requirements" for all applicants were that they "must be a U.S. citizen and a student" and "a qualified typist (40[words per minute])."

Graul told the OIG that around the time that the vacancy announcement was posted, she had a conversation with O'Leary in which she mentioned that she was planning to hire a student for the upcoming summer. Graul stated that she had a general recollection that O'Leary told her that his daughter might be interested in a position at SFMS or words to that effect. Graul also told the OIG that O'Leary told her in that conversation that Louise would be submitting an application in response to the EOIR student vacancy announcement. According to Graul, she knew at the time that Louise was interested in working in architecture for the summer and that SFMS was the only EOIR unit that had work in that field.

O'Leary told the OIG that he recalled that his daughter wanted to find a position in the summer of 2009 that was related to her academic studies, particularly architecture or interior design, in order to use the skills she was learning in college and gain experience. He also stated that Louise knew at that time that EOIR had building facilities because there were immigration courts throughout the nation, and therefore her focus in their discussions was on SFMS. O'Leary told the OIG that he recalled that his daughter was not interested in working in a court doing support work for lawyers or judges.

According to O'Leary, he told Graul that Louise was going to apply to work at EOIR, although he stated that he did not recall a specific conversation about it. O'Leary stated that he simply informed Graul that Louise was applying and did not advocate that any particular action be taken in respect to Louise. O'Leary told the OIG that he knew Graul already knew that Louise was majoring in architecture and interested in interior design and architecture, so he would not have mentioned that in their conversation.

On March 23, 2009, Louise submitted an application in response to EOIR's vacancy announcement. O'Leary told the OIG that he and his daughter probably communicated about her EOIR application and that he recalled one specific conversation with her about the application process because she had some

concerns about the documents that her school provided to her to support her application.<sup>63</sup>

Roughly two months later, on May 13, 2009, Annette Rendell, a Human Resources official at EOIR, distributed a cert list of 35 qualified applicants.<sup>64</sup> Of the 35 candidates on the cert list, 11 of the students, including Louise, were classified as eligible for GS-4. Rendell then sent the cert list to three managers within EOIR responsible for selecting students, including Graul.<sup>65</sup> Rendell stated that she believed she attached the resumes of all of the 35 qualified candidates to the cert list because it was something she always did and that the law required her to do so.<sup>66</sup>

Although Rendell stated that she believed she attached the application materials for all of the candidates, Graul told the OIG that she recalled that the only application material attached to the cert list that she received was Louise's resume.<sup>67</sup> Graul stated that she "gravitated" toward Louise because she had an architecture background. Graul stated further that she did not know whether any of the other candidates had architecture experience because she did not know their backgrounds and human resources personnel had not attached application materials for any other applicants in the cert list she received. Graul told the OIG that in connection with prior vacancies for students and full-time employees, she told Rendell that she specifically wanted candidates with an architecture background. Graul stated that although she did not recall whether she had reiterated her interest in candidates with architecture experience in connection with the 2009 vacancy, she believed Louise's application was attached to her list as a recommendation from Human Resources personnel that she was the best fit. Graul also stated that she did not know why she did not receive resumes for any other candidates, but added that she assumed that Human Resources personnel would

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<sup>63</sup> The available evidence indicates that O'Leary communicated with an EOIR Human Resources official about a technical aspect of the application process related to required documentation.

<sup>64</sup> "Annette Rendell" is a pseudonym.

<sup>65</sup> EOIR confirmed to the OIG that this cert list was circulated to three EOIR managers, one of whom was Graul.

<sup>66</sup> As noted above, two Human Resources supervisors who worked at EOIR during the relevant time period told the OIG that EOIR Human Resources personnel would transmit to selecting officials the applications for all qualified candidates on a given cert list. These supervisors also stated that EOIR Human Resources personnel did not rank individual applicants within each grade or single out specific applicants as being more qualified.

<sup>67</sup> Other evidence suggested that Graul did in fact receive resumes of other candidates beyond Louise. For instance, Graul was interviewed by an attorney in EOIR's General Counsel's Office during EOIR's informal review and, according to a memorandum detailing that investigation, Graul told the attorney that "to her knowledge, [Louise] responded to a student posting, and her resume came through personnel *along with a number of others.*" (Emphasis added.) We also note that in her first OIG interview, Graul stated: "I may have recommended her . . . because again this list went out and said 'First come, first serve,' and so I believe I probably said 'That's who I would like to hire,' out of the list of, uh, *resumes.*" (Emphasis added.)

have given her the paperwork of other applicants, if any had an architectural background.

Graul told the OIG that she picked Louise among the candidates on the cert list because she had an architecture background, and recommended that her supervisor, who would sign the paperwork as the authorizing official, approve Louise's hiring. According to records, on May 14, 2009, the day after Rendell circulated the cert list, Graul's supervisor approved Louise's hiring.<sup>68</sup> Graul told the OIG that she acted quickly to select Louise because she understood that the list of available students was circulated to other managers and believed the selection of students would be on a first-come-first-served basis.

According to Graul, Louise is the only student she had ever selected or recommended for hire since she joined the Department in 1992.<sup>69</sup> Graul told the OIG that she looked favorably on Louise because she knew her and understood that Louise had the necessary qualifications. However, she denied that she looked at her more favorably than other candidates, stating that "[t]here was nothing to compare [Louise] to." Graul stated that she believed having some experience in architecture was a necessity for the student position at SFMS, and that she would have equally considered any other candidate who also had such a background.

Graul told us that she did not seek any ethics or legal guidance with respect to Louise's application or appointment to EOIR. Graul stated that while she had received ethics training, she did not consider the actions she took relating to Louise's hiring to be unethical.

Rendell did not corroborate Graul's account and disputed Graul's recollection on certain material facts. First, Rendell told the OIG that she did not recall any conversations with Graul in which Graul stated that she wanted students with an architecture background for consideration. In addition, Rendell stated that even if Graul had asked her to only pick out candidates with an architecture background, she could not have done so because an architecture requirement was not identified as a qualification requirement in the vacancy announcement and therefore to only select candidates with that qualification would have been illegal. Rendell told the OIG that she believed the law required them to treat everyone who applies for a position equally throughout the hiring process, and that EOIR would have been required to re-post the announcement and specifically identify experience in architecture as a qualification.

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<sup>68</sup> It is unclear whether Graul interviewed Louise before she selected her for the student position. Graul initially stated that she did not interview anyone and later stated that she believed Louise was the only applicant she interviewed. It is also unclear when any interview would have occurred, as SFMS apparently selected Louise the day after receiving the list of eligible candidates from EOIR Human Resources staff.

<sup>69</sup> Graul told the OIG that she had recommended to her supervisor hiring specific candidates for full-time positions in the past, but never a student. According to Graul, her supervisor had never rejected any of her hiring recommendations.



Moreover, Rendell also stated that she believed she attached the resumes of all of the 35 qualified candidates to the cert list, not just Louise's. According to Rendell, it was her regular practice to send the resumes of all eligible applicants to selecting officials, and she believed the law required her to do so. Rendell stated that there would never be a scenario in which she would pick out a single resume and send only the selected one to a manager. When asked whether managers could receive a cert list and then identify which resumes they wanted to see, Rendell responded, "Absolutely not," noting that the selecting officials would get all of the eligible candidates' resumes.

On May 18, 2009, a program analyst in the Office of the Chief Immigration Judge sent an e-mail to O'Leary stating: "I saw [Louise's] name on the cert. and I asked them . . . to pick her. I'll keep you posted."<sup>70</sup> O'Leary responded to the Program Analyst: "Thanks for looking out for her. She's an architecture major, so she was hoping to get in with SFMS. Please check with Mary Jane Graul because I think they were going to select her."

O'Leary told the OIG that he knew the Program Analyst because she had worked in his direct chain of command when he was the Deputy Chief Immigration Judge between 2003 and 2006. He stated that he believed that she worked at the time in a unit that supported EOIR judges and lawyers, as well as the administrative units in EOIR headquarters and in the field. O'Leary confirmed to the OIG that he was far above the Program Analyst in the hierarchy at the time, as he was a sitting Immigration Judge and she was a career employee.

O'Leary told the OIG that he sent his response to the Program Analyst because he believed that all of the qualified students had been compiled into one unified list and that all of the EOIR components would be choosing students from that list. O'Leary stated that when the Program Analyst sent him the e-mail above, he wanted her to know that Louise's preference was not to be picked by OCIJ because she was not interested in general clerical work. When asked whether O'Leary sent that response because he did not want the Program Analyst's unit to select Louise for a student position, O'Leary replied: "Yes. I didn't want her to be selected by another unit. Because my understanding was if she got selected by that unit, that would end her opportunity to be selected by SFMS."<sup>71</sup>

The next day, May 19, 2009, the Program Analyst replied to O'Leary, stating: "Okay. That's great! I'm sure Mary Jane will get her. [] Let me know when she comes on board so I can meet her." O'Leary then replied: "Thanks again. I hope she makes it."

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<sup>70</sup> The Program Analyst's e-mail identified an unrelated employee by name, which the OIG omitted from the quotation.

<sup>71</sup> With regard to the statement in his e-mail that "I think [the SFMS] were going to select her," O'Leary stated that he did not recall having a conversation with Graul in which she told him that she was going to select Louise, and stated that he definitely did not speak with anyone else at SFMS.

O'Leary then forwarded this e-mail exchange to Graul and wrote "MJ: FYI." In his first OIG interview, O'Leary stated that he sent this e-mail to Graul to inform her that the Program Analyst had somehow discovered that Louise was an applicant for a student position and that it sounded like another component was expressing an interest in hiring her. O'Leary stated in his first interview that he was not trying to influence Graul's decision to hire Louise by sending this e-mail.

In his second OIG interview, O'Leary told the OIG that he did not know when SFMS submitted the paperwork to select Louise, and he forwarded his e-mail exchange with the Program Analyst to Graul because he was concerned that if there was one list of eligible student candidates and Louise was selected for another unit, then she would become unavailable for hire at SFMS. He stated: "So I sent it to Mary Jane on the hope that, if she was going to select her, she did so before one of the other components did."

O'Leary told the OIG that he did not recall communicating with Graul any further in connection with this e-mail. O'Leary also told the OIG that he did not recall speaking with anyone other than Rendell and Graul about Louise's application. Graul told us that she received the e-mail and that no one told her to act quickly to hire Louise. The OIG did not obtain any evidence that Graul responded to O'Leary's May 19 message. As noted above, Graul's supervisor had already approved Louise's hiring on May 14.

On June 12, 2009, Rendell sent a letter to Louise informing her that her appointment with EOIR had been approved. Louise was assigned to SFMS as a GS-4 student clerk with a starting salary of \$29,736 per year. She worked at EOIR during summer and winter vacations until 2012, before resigning to seek another position.

## **B. Analysis of the Conduct of Brian O'Leary**

We concluded that O'Leary's conduct in connection with the appointment of his daughter Louise to a student position at EOIR contravened the Standards of Ethical Conduct. We did not find sufficient evidence to conclude that his conduct violated the federal nepotism statute, 5 U.S.C. § 3110(b). However, we do believe that O'Leary's successful intervention to get his daughter her preferred summer job in EOIR reflected poor judgment and helped perpetuate the widespread culture of nepotism and favoritism in hiring in EOIR.

### **1. Nepotism - 5 U.S.C. §§ 3110(b) and 2302(b)(7)**

We did not find sufficient evidence to conclude that O'Leary violated the federal nepotism statute, 5 U.S.C. § 3110(b). As detailed above, the nepotism statute prohibits a "public official" from appointing, employing, promoting, advancing, or advocating for appointment, employment, promotion, or advancement of his "relative" to a civilian position in the official's agency.

O'Leary, who was serving as an Immigration Judge during the period in question, had authority to make or affect employment decisions within the agency

and therefore qualified as a "public official" under the nepotism statute. In addition, his daughter falls within the statutory definition of "relative." See 5 U.S.C. § 3110(a)(3). We turn therefore to the question of whether O'Leary's conduct constituted advocating for his daughter's appointment within the meaning of 5 U.S.C. § 3110(b).

As noted above, a review of relevant caselaw indicates that "advocate" should be assigned its common meaning, which would include speaking in favor of, recommending, commending, or endorsing a relative for employment. See *Alexander v. Dep't of Navy*, 24 M.S.P.R. 621(1984). Notably, violations of the nepotism statute require some affirmative action beyond submitting or mentioning a relative's employment application. See, e.g., *Wallace v. Dep't. of Commerce*, 106 M.S.P.R. 23 (2007).

In this case, the evidence established that after Graul told O'Leary that she was planning on hiring a student for the upcoming summer, O'Leary responded that his daughter might be interested in that position and that she would be applying to the EOIR vacancy announcement. Both O'Leary and Graul told the OIG that O'Leary's comments did not go beyond that, and the OIG obtained no evidence to the contrary. We found insufficient evidence to conclude that O'Leary's comments crossed the line of impermissible advocacy.

We believe that O'Leary did not have to say much in order to get the advantage for his daughter that he wanted. He was close friends with Graul, who knew Louise and was in charge of the very unit best suited to her training and interests. Merely telling Graul that Louise was interested in a job in SFMS was likely sufficient to achieve the desired result.

We recognize that O'Leary admitted taking subsequent actions on Louise's behalf – namely, alerting OCIJ that Louise preferred to work in SFMS and signaling to Graul that she should move quickly to prevent another unit from selecting Louise. Those actions, however, did not relate to SFMS's decision to hire Louise. As noted above, by the time O'Leary sent the e-mails to the Program Analyst and Graul about the OCIJ unit's interest in Louise, SFMS had already completed the cert list identifying Louise as its selected student and Graul's supervisor had approved the decision. Although we concluded that these actions violated at least one federal regulation (as described below), we found that they did not constitute a violation of the nepotism statute.

At the same time, we cannot ignore that O'Leary knew these acts would have a significant impact on getting Louise the SFMS position she wanted. O'Leary's conduct is especially troubling in light of the fact that he was a sitting judge at the time of these actions and therefore should have known that such conduct was inappropriate or at a minimum close to the line of propriety. If O'Leary had consulted an ethics advisor, he almost certainly would have been told that the most prudent course would be to have no communications at all with EOIR employees about his daughter's application for a summer job. Louise, like many other children of EOIR employees, received an advantage in the hiring process that other students

who applied to work in EOIR did not. O'Leary's role in securing his daughter this advantage undermined the Merit System Principles and helped to perpetuate the widespread culture of favoritism and nepotism in EOIR.

## **2. The Standards of Ethical Conduct - 5 C.F.R. §§ 2635.702 and 2635.502**

We found that O'Leary's conduct on behalf of his daughter violated Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702. That provision states, in part: "An employee shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity." In addition to the general prohibition set forth above, Section 702 includes the following specific prohibition:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

O'Leary and Graul described a conversation in which O'Leary told Graul that Louise planned to apply for a job at EOIR. Even assuming the conversation was limited to this communication, we note that Graul already knew about Louise's training and interest in architecture and design, and nothing else was needed to induce Graul to begin paving the way for Louise to be hired into SFMS. Nevertheless, because the evidence is so limited regarding what O'Leary said to Graul, we cannot on this basis find a violation of Section 702. Further, we note that O'Leary and Graul had a close longstanding friendship, and both of them told us the conversation about Louise was casual. O'Leary could plausibly claim that he was acting on the basis of that friendship and not using his government position to induce Graul to assist Louise.

However, we believe that O'Leary's subsequent acts to ensure that Louise got the job she wanted in SFMS were taken in his capacity as a government employee and did violate Section 702. As described above, when an OCIJ program analyst indicated that she wanted to select Louise for a student position, O'Leary informed her that Louise wanted to work at SFMS and that she should check with Graul because he believed SFMS would be selecting Louise. According to O'Leary, the purpose of his e-mail was that he wanted the Program Analyst to know that Louise was not interested in general clerical work and did not want to be picked by OCIJ, and that he was trying to discourage her unit from selecting Louise, so that Louise would still be available for the SFMS position, which both he and Louise preferred. Significantly, O'Leary told us that he understood that if OCIJ offered Louise a position, it would end her opportunity to be selected by SFMS. We also note that O'Leary told the OIG that the Program Analyst had been in his direct chain of command previously and, at the time of these e-mails, was junior to him in the EOIR hierarchy.

We therefore concluded that O'Leary used his position in a manner that was intended to induce the Program Analyst to not select his daughter so that she would get the preferred position at SFMS. The fact that a position in the Program Analyst's office may have paid the same amount as the SFMS position is immaterial, as the regulation expressly includes non-financial benefits. In this case, the benefit that O'Leary sought for this daughter was the position in a preferred office, SFMS, which they believed would develop the skills she was learning in college and give her experience in her chosen field. Similarly, O'Leary's subsequent e-mail to Graul was intended to encourage her to move quickly before Louise was chosen for a less desirable position. And, even though the selection had already been approved by Graul's supervisor on May 14, O'Leary was unaware of that and his communications with the Program Analyst and Graul were still "intended . . . to induce" the desired result, even if they were unnecessary to do so.

We considered whether O'Leary's May 18 e-mail to the OCIJ Program Analyst (which he forwarded to Graul the next day) may also have violated 5 C.F.R. § 2635.502, which prohibited O'Leary from participating substantially in any matter that he knew would have a direct and predictable effect on Louise's financial interest.<sup>72</sup> The "particular matter" here can be identified as whether SFMS would hire Louise for a summer job. So defined, the matter clearly was likely to affect Louise's financial interest. O'Leary told us that his purpose in sending the e-mail was to help ensure that Louise would get a position in SFMS, because it was his understanding that if OCIJ extended an offer to Louise before SFMS did, it would "end her opportunity to be selected by SFMS." Assuming that O'Leary was correct in that belief, his intervention to dissuade OCIJ from making an offer to Louise could be considered "participation" in the particular matter. However, we note that Graul's supervisor's signature authorizing the SFMS's selection of Louise was dated May 14, 2009, several days before O'Leary's e-mail. It is unclear when that request was submitted to EOIR Human Resources personnel. If SFMS submitted its request before O'Leary's e-mail to Graul, this would raise doubt whether O'Leary's effort to discourage the OCIJ office from hiring his daughter in the May 18 e-mail exchange had any effect at all on the outcome, which would raise a question about if he actually "participated" in the matter in a meaningful way. Under the circumstances, we did not find sufficient evidence to conclude that O'Leary failed to comply with Section 502.<sup>73</sup>

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<sup>72</sup> We also analyzed O'Leary's conduct in connection with his daughter's hiring under the federal conflict-of-interest statute, [REDACTED]. That provision, however, is limited in scope to particular matters that benefit an official's "minor child." We understand that Louise was not a minor during the relevant time period and therefore we concluded that O'Leary's conduct could not have violated that provision.

<sup>73</sup> If the "particular matter" is defined as "where Louise will be placed in EOIR," then there arguably is no violation of Section 502 because there is no evidence that one job paid more than the other. Defined this way, the "matter" did not affect Louise's financial interest, and Section 502 would not be implicated.

### C. Analysis of the Conduct of Mary Jane Graul

Although our review focused on the conduct of O'Leary, we could not ignore the role of Mary Jane Graul in selecting Louise for a STEP position. We concluded that Graul granted Louise a preference not available to other candidates because she was the daughter of O'Leary, in violation of the Merit System Principles and the Standards of Ethical Conduct. As noted above, 5 U.S.C. § 2301(b)(1) requires that employee recruitment, selection, and advancement be based on merit, after fair and open competition. Section 2302(b)(6) prohibits the granting of unauthorized preferences or advantages to job applicants. Section 702 of the Standards of Ethical Conduct prohibits the use of an official's position for the benefit of a friend, relative, or other person with whom the official is affiliated in a nongovernmental capacity.

Graul told us she had known Louise for years prior to her hiring and maintained a close personal friendship with her father. These out-of-office relationships should have been a reason for Graul to be very cautious in taking any official acts that might affect Louise. Even in the absence of such relationships, Graul should have been careful about giving a preference to Louise in light of the fact that her father was an Immigration Judge.

Instead, Graul appears to have given Louise advantages that no other STEP applicant ever received from her. Significantly, Graul told us that Louise is the *only* student she ever selected or recommended for appointment in her 22-year career at EOIR. In all the years before or after the three summers that Louise worked in Graul's unit, Graul never found it necessary to select or recommend a student for appointment. Second, Graul selected Louise within 24 hours of receiving the cert list with her name on it. We note that Graul gave inconsistent accounts of whether she interviewed Louise at all for the position before selecting her. Graul initially stated that she did not interview anyone, but later stated that she believed that Louise was the only applicant she interviewed. In her third interview, however, Graul stated unequivocally that she did not interview Louise.

Third, there is no evidence that Graul gave serious consideration to any other candidate for the STEP position in SFMS. Graul told us she did not review the resumes of any other candidates because the only candidate whose resume was sent to her was Louise's. Graul stated that the reason she only received one resume was that she had told Annette Rendell, an EOIR Human Resources official with responsibility for the STEP program, in connection with other SFMS vacancies that she wanted only candidates who had architecture backgrounds. Graul said that she believed Louise's resume was the only one that Human Resources sent to her in connection with this vacancy.

We did not credit Graul's account of receiving only one resume. It appears to be inconsistent with the account she gave to EOIR during its internal review. The EOIR memorandum characterized Graul's comments as follows: "to [Graul's] knowledge, Louise responded to a student posting, and her resume came through personnel *along with a number of others.*" (Emphasis added.) Moreover, Rendell

testified that she did not recall Graul ever telling her that she was interested only in students with an architecture background, and that she believed such a request would have been illegal, as architecture experience was not identified as a qualification requirement in the vacancy announcement. Rendell stated that to her knowledge she sent the resumes of all the eligible candidates identified on the cert list because she always did so and the law required her to do so. We found Rendell's testimony, supported by her understanding of appropriate hiring practices, credible. It was further supported by two Supervisory Human Resources Specialists familiar with EOIR's cert list practices for STEP hiring, who confirmed that it was the practice of EOIR Human Resources personnel to transmit the applications for *all* qualified candidates on a given cert list to the selecting official. We therefore concluded that Graul received more than one resume, but that she only gave serious consideration to hiring Louise.

Taken together, the evidence does not suggest that Graul's selection of a summer student for SMFS was open and fair, as required under 5 U.S.C. § 2301(b)(1). Rather, we concluded that Graul gave Louise an unlawful preference in violation of 5 U.S.C. § 2302(b)(6). We also concluded that, even though Louise was qualified to work at SMFS, the record establishes that Graul acted because of her relationships with O'Leary and with Louise herself, thereby using her office to provide a benefit to a friend or other person with whom she was affiliated in a non-governmental capacity, in violation of Section 702 of the Standards of Ethical Conduct. Graul did not give equivalent consideration to other applicants.

Section 702(d) of the Standards of Ethical Conduct counsels employees to consult ethics officials in cases potentially involving the granting of benefits to friends. If Graul had told an ethics advisor that she was a close personal friend of O'Leary and Louise, she likely would have been advised to recuse herself from participating in hiring Louise or at least cautioned to ensure that the hiring process remained open and fair and that Louise did not receive an improper preference.

We do note that Graul's conduct appears to have been no different than that of numerous other officials in EOIR who routinely gave preference to the relatives of other EOIR employees in selecting students for jobs under the STEP program and, in that regard, represents just one incident in a larger culture of nepotism and favoritism.

## **VII. CONCLUSIONS AND RECOMMENDATION**

This review was initiated as a result of a recommendation by the Office of the Deputy Attorney General that EOIR inform the OIG about certain hiring practices in EOIR. We focused on the appointment of the relatives of three of the most senior EOIR officials because of the inherent difficulty that any EOIR employee would face in conducting such a review internally.

Our review uncovered violations of law and troubling lapses in judgment between 2007 and 2010 by several senior EOIR judges and other officials in connection with the appointment of their own relatives to STEP positions in EOIR.

We concluded that Juan Osuna's participation in the appointment of his niece violated several statutes and regulations, including 5 U.S.C. § 3110(b), the federal nepotism prohibition; 5 C.F.R. § 2635.702, which prohibits an employee from using his public office for his relatives' private gain; and 5 C.F.R. § 213.3202(a)(7), which prohibits a direct reporting relationship between an employee and a relative employed in a STEP position. We also concluded that Osuna failed to adhere to the guidelines set forth in 5 C.F.R. § 2635.502, which governs an employee's participation in a matter affecting the financial interest of a person in a covered relationship.

With regard to David Neal, we concluded that his conduct in connection with the employment of his daughter violated 5 C.F.R. § 213.3202(a)(7), which prohibits a direct reporting relationship between an employee and a relative employed in a STEP position. While we concluded that Neal's conduct in connection with his daughter's appointment did not violate the federal nepotism prohibition (5 U.S.C. § 3110(b)), [REDACTED], or conflict-of-interest regulations (5 C.F.R. § 2635.502), we found Neal exercised poor judgment in connection with his daughter's interest in working at EOIR.

In connection with the appointment of Neal's son to an EOIR student position, we found insufficient evidence to conclude that Neal violated the federal laws governing conflicts of interest. We did find, however, that David Neal's conduct related to his son's employment violated the federal nepotism prohibition, 5 U.S.C. § 3110(b).

We concluded that Brian O'Leary's conduct in connection with the appointment of his daughter to a student position at EOIR violated Section 702 of the Standards of Ethical Conduct, which prohibits an employee from using his public office for his relatives' private gain. Although we did not find sufficient evidence to conclude that his conduct violated the federal nepotism statute, 5 U.S.C. § 3110(b), we concluded that O'Leary's efforts to secure for his daughter a certain position in EOIR reflected poor judgment and helped perpetuate the widespread culture of nepotism and favoritism in hiring in EOIR.

In addition, several other senior EOIR employees took specific actions to facilitate the placement of the relatives of these senior EOIR officials in a manner that violated the Merit System Principles and gave these students unfair advantages.

We are referring our findings to the Office of the Deputy Attorney General for its review and appropriate disciplinary action.

Although our inquiry focused exclusively on four specific appointments of persons related to three very senior employees, we believe that these hires were emblematic of a pervasive problem in EOIR's student hiring under the STEP program – namely, that students who were related to or referred by EOIR employees enjoyed a considerable advantage in securing paid student positions with the organization. The evidence established that some selecting officials decided to hire student candidates before receiving the students' resumes or



conducting interviews and apparently based their decisions solely on the candidates' relationships with EOIR employees. Some administrative personnel in EOIR's components were actively involved in placing such candidates in the organization, including two BIA officials who told the OIG that they believed placing such students in EOIR positions was one of their job responsibilities. In that environment, candidates with no connections to EOIR employees were rarely considered for STEP positions in some EOIR components and therefore stood little chance of securing such a position.

As detailed in this report, the culture of improper hiring started from the top. It was so permissive that some EOIR employees aggressively sought positions for their children, other relatives, or friends, including senior officials who openly advocated for the hiring of their relatives to other EOIR employees. It is especially troubling that some of EOIR's senior administrative personnel – the officials who should know hiring rules and provide correct guidance to other EOIR employees – either misunderstood those rules or intentionally violated them, thereby perpetuating EOIR's errant hiring practices. Indeed, as noted above, the then-Human Resources Officer for EOIR wrote multiple e-mails that clearly crossed the line to secure a STEP position for her own son.

In comments submitted after reviewing a draft of this report, Osuna stated:

[A]s Director of EOIR I took immediate and aggressive action to learn about and address any policies or practices that violated nepotism standards upon learning of the OIG's views on the matter. Specifically, within days of OIG's 2012 report on prohibited practices at the Justice Management Division, I directed EOIR's senior managers to investigate similar practices at EOIR, and to report them to our Office of General Counsel. I included myself in this initiative. The results of that internal investigation were ultimately reported to the Office of the Deputy Attorney General and eventually to OIG. Moreover, shortly thereafter I put in place at EOIR a new anti-nepotism policy consistent with OIG's standards. Thus, my conduct, and that of my agency, upon learning of OIG's interpretation of the applicable standards has reflected good faith efforts to be transparent, responsive, and to get it right.

We acknowledge the important and positive steps Director Osuna took following issuance of the OIG's 2012 report, including ordering the compilation of a list of EOIR employees who had family members hired by EOIR in the past five years and issuing a Nepotism Policy. EOIR's new policy required an applicant's relative to certify that he or she has not participated in any manner related to the component's consideration of the application, and required the hiring official to acknowledge the prohibition on the granting of unauthorized preferences and to certify compliance with the Merit System Principles. EOIR has also informed the OIG that it intends to provide agency-wide training regarding nepotism. As noted, we believe that EOIR was one of the first components to adopt a more restrictive policy on nepotism in response to the OIG's 2012 JMD report.

Such steps are commendable, and reflect positively on the willingness of EOIR leadership to confront and address these important issues. We note, however, that it will not be sufficient for EOIR employees to merely abstain from advocating explicitly on behalf of their own relatives if other employees continue giving illegal preferences to the relatives of EOIR personnel. The OIG therefore recommends that EOIR's training focus not only on the need to avoid improper "advocacy" for the hiring of relatives that would violate the nepotism statute, but also the broader provisions of the Merit Systems Principles and Prohibited Personnel Practices that prohibit the granting of unauthorized preferences to relatives of EOIR employees, regardless of whether the employee has engaged in any "advocacy" on his or her relative's behalf.

On September 16, 2014, the Deputy Attorney General issued a memorandum directing all Department components to adopt hiring disclosure procedures similar to those adopted by JMD in response to the OIG's 2012 JMD report. Thereafter, JMD revised its procedures to include the requirement that, in the case of an applicant who is a relative of a DOJ employee, the selecting official must certify that the relationship between the applicant and the DOJ employee did not influence the selection decision. EOIR's compliance with these procedures will help prevent the granting of unauthorized preferences in the future.

The conduct that we saw in this report infected the entire organization from the highest levels down, and only through a concerted effort and continued vigilance will it be eradicated and hiring returned to the principles of fair competition that are rightly expected of a component of the Department of Justice.

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