



evidence that was not included in the record. Consistent with the following, we remand the case to the Judge.

At the hearing, the Judge left the record open until August 8, 2016, for Applicant to submit documents. Tr. at 56 and 64. In the decision, the Judge noted that Applicant did not submit any documents. In her appeal brief, Applicant asserted she submitted documents to Department Counsel on August 8, 2016, and provided a copy of the email that she sent to Department Counsel along with its five purported attachments.

Applicant's assertions on appeal constitute new evidence, which we are generally prohibited from considering. However, we will consider new evidence insofar as it bears upon threshold issues such as due process. *See, e.g.*, ISCR Case No.14-00812 at 2 (App. Bd. Jul. 8, 2015). Under the facts of this case, we conclude that Applicant's assertions are sufficient to raise a *prima facie* case that she submitted documents to Department Counsel that either did not arrive at DOHA or were not sent to the Judge. We cannot resolve this issue based upon the facts before us. Accordingly, we conclude that the best resolution of this case is to remand it to the Judge for further processing consistent with the Directive. *See, e.g.*, ISCR Case No. 12-07667 at 2-3 (App. Bd. Mar. 11, 2013).

### Order

The Decision is **REMANDED**.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board