



Department of Justice

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FACT SHEET BOARD OF IMMIGRATION APPEALS: FINAL RULE

The Purpose of the Rule: Providing Quality Service Through More Expeditious Review

People from around the world come to the U.S. to seek the same dreams that have inspired millions of others: they want a better life for their families and children. In keeping with the Administration's commitment to transforming the immigration service system to one that ensures fairness and integrity, yet also provides timely and accurate services, these reforms are intended to provide all immigrants with efficiency and effectiveness in the immigration adjudication process.

Revamping the Structure and Procedures of the BIA. This final rule revises the structure and procedures of the Board of Immigration Appeals (BIA, or Board) to enable the Board to reduce delays in the administrative review process, eliminate the existing backlog of cases, and focus more attention and resources on those cases presenting significant issues for resolution. The reforms mandated by this rule are part of a broader reorganization process that the Department of Justice is undertaking in order to better serve its mission of protecting national security, enforcing our nation's laws, and providing quality service to immigrants, citizens, and businesses.

Four Important Objectives: The Attorney General has stressed four important objectives in the disposition of administrative immigration appeals:

- Eliminating the current backlog of cases pending before the Board;
- Eliminating unwarranted delays in the adjudication of administrative appeals;
- Utilizing the resources of the Board more efficiently; and
- Allowing more resources to be allocated to the resolution of those cases that present difficult or controversial legal questions – cases that are most appropriate for searching appellate review and that may be appropriate for the issuance of precedent decisions.

***Addressing Concerns with the BIA's Efficiency and Effectiveness:
A Significant Backlog of Cases Has Developed Over Time,
Slowing Down the System for Many***

The BIA Has Been Unable to Effectively and Efficiently Adjudicate Its Caseload in Years Past. The immigration court system receives a staggering number of cases - approximately 271,000 a year. Due to an inefficient adjudication process, the Board has not been able to keep up with its appellate caseload. Despite a steady increase in the number of Board members over the last several years, the Board has accrued a backlog of more than 56,000 cases.

- **The Attorney General Recognized the Problem, and Mandated Reform.** The Attorney General recognizes that the delays have affected the Department's law enforcement effectiveness, while contributing to the public perception that "justice delayed is justice denied." To address this problem, which is fundamentally an issue of procedures and not personnel, the Attorney General has mandated reforms to the Board's adjudication process and has made these reform a top priority of the Department.
- **The Reforms Build on the Streamlining Initiative that Has Already Produced Results.** The Board's streamlining initiative has significantly reduced the current backlog within the last 6 months to less than 47,000 cases and allowed the Board to resolve twice as many cases than before. This rule will expand upon the streamlining process already in place and make it the dominant method for adjudicating the majority of cases before the Board.

***Summarizing the Key Reforms:
Reforms Will Ensure Timely Adjudication and Strengthen
the BIA's Review Process***

Necessary Reforms. This rule reflects a variety of necessary reforms to achieve the goals of strengthening the Board's review process, enhancing the function of the Board in resolving issues, providing effective guidance regarding the implementation of the immigration laws, and improving the timeliness of the Board's review. Some of the key reforms include:

- **Improved Streamlining.** The reform procedures expand the existing streamlining process by which the Board resolves routine appeals through a single member adjudication process. The rule expands the existing streamlining process and makes it the dominant method of adjudication for the majority of routine cases before the Board.
 - ✓ The Department agrees with the fundamental assessment by outside evaluators that the Board's use of the streamlining process already in place has been successful.

- ✓ As a retired Board Member testified before the House Judiciary Committee, the "overwhelming percentage of immigration judge decisions . . . [are] legally and factually correct."
 - ✓ Single-member review is appropriate in these straightforward cases where there has been no historic disagreement within the Board over the result.
- **Three-Board Member Review Remains for Complex Cases, and for Those that Require Interpretation of Law, or the Correction of Clear Errors of Fact.** The rule provides for three member review in cases that require the Board to correct clear errors of fact, interpret the law, and provide guidance regarding the exercise of discretion. This will enable the Board to resolve simple cases efficiently, while reserving its limited resources for more complex cases and the development of precedent to guide the immigration judges and the parties. Three-member panels will focus on:
 - ✓ Settling inconsistencies among the rulings of different immigration judges;
 - ✓ Establishing precedent construing the meaning of laws, regulations, or procedures;
 - ✓ Reviewing decisions by immigration judges or the Immigration and Naturalization Service (INS) that are not in conformity with the law or with applicable precedents;
 - ✓ Resolving cases or controversies of major national import; and
 - ✓ Reviewing clearly erroneous factual determinations by immigration judges.
 - **According an Appropriate Amount of Deference to Immigration Judges' Fact-Findings.** The rule replaces the existing standards of review with the more deferential "clearly erroneous" standard for review of immigration judges' factual findings. Under the current procedure, which may apply the "*de novo*" standard of review, the Board may look at a case anew without according deference to the immigration judge's factual or other findings. The final rule requires the Board to apply the much more deferential "clearly erroneous" standard in its review of immigration judges' fact findings. Under the "clearly erroneous" standard, the Board may not disturb an immigration judge's fact findings unless they were so clearly wrong that they must be overturned.
 - ✓ The Board's historic rule of not considering new evidence on appeal is codified in this rule. The Board, however, may remand cases to the immigration judge for any fact-finding that may be required after a case goes on appeal.
 - ✓ The rule will allow the Board to continue reviewing the decisions of the INS under the broader "*de novo*" standard of review.

- **Establishing Reasonable Deadlines for the Completion of Board Decisions.** The time period allowed for transcript production, briefing, and the adjudication of the appeals will be shortened. The Chairman will be responsible for a case management screening system to review all incoming appeals and to provide for prompt and appropriate disposition of all cases.
 - ✓ After a case is ready for adjudication, ideally single-member adjudications will be completed within 90 days and three-member adjudications will be completed within 180 days.
 - ✓ Appeals that are untimely filed and must be dismissed on that basis will be processed more efficiently.
 - ✓ Immigration judges will be required to review their decisions and the hearing transcripts in a timely manner.
 - ✓ Parties will be required to brief cases expeditiously, generally within a 21-day period.
- **After a Transition Period, the Board Will Be Reduced in Size.** After a transition period to implement the new procedures and to reduce the current backlog, the size of the Board will be reduced to 11 members. Eleven members is the appropriate size for the Board based on the historic capacity of appellate courts and administrative appellate bodies to adjudicate the law in a cohesive manner, the ability of individuals to reach consensus on legal issues, and the requirements of the existing and projected caseload.

Developing the Final Rule:

Giving Careful Consideration to the Comments of Those Affected

A Process that Accorded Opportunity for Comment. The proposed rule was published on February 19, 2002. The Department received nearly 70 helpful comments. After a careful review of these comments, the Department has made a number of changes, including provisions for:

- **Consecutive filing of briefs in non-detained cases**, rather than the proposed rule provision for concurrent filing.
- **Discretionary determinations of when a case should be heard by a three-member panel**, rather than the proposed rule provision that made these determinations mandatory.
- **Discretionary determinations of when a case should be summarily dismissed**, rather than the proposed rule provision that permitted no discretion.

- **The "clearly erroneous" standard will be applied only to factual determinations by immigration judges, not INS determinations or questions of law or judgment.**
- **The "clearly erroneous" standard will be applied only to appeals filed after the effective date of the rule.**
- **In addition, because of concerns raised in comments received, the Attorney General has instructed the Board's Chairman to:**
 - ✓ **Establish a system of quality assurance in Board decisions; and**
 - ✓ **Ensure, with the Chief Immigration Judge, that transcripts of proceedings are provided to the parties in a timely manner.**

All of the changes in the final rule were the product of suggestions provided by the public as well as the components of the Department of Justice.