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8 Stays

8.1 In General

A stay prevents the Department of Homeland Security from executing an order of removal, deportation, or exclusion. Stays are automatic in some instances and discretionary in others. This chapter provides general guidance regarding stays. For particular cases, parties should consult the controlling law and regulations. See INA §§ 240(b)(5)(C), 240(c)(7)(C)(iv), 8 C.F.R. §§ 1003.2(f), 1003.6, 1003.23(b)(1)(v), 1003.23(b)(4)(ii).

For cases under the jurisdiction of the Board of Immigration Appeals, parties should consult the Board of Immigration Appeals Practice Manual. The Board of Immigration Appeals Practice Manual is available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir/biainfo.htm.

8.2 Automatic Stays

(a) Removal proceedings. — There are limited circumstances in which an order of removal is automatically stayed:

- during the 30-day period for filing the direct appeal of an Immigration Judge's decision on the merits, unless the right to appeal has been waived
- during the direct appeal of an Immigration Judge's decision on the merits of the case (not including bond and custody determinations)
- during the period in which a case is certified to the Board of Immigration Appeals
- during the period between the filing of a motion to reopen to rescind an in absentia order and the Immigration Judge's ruling on that motion
- pending the final disposition, including appeal, of certain motions to reopen by battered spouses, children, and parents

An appeal or motion must be timely and properly filed for an automatic stay to take effect.

When a stay is automatic, the Immigration Judge does not issue an order staying removal.

(b) Deportation and exclusion proceedings. — There are important differences between the automatic stay provisions in deportation and exclusion proceedings and the automatic stay provisions in removal proceedings. Those differences are not covered in this Practice Manual. Accordingly, parties in deportation or exclusion proceedings should carefully review the controlling law and regulations.

8.3 Discretionary Stays

An Immigration Judge is authorized to grant stays as a matter of discretion, but only for matters within the Immigration Judge's jurisdiction. See Chapters 1.5 (Jurisdiction and Authority), 6.3 (Jurisdiction). Immigration Judges consider requests for discretionary stays only when a motion to reopen or a motion to reconsider is pending before the Immigration Court.

(a) Motion required. — A request for a discretionary stay should be made by written motion. The motion should be filed with a cover page labeled "MOTION TO STAY REMOVAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

If the execution of an order is imminent, the motion should be filed with a cover page labeled "EMERGENCY MOTION TO STAY REMOVAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

(b) Contents. — A motion for a discretionary stay should state the complete case history and all relevant facts. It should also include a copy of the order that the party wants stayed, if available. If the moving party does not have a copy of the order, that party should provide the date of the order and a detailed description of the Immigration Judge's ruling and reasoning, as articulated by the Immigration Judge. If the facts are in dispute, the moving party should provide appropriate evidence. See Chapter 5.2(e) (Evidence).

(c) Pending motions. — The mere filing of a motion for a discretionary stay of an order does not prevent the execution of the order. Therefore, the order may be executed unless and until the motion is granted.