Board of Immigration Appeals
Practice Manual

This Practice Manual has been assembled as a public service to parties appearing before the Board of Immigration Appeals.

This manual is strictly informational in nature. This manual is not intended, in any way, to substitute for a careful study of the pertinent laws and regulations. Readers are advised to review Chapter 1.1 before consulting any information contained herein.

The Practice Manual is updated periodically. The legend at the bottom of each page reflects the last revision date for that page. Updates of the Practice Manual are available through the EOIR Web site at www.usdoj.gov/eoir.

The Board of Immigration Appeals

Lori L. Scialabba, Chairman

David B. Holmes	Anthony C. Moscato
Gerald S. Hurwitz	Neil P. Miller
Lauri S. Filppu	Juan P. Osuna
Patricia A. Cole	Roger Pauley
Edward R. Grant	Frederick D. Hess

The Board would like to express its gratitude to Stephen Griswold, Andrea Macri, and David Neal for their efforts in the preparation of the Practice Manual and these Questions and Answers Regarding Proceedings Before the Board.

Lori Scialabba

Chairman, Board of Immigration Appeals

TABLE OF CONTENTS

Chapter 1 The Board of Immigration Appeals

Chapter 2 Appearances before the Board

Chapter 3 Filing with the Board

Chapter 4 Appeals of Immigration Judge Decisions

Chapter 5 Motions before the Board

Chapter 6 Stays and Expedite Requests

Chapter 7 Bond

Chapter 8 Oral Argument

Chapter 9 Visa Petitions

Chapter 10 Fines

Chapter 11 Discipline of Practitioners

Chapter 12 Forms

Chapter 13 Freedom of Information Act (FOIA)

Chapter 14 Other Information

Appendices

Word Index

Citation Index

TABLE OF CONTENTS

Chapter 1 The Board of Immigration Appeals
1.1 Scope of the Practice Manual 1
1.2 Function of the Board 1
1.3 Composition of the Board 3
1.4 Jurisdiction and Authority 5
1.5 Public Access 10
1.6 Inquiries 12

Chapter 2 Appearances before the Board
2.1 Representation Generally 15
2.2 Unrepresented Aliens ("Pro se" Appearances) 16
2.3 Attorneys 17
2.4 Accredited Representatives 22
2.5 Law Students and Law Graduates 24
2.6 Paralegals 25
2.7 Immigration Specialists 25
2.8 Family Members 25
2.9 Others 25
2.10 Amicus Curiae 27

Chapter 3 Filing with the Board
3.1 Delivery and Receipt 28
3.2 Service 32
3.3 Documents 34
3.4 Filing Fees 40
3.5 Briefs 43
3.6 Expedite Requests 43

Chapter 4 Appeals of Immigration Judge Decisions
4.1 Types of Appeal 44
4.2 Process 44
4.3 Parties 47
4.4 Filing an Appeal 49
4.5 Appeal Deadlines 51

Chapter 4 Appeals of Immigration Judge Decisions (cont.)
4.6 Appeal Briefs 52
4.7 Briefing Deadlines 59
4.8 Evidence on Appeal 62
4.9 New Authorities Subsequent to Appeal 62
4.10 Combining and Separating Appeals 62
4.11 Withdrawing an Appeal 63
4.12 Non-Opposition to Appeal 64
4.13 Effect of Departure 65
4.14 Interlocutory Appeals 65
4.15 Summary Affirmance 66
4.16 Summary Dismissal 67
4.17 Frivolous Appeals 68
4.18 Certification by an Immigration Judge 68

Chapter 5 Motions before the Board
5.1 Who May File 69
5.2 Filing a Motion 70
5.3 Motion Limits 74
5.4 Motion Briefs 74
5.5 Transcript Requests 74
5.6 Motions to Reopen 75
5.7 Motions to Reconsider 77
5.8 Motions to Remand 79
5.9 Other Motions 79
5.10 Decisions 81
5.11 Effect of Departure 81
5.12 Non-Opposition to Motion 81

Chapter 6 Stays and Expedite Requests
6.1 Stays Generally 82
6.2 Automatic Stays 82
6.3 Discretionary Stays 83
6.4 Procedure for Requesting a Discretionary Stay 83
6.5 Expedite Requests 85

Chapter 7 Bond
7.1 Bond Appeals Generally 86
7.2 Jurisdiction 86
7.3 Procedure 88
7.4 Mootness 90

Chapter 8 Oral Argument
8.1 Oral Argument Coordinator 91
8.2 Selection of Cases 91
8.3 Notification 92
8.4 Location 93
8.5 Public Access 93
8.6 Appearances 95
8.7 Rules of Oral Argument 96
8.8 Conclusion of Oral Argument 100

Chapter 9 Visa Petitions
9.1 Visa Petitions Generally 102
9.2 Jurisdiction Generally 102
9.3 Visa Petition Denials 102
9.4 Visa Revocation Appeals 105
9.5 Visa Revalidation Appeals 106

Chapter 10 Fines
10.1 Fines Generally 107
10.2 Jurisdiction 107
10.3 Processing 107
10.4 Personal Interviews 110

Chapter 11 Discipline of Practitioners
11.1 Practitioner Discipline Generally 111
11.2 Definition of Practitioner 111
11.3 Jurisdiction 111
11.4 Conduct 112
11.5 Complaints 113
11.6 Duty to Report 114
11.7 Procedure 114
11.8 Sanctions 116
11.9 Confidentiality 117

Chapter 11 Discipline of Practitioners (cont.)
11.10 Effect on Cases before the Board 117
11.11 List of Suspended and Expelled Attorneys 117
11.12 Reinstatement 118

Chapter 12 Forms
12.1 Forms Generally 120
12.2 Obtaining Blank Forms 120
12.3 Submitting Completed Forms 122

Chapter 13 Freedom of Information Act (FOIA)
13.1 Generally 123
13.2 Requests 123
13.3 Denials 125

Chapter 14 Other Information
14.1 Reproduction of the Practice Manual 126
14.2 Updates to the Practice Manual 126
14.3 Updates of the Q&As 126
14.4 Public Input 126

Appendices
A Mailing Addresses A-1
B Directory B-1
C Organizational Chart C-1
D Deadlines D-1
E Forms E-1
F Sample Cover Page F-1
G Sample Proof of Service G-1
H Sample Certificate of Translation H-1
I Telephonic Information I-1
J Citation Guidelines J-1
K Where to File a Motion K-1

1 The Board of Immigration Appeals

1.1 Scope of the Practice Manual

(a) *Authority.* — The Board of Immigration Appeals has the authority to prescribe rules governing proceedings before it. 8 C.F.R. § 1003.1(d)(3), (4).

(b) *Purpose.* — This manual describes procedures, requirements, and recommendations for practice before the Board of Immigration Appeals. This manual is provided for the information and convenience of the general public and for parties that appear before the Board.

(c) *Disclaimer.* — This manual does not carry the weight of law or regulation. This manual is not intended, nor should it be construed in any way, as legal advice, nor does it extend or limit the jurisdiction of the Board as established by law and regulation.

(d) *Revisions.* — The Board reserves the right to amend, suspend, or revoke the text of this manual at its discretion. To obtain updates of this manual, see Chapter 14.2 (Updates of the Practice Manual).

1.2 Function of the Board

(a) *Role.* — The Board of Immigration Appeals is the highest administrative tribunal on immigration and nationality matters in the United States. The Board is responsible for applying the immigration and nationality laws uniformly throughout the United States. Accordingly, the Board has been given nationwide jurisdiction to review the orders of Immigration Judges and certain decisions made by the Department of Homeland Security (DHS), and to provide guidance to the Immigration Judges, DHS, and others, through published decisions. The Board is tasked with resolving the questions before it in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act and regulations, and to provide clear and uniform guidance to DHS, Immigration Judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations. 8 C.F.R. § 1003.1(d)(1).

The Board is also responsible for the recognition of organizations and the accreditation of representatives wishing to appear before the Immigration Courts, DHS, and the Board.

(b) *Location within the federal government.* — The Board of Immigration Appeals is a component of the Executive Office for Immigration Review (EOIR) and, along with the Office of the

Chief Immigration Judge (OCIJ) and the Office of the Chief Administrative Hearing Officer (OCAHO), operates under the supervision of the Director of the Executive Office for Immigration Review. See 8 C.F.R. § 1003.0(a). In turn, the Executive Office for Immigration Review is a component of the Department of Justice and operates under the authority and supervision of the Attorney General. See Appendix C (Organizational Chart).

(c) *Relationship to the Immigration Courts.* — The Office of the Chief Immigration Judge (OCIJ) oversees the administration of the Immigration Courts nationwide and exercises administrative supervision over Immigration Judges. The Immigration Judges, as independent adjudicators, make determinations of removability, deportability, and excludability, and adjudicate applications for relief. The Board, in turn, reviews the decisions of the Immigration Courts. The decisions of the Board are binding on the Immigration Courts, unless modified or overruled by the Attorney General or a federal court. See Chapters 1.4(a) (Jurisdiction), 1.4(d) (Board decisions).

(d) *Relationship to the Department of Homeland Security (DHS).* — The Department of Homeland Security was created in 2002 and assumed most of the responsibilities of the now abolished Immigration and Naturalization Service (INS). DHS is responsible for the enforcement of the immigration laws and the administration of immigration and naturalization benefits. In contrast, the Board and the Immigration Courts are responsible for the independent adjudication of cases under the immigration and nationality laws. Thus, DHS is entirely separate from the Department of Justice and is deemed a party when appearing before the Board or an Immigration Court. See Chapters 1.4(a) (Jurisdiction), 1.4(d) (Board decisions), 1.4(f) (Department of Homeland Security).

(e) *Relationship to the Immigration and Naturalization Service (INS).* — Prior to the creation of the Department of Homeland Security, the Immigration and Naturalization Service (INS) was the component of the Department of Justice responsible for the enforcement of the immigration laws and the administration of immigration benefits. The role of the INS has now been assumed by the DHS. See subsection (d), above.

(f) *Relationship to the Office of the Chief Administrative Hearing Officer (OCAHO).* — The Office of the Chief Administrative Hearing Officer (OCAHO) is an independent entity within the Executive Office for Immigration Review. OCAHO is responsible for hearings involving employer sanctions, antidiscrimination, and document fraud under the Immigration and Nationality Act. The Board does not review decisions made by OCAHO. OCAHO Administrative Law Judges may be designated by the Director of the Executive Office for Immigration Review to serve as Temporary Board Members.

(g) *Relationship to the Administrative Appeals Office (AAO).* — The Administrative Appeals Office (AAO), sometimes referred to as the Administrative Appeals Unit (AAU), was a

component of the Immigration and Naturalization Service and is now a component of the Department of Homeland Security. The AAO is responsible for adjudicating appeals from DHS denials of certain kinds of applications and petitions, including employment-based immigrant petitions and most nonimmigrant visa petitions. See 8 C.F.R. §§ 103.2, 103.3. The AAO is not a component of the Executive Office for Immigration Review and should not be confused with EOIR or the Board. See Appendix C (Organizational Chart).

(h) ***Relationship to the Office of Immigration Litigation (OIL).*** — The Office of Immigration Litigation (OIL) conducts civil trial and appellate litigation in the federal courts and represents the United States in civil suits brought against the federal government regarding the movement of citizens and aliens across U.S. borders. OIL is a separate and distinct component of the Justice Department, located within the Civil Division, and should not be confused with EOIR or the Board. See Appendix C (Organizational Chart).

1.3 Composition of the Board

(a) ***General.*** — The Board consists of 11 Board Members, including a Chairman and up to two Vice Chairmen. Under the direction of the Chairman, the Board uses a case management system to screen all cases and manage its caseload. 8 C.F.R. § 1003.1(e). Under this system, the Board adjudicates cases in one of four ways:

(i) ***Individual.*** —The majority of cases at the Board are adjudicated by a single Board Member. In general, a single Board Member decides the case unless the case falls into one of six categories that require a decision by a panel of three Board Members. These categories are:

- the need to settle inconsistencies among the rulings of different immigration judges
- the need to establish a precedent construing the meaning of laws, regulations, or procedures
- the need to review a decision by an Immigration Judge or DHS that is not in conformity with the law or with applicable precedents
- the need to resolve a case or controversy of major national import
- the need to review a clearly erroneous factual determination by an Immigration Judge

- the need to reverse the decision of an Immigration Judge or DHS in a final order, other than nondiscretionary dispositions.

(ii) *Panel.* — Cases not suitable for consideration by a single Board Member are adjudicated by a panel consisting of three Board Members. The panel of three Board Members renders decisions by majority vote. Cases are assigned to specific panels pursuant to the Chairman's administrative plan. The Chairman may change the composition of the sitting panels and may reassign Board Members from time to time.

(iii) *En banc.* — The Board may, by majority vote or by direction of the Chairman, assign a case or group of cases for full en banc consideration. 8 C.F.R. § 1003.1(a)(5). By regulation, en banc proceedings are not favored.

(b) *Chairman and Vice Chairmen.* — The Chairman directs, supervises, and establishes internal operating procedures and policies for the Board. The Chairman is assisted in the performance of his or her duties by one or two Vice Chairmen. The Chairman and the Vice Chairmen are sitting Board Members.

(c) *Board Members.* — Board Members, including the Chairman and the Vice Chairmen, adjudicate cases coming before the Board. 8 C.F.R. § 1003.1(a)(4). Board Members may recuse themselves under any circumstances considered sufficient to require such action.

A vacancy, absence, or unavailability of a Board Member does not impair the right of the remaining members to exercise all the powers of the Board. When circumstances so warrant, Immigration Judges, retired Board Members, retired Immigration Judges, and Administrative Law Judges may be designated by the Director of the Executive Office for Immigration Review as Temporary Board Members. 8 C.F.R. § 1003.1(a)(1).

Parties appearing before the Board may not request specific Board Members or a specific panel to adjudicate their case. The Board also does not entertain inquiries regarding the identity of the panel or Board Members assigned to a pending case.

(d) *Legal Staff.* — The Board employs a legal staff assigned to support designated panels, Board Members, and functions. See generally 8 C.F.R. § 1003.1(a)(6).

(e) *Clerk's Office.* — The Office of the Clerk is responsible for managing appellate records and information for the Board. The Clerk's Office is headed by the Chief Clerk of the Board. Cases in which an alien is not detained are processed by two regional teams (East and West), depending on the location of the Immigration Court. Cases involving detained aliens are processed by the

Priority Case Management team. The Docket team processes adjudicated cases and serves decisions on parties. The Appeals Support team provides management support to all operations.

(f) *Library.* — The Board maintains a Law Library and Immigration Research Center (LLIRC). This law library is maintained for the Board's staff and the staff of the Executive Office for Immigration Review. The library is open to the public. See Chapter 1.5(b) (Library). The library also maintains a "Virtual Law Library" that is accessible at www.usdoj.gov/eoir. The Virtual Law Library serves as a comprehensive repository of immigration-related law and information for use by attorneys and the general public. The site serves as a complement to the LLIRC located within the headquarters complex of the Executive Office for Immigration Review.

(g) *Public Affairs Office (EOIR).* — Public relations for the Executive Office for Immigration Review, including the Board, are the responsibility of the Public Affairs Office. Among its duties, the Public Affairs Office serves as the Board's liaison with the press. See Appendix B (Directory).

(h) *Office of General Counsel (EOIR).* — The Office of General Counsel for the Executive Office for Immigration Review provides legal advice to the Executive Office for Immigration Review, including the Board. The Office of General Counsel is responsible for Freedom of Information Act (FOIA) requests for information from the Board. See Chapter 13 (FOIA), Appendix B (Directory). The Office of General Counsel is also responsible for receiving complaints about attorneys and accredited representatives and initiates disciplinary proceedings when appropriate. The Office of General Counsel maintains the list of accredited representatives for the Board. See Chapters 2.4 (Accredited Representatives), 11 (Discipline of Practitioners).

1.4 Jurisdiction and Authority

(a) *Jurisdiction.* — The Board generally has the authority to review appeals from the following:

- decisions of Immigration Judges in removal, deportation, and exclusion proceedings (with some limitations on decisions involving voluntary departure, pursuant to 8 C.F.R. § 1003.1(b)(2), (3))
- decisions of Immigration Judges pertaining to asylum, withholding of deportation, withholding of removal, Temporary Protected Status, the Convention Against Torture, and other forms of relief
- decisions of Immigration Judges on motions to reopen where the proceedings were conducted in absentia

- some decisions pertaining to bond, parole, or detention, as provided in 8 C.F.R. part 1236, subpart A

- decisions of DHS on family-based immigrant petitions, the revocation of family-based immigrant petitions, and the revalidation of family-based immigrant petitions (except orphan petitions)

- decisions of DHS regarding waivers of inadmissibility for nonimmigrants under § 212(d)(3) of the Immigration and Nationality Act

- decisions of Immigration Judges in rescission of adjustment of status cases, as provided in 8 C.F.R. part 1246

- decision of DHS involving administrative fines and penalties under 8 C.F.R. part 1280

See 8 C.F.R. §§ 1003.1(b), 1292.3. The Board may review these matters either upon appeal by one of the parties or by certification. See 8 C.F.R. § 1003.1(b), (c). Regarding the Board's scope of review, see Chapter 1.4(c) (Scope of review).

The Board also has the authority to:

- decide applications from organizations or attorneys requesting to be certified as providers of free legal services, as discussed in Chapter 2.4 (Accredited Representatives)

- discipline attorneys and accredited representatives for professional misconduct, as discussed in Chapter 11 (Discipline of Practitioners)

(b) *No jurisdiction.* — Although the Board exercises broad discretion over immigration matters brought before the Immigration Courts and DHS, there are certain matters that the Board generally does not have the authority to review, such as:

- the length of a grant of voluntary departure granted by an Immigration Judge under former § 244(e) of the Immigration and Nationality Act and current § 240B of the Immigration and Nationality Act

- direct appeals from persons removed or deported in absentia pursuant to former § 242B of the Immigration and Nationality Act and current § 240(b) of the Immigration and Nationality Act
- credible fear determinations, whether made by an Asylum Officer or an Immigration Judge
- applications for advance parole
- applications for adjustment of status denied by DHS
- orphan petitions
- employment-based immigrant visa petitions
- waivers of the two-year foreign residence requirement for J-1 exchange visitors
- H and L nonimmigrant visa petitions
- K-1 fiancé / fiancée petitions
- employer sanctions
- DHS decisions involving administrative fines and penalties under 8 C.F.R. part 1280

See 8 C.F.R. § 103.3, 28 C.F.R. § 68.53(a), 28 C.F.R. § 68.55.

(c) *Scope of review.* —

(i) *Immigration Judge decisions.* —

(A) *Questions of fact.* — By regulation, the Board applies a clearly erroneous standard to an Immigration Judge's findings of fact, including credibility findings. See 8 C.F.R. § 1003.1(d)(3).

(B) *Questions of law.* — The Board applies a de novo standard of review to questions of law, discretion, judgment, and other issues. See 8 C.F.R. § 1003.1(d)(3).

(ii) *DHS officer decisions.* — The Board applies a de novo standard to all appeals of DHS officer decisions. 8 C.F.R. § 1003.1(d)(3).

(d) *Board decisions.* — Board decisions are rendered either by a single Board Member, by a panel of three, or in rare instances, the entire Board. See Chapter 1.3(a) (Composition of the Board). Upon the entry of a decision, the Board serves its decision upon the parties by regular mail. An order issued by the Board is final, unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. See generally 8 C.F.R. § 1003.1(d)(3), (f), (g). An order is deemed effective as of its issuance date, unless the order provides otherwise.

Board decisions are generally released in one of two forms: published and unpublished. For the citation format for Board cases, see Chapter 4.6(d) (Citation).

(i) *Published decisions.* — Published decisions are binding on the parties to the decision. Published decisions also constitute precedent that binds the Board, the Immigration Courts, and DHS. The vast majority of the Board's decisions are unpublished, but the Board periodically selects cases to be published. See 8 C.F.R. § 1003.1(g). DHS decisions may also be published. See 8 C.F.R. §§ 103.3(c); 1103.3(c).

(A) *Criteria.* — Decisions selected for publication meet one or more of several criteria, including but not limited to: the resolution of an issue of first impression; alteration, modification, or clarification of an existing rule of law; reaffirmation of an existing rule of law; resolution of a conflict of authority; and discussion of an issue of significant public interest.

(B) *Publication.* — When a decision is selected for publication, it is prepared for release to the public. Headnotes are added, and an I&N Decision citation is assigned. Where appropriate, the parties' names are abbreviated, and alien registration numbers ("A numbers") are redacted. The decision is then served on the parties in the same manner as an unpublished decision.

Precedent decisions are collected and published in bound volumes of *Administrative Decisions Under Immigration and Nationality Laws of the United States* ("I&N Decisions"), which can be purchased from the United States Government Printing Office, (202) 512-1800. Copies of individual decisions may be obtained from the Board's Internet site. See Chapter 1.6(e) (Electronic communications). Questions about how to obtain copies of published cases may be directed to the Board's library. See Chapter 1.5(b) (Library).

(C) ***Interim Decisions.*** — In the past, the Board issued precedent decisions as slip opinions, called "Interim Decisions," before publication in a bound volume. See subsection (B), above. While precedent decisions are still assigned an "Interim Decision" number for administrative reasons, the proper citation is always to the volume and page number of the bound volume. See subsection (B), above. The use of the Interim Decision citation is greatly disfavored by the Board.

(ii) ***Unpublished decisions.*** — Unpublished decisions are binding on the parties to the decision but are *not* considered precedent for unrelated cases. Should a party in an unrelated matter nonetheless wish to refer to an unpublished Board decision, a copy of that decision should be attached to the party's brief, motion, or other submission. If a copy is not available, the alien registration number ("A number") and decision date should be provided.

The Board will entertain requests to publish an unpublished decision, but such requests are granted sparingly.

(iii) ***Indexed decisions.*** — Indexed decisions are unpublished, non-precedent decisions that are compiled for the use of Executive Office for Immigration Review staff. Should a party nonetheless wish to refer to an indexed decision, the decision should be treated as an unpublished case. See subsection (ii), above.

(iv) ***Advisory opinions.*** — The Board does not issue advisory opinions.

(e) ***Immigration Judges.*** — As a general matter, Immigration Judges decide issues of removability, deportability, and admissibility, and adjudicate applications for relief. The Board has broad authority to review the decisions of Immigration Judges. See 8 C.F.R. § 1003.1(b). While the Immigration Courts and the Board are both components of the Executive Office for Immigration Review, the two are separate and distinct entities. Thus, administrative supervision of Immigration Judges is vested in the Office of the Chief Immigration Judge, not the Board. See Chapter 1.2(c) (Relationship to the Immigration Courts).

(f) ***Department of Homeland Security.*** — The Department of Homeland Security (DHS) enforces the immigration and nationality laws and represents the U.S. government's interests in removal, deportation, and exclusion proceedings. DHS also adjudicates visa petitions and applications for immigration benefits. See, e.g., 8 C.F.R. § 1003.1(b)(4), (5). DHS is entirely separate from the Department of Justice. When appearing before the Board, DHS is deemed a party to the proceedings and is represented by its Office of Appellate Counsel. See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)), Appendix C (Organizational Chart). The decisions of the Board are binding on DHS, unless modified or overruled by the Attorney

General or a federal court. See Chapters 1.4(a) (Jurisdiction), 1.4(d) (Board decisions), 1.4(f) (Department of Homeland Security).

(g) *Attorney General.* — Decisions of the Board are reviewable by the Attorney General and may be referred to the Attorney General, at the request of the Attorney General, DHS, or the Board. The Attorney General may vacate decisions of the Board and issue his or her own decisions. 8 C.F.R. § 1003.1(d)(1)(i), 1003.1(h). Decisions of the Attorney General may be published as precedent decisions in *Administrative Decisions Under Immigration and Nationality Laws of the United States* ("I&N Decisions").

(h) *Federal courts.* — The decisions of the Board are reviewable in certain federal courts, depending on the nature of the appeal. When a decision of the Board is reviewed by a federal court, the Board provides that court with a certified copy of the record before the Board.

The Board cannot advise parties regarding the propriety of or means for seeking judicial review.

1.5 Public Access

(a) *Office location.* — The Board of Immigration Appeals is located in Falls Church, Virginia, which is within the metropolitan Washington, D.C. area. With the specific exceptions made for the public information window, the law library, and on appropriate occasions the Oral Argument Room, access to Board facilities is limited to authorized personnel.

(b) *Library.* —

(i) *Law Library and Immigration Research Center.* — The Board maintains a Law Library and Immigration Research Center (LLIRC) at 5205 Leesburg Pike, Falls Church, Virginia 22041. The library is located on the first floor of Building One of the Skyline Mall complex. The library maintains select sources of immigration law, including Board decisions, federal statutes and regulations, federal case reporters, immigration law treatises, and various secondary source materials. The library serves the Board and the component agencies of the Executive Office for Immigration Review, but is also open to the public. For hours, directions, and collection information, contact the library at (703) 605-1103 or visit the Board's Internet site. See Appendix B (Directory).

The Board library is not a lending library, and all materials must be viewed on the premises. While library staff may assist patrons in locating materials, library staff are not available for research assistance. Library staff may not provide legal advice or guidance

regarding the filing, procedures, or follow-up for matters before the Board. Library staff may, however, provide guidance in locating published decisions of the Board.

Limited self-service photocopying is available in the library. Smoking is prohibited.

(ii) *Virtual Law Library.* — The library also maintains a "Virtual Law Library" accessible at www.usdoj.gov/eoir. The Virtual Law Library serves as a comprehensive repository of immigration-related law and information for use by attorneys and the general public.

(c) *Oral argument.* — The public may attend oral argument under certain circumstances. See Chapter 8 (Oral Argument).

(d) *Records.* —

(i) *Inspection by parties.* — Parties to a proceeding, and their legal representatives, may inspect the official record of proceedings by prior arrangement with the Clerk's Office. Parties may review the entire record, except any portion of the record that is prohibited to the party (e.g., classified information, documents under a protective order). Removal of records by parties or other unauthorized persons is prohibited.

(ii) *Inspection by non-parties.* — Persons or entities who are not party to a proceeding must file a request for information pursuant to the Freedom of Information Act (FOIA). See Chapter 13 (Freedom of Information Act). The Clerk's Office may not permit non-parties to inspect the record or any part thereof.

(iii) *Copies for parties.* — The Clerk's Office, subject to the availability of resources, may provide up to 25 pages of the record to a party without charge. Otherwise, the Clerk's Office may, in its discretion, refer the party to the FOIA Unit for assistance. For parties inspecting the record on site, limited self-service copying is available. Parties may obtain a copy of any portion of the record, provided that portion is not prohibited to the party (e.g., classified information, documents under a protective order).

(iv) *Copies for non-parties.* — The Clerk's Office will not provide non-parties with copies of any official record, whether in whole or in part. Non-parties must file a request for information pursuant to the Freedom of Information Act (FOIA). See Chapter 13 (Freedom of Information Act).

(v) *Confidentiality.* — The Board must balance the public's need for information with the protection of persons who appear before the Board. The Board takes special

precautions to ensure the confidentiality of cases involving asylum applicants, battered alien spouses and children, exclusion proceedings, and classified information.

1.6 Inquiries

(a) *All communications.* — All inquiries to the Board must contain or provide the following information for each alien:

- complete name (as it appears on the charging document or petition)
- alien registration number ("A number"), if applicable
- type of proceeding (removal, deportation, exclusion, bond, visa petition)

See also Chapter 3.3(c)(vi) (Cover page and caption). If a party has more than one case before the Board, the inquiry must specify which case is the subject of the inquiry.

(b) *Telephone calls.* — Most questions to the Board can be answered through one of two automated phone numbers, "ASQ" and "BIA TIPS". See Appendix I (Telephonic Information). Requests for action must be in writing, unless there is an emergency situation. See generally Chapter 6 (Stays and Expedite Requests). Requests for information may be made in writing or telephonically, pursuant to the procedures set forth below. Collect calls are not accepted.

(i) *Simple inquiries.* —

(A) ASQ. – The Automated Status Query system or "ASQ" (pronounced "ask") provides information about the status of cases before an Immigration Judge or the Board. See Appendix B (Directory), Appendix I (Telephonic Information). ASQ contains a phone menu (in English and Spanish) covering most kinds of cases. The caller must provide the alien registration number ("A number") of the alien involved.

For cases before the Board, ASQ contains information regarding:

- appeals of most Immigration Judge decisions
- briefing deadlines
- filing instructions

For cases before the Board, ASQ does not contain information regarding:

- bond, interlocutory, and visa petition appeals
- motions before the Board
- appeals of motions to reopen or to reconsider

If an inquiry cannot be answered by ASQ, inquiries may be directed to the Clerk's Office. See Appendix B (Directory). Callers must be aware that clerks, like all Board staff, are prohibited from providing any legal advice, and that no information provided by the Clerk's Office may be construed as legal advice.

(B) BIA TIPS. – The Board of Immigration Appeals Telephonic Instructions and Procedures System or "BIA TIPS" contains recorded answers to commonly asked questions, including how to file an appeal, motion, brief, change of address, or other document with the Board. See Appendix B (Directory), Appendix I (Telephonic Information). When the recorded information does not adequately answer the question, pressing "0" for the operator connects the caller with Clerk's Office staff.

(ii) *Complex inquiries.* — Callers must bear in mind that the Board may not engage in ex parte communications or provide legal advice. Complex inquiries are best submitted in writing, whenever possible and appropriate.

In the event that a telephonic inquiry is inappropriate for the Clerk's Office, the Clerk's Office may advise a caller to submit an inquiry in writing or otherwise refer the caller to qualified personnel. See Appendix B (Directory).

(iii) *Projected processing times.* — Given the volume and the varying complexity of the cases before the Board, the Board cannot predict processing times upon request. However, most parties can expect to receive a filing receipt for an appeal, a motion to reopen, or a motion to reconsider within 1-2 weeks of filing.

(iv) *Inquiries to specific staff members.* — Because of concerns regarding ex parte communications and judicial propriety, the Board does not permit parties to communicate directly with the Board Members or other staff assigned to any given case. For this reason, the Board does not reveal to the public the names of the Board Members or other staff who are assigned to a pending case.

(v) *Emergencies and expedite requests.* — The Board provides special procedures for emergency situations. See Chapter 6 (Stays and Expedite Requests).

(c) *Faxes.* — The Board does not accept faxes or other electronic transmissions transmitted directly to the Board without prior authorization. Faxes that are sent to a third party and then hand-delivered to the Board are acceptable under certain conditions. See Chapter 3.1(a)(vi) (Faxes).

(d) *Mail and other forms of delivery.* — The Board uses different addresses for different means of delivery. Appendix A (Mailing Addresses). The public should carefully observe the guidelines in Chapters 3.1(a)(iii) (Mail) and 3.1(a)(iv) (Hand delivery and overnight delivery). An "attention" line indicating the intended recipient, if the name or office is known, should appear at the bottom left of the envelope or at the appropriate location on the mailing label or form.

(e) *Electronic communications.* —

(i) *Internet.* — The Executive Office for Immigration Review maintains an Internet web site at http://www.usdoj.gov/eoir. See Appendix B (Directory). The site contains information about the Board and other components of the Executive Office for Immigration Review, such as newly published regulations and Board precedent decisions, events at the Executive Office for Immigration Review, a copy of the "Questions and Answers Regarding Proceedings before the Board," and a copy of this manual.

(ii) *E-mail.* — The Board does not correspond with the public through e-mail communications.

(iii) *E-filing.* — The Board does not have electronic filing, or "e-filing," at this time. Certain forms can, however, be filled in on-line, but must be printed for hard copy submission to the Board. See Chapter 12.2(b) (Obtaining forms).

(iv) *Faxes.* — See subsection (c), above.

(f) *Emergencies and expedite requests.* — If imminent deportation or other impending circumstances require urgent Board action, parties should follow the procedures set forth in Chapter 6 (Stays and Expedite Requests).

2 Appearances before the Board

2.1 Representation Generally

(a) *Types of representatives.* — The regulations specify who may represent parties before the Board. See 8 C.F.R. § 1292.1. As a practical matter, there are four categories of people who may present cases to the Board: unrepresented aliens (Chapter 2.2), attorneys (Chapter 2.3), accredited representatives (Chapter 2.4), and certain kinds of individuals who are expressly recognized by the Board (Chapters 2.5 and 2.9).

No one else is recognized to practice before the Board. Non-lawyer "immigration specialists," "visa consultants," "notarios," and "asesorios" are *not* authorized to represent parties before the Board. See Chapter 2.7 (Immigration Specialists).

(b) *Entering an appearance.* — All representatives must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). Representatives should be sure to use the most current version of the form, which can be found on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. Note that this form is not the one used before the Immigration Court (Form EOIR-28) and that the Board will not recognize a representative using Form EOIR-28. Unrepresented persons ("pro se" aliens) should not file a Notice of Appearance. An original Notice of Appearance should always be filed in the following situations:

- the filing of an appeal
- the filing of a motion to reopen
- the filing of a motion to reconsider
- the first appearance of an attorney or representative
- any change of business address for the attorney or representative

(c) *Notice to opposing party.* — In all instances of representation, the other party must be served with a copy of the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). See Chapter 3.2 (Service).

(d) *Filings and communications.* — Whenever a party is represented, the party should submit all filings and communications to the Board through the representative. Filings should always be made by a party to the proceedings, or a party's representative, and not by a third party. See Chapters 4.3(d) (Persons not party to the appeal), 5.1(c) (Persons not party to the proceeding).

2.2 Unrepresented Aliens ("Pro se" Appearances)

(a) *Competence.* — An individual in proceedings may represent himself or herself before the Board.

Many individuals choose to be represented by an attorney or accredited representative. Due to the complexity of the immigration and nationality laws, the Board recommends that those who can obtain professional representation do so.

(b) *Pro Bono Program.* — The Board cannot give advice on when to obtain professional representation or whom to select. However, the Executive Office for Immigration Review (EOIR) provides general information for persons seeking free legal services on its website at www.usdoj.gov/eoir under the "*Pro Bono* Program" link. The website also includes information on the BIA *Pro Bono* Project, which matches attorney brief writers with indigent aliens who have cases on appeal.

(c) *Address obligations.* — Whether represented or not, all aliens in proceedings before the Board *must* notify the Board within 5 days of any change of address. See 8 C.F.R. § 1003.38(e). In all instances, the Board sends communications to the last properly provided address. If an alien fails to keep address information up to date, the Board may treat that failure as abandonment of the alien's appeal or motion.

(i) *Form EOIR-33/BIA.* — Changes of address *must* be made in writing and *only* on Form EOIR-33/BIA. Unless the alien is detained, *no other means of notification is acceptable.* Changes communicated through motion papers, correspondence, telephone calls, applications for relief, or other means will not be recognized, and the address information on record will not be changed. For information on obtaining or reproducing Form EOIR-33/BIA, see Chapter 12 (Forms) and Appendix E (Forms).

(ii) *Appeals.* — When an appeal is filed, the Board relies on the address for the alien that appears in the Notice of Appeal (Form EOIR-26) until such time as a change of address is reported through the filing of a Change of Address Form (Form EOIR-33/BIA).

(iii) *Motions.* — The Board recommends that an alien file a Change of Address Form (Form EOIR-33/BIA) whenever filing a motion to reopen, a motion to reconsider, or a motion to recalendar. This will ensure that the Board has the alien's current address when it adjudicates the motion.

(d) *Address obligations of detained aliens.* — When an alien is detained, DHS is obligated by regulation to report to the Board any changes in the alien's location, including where the alien is detained and when the alien is released. See 8 C.F.R. § 1003.19(g).

(i) *While detained.* – In recognition of the unique address problems of detained persons and to help ensure that the Board's records remain current, the Board recommends that detained persons notify the Board of their transfer from one facility or institution to another. Whenever possible, a detained alien should report his or her transfer on the Change of Address Form (Form EOIR-33/BIA). See subsection (b), above.

(ii) *When released.* – DHS is responsible for notifying the Board when an alien is released from custody. 8 C.F.R. § 1003.19(g). Nonetheless, the alien should file a Change of Address Form (Form EOIR-33/BIA) with the Board to ensure that the Board's records are current.

2.3 Attorneys

(a) *Right to Counsel.* — An alien in immigration proceedings may be represented by an attorney of his or her own choosing, at no cost to the government. Unlike criminal proceedings, the government is *not* obligated to provide legal counsel. The Immigration Courts provide lists of attorneys who may represent aliens for little or no cost, and many of these attorneys handle cases on appeal as well. Bar associations and nonprofit agencies can also refer aliens to practicing attorneys.

(b) *Qualifications.* — An attorney may practice before the Board if he or she is a member in good standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law. See 8 C.F.R. §§ 1001.1(f), 1292.1(a)(1). Any attorney practicing before the Board who is the subject of such disciplinary action in any jurisdiction must promptly notify the Board of that action. See Chapter 11.6 (Duty to Report).

(c) *Appearances.* — Attorneys must enter an appearance before the Board by filing a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals

(Form EOIR-27). See 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(3). A Notice of Appearance should always be filed in the situations described in Chapter 2.1(b) (Entering an appearance). The Notice of Appearance must be served on the opposing party. See Chapter 3.2 (Service). If information is omitted from the Notice of Appearance or the form is not properly completed, the attorney's appearance may not be recognized, and the filing may be rejected.

(i) *EOIR-27.* – Practitioners *must* use the most current version of the form, which can be found on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. Practitioners should observe the distinction between the Board's Notice of Appearance (Form EOIR-*27*) and the Immigration Courts' version (Form EOIR-*28*). The Board will *not* recognize a practitioner based on an Immigration Court appearance form (Form EOIR-28), whether filed with the Immigration Court or the Board.

(ii) *Attorney information.* – The Notice of Appearance must bear an individual attorney's current address and the attorney's original signature in compliance with the requirements of Chapter 3.3(b) (Signatures). Note that Identification Numbers ("EOIR ID numbers") for attorneys and representatives are not currently being issued, and therefore that information does not need to be provided at this time.

(iii) *Alien's signature.* – When an attorney represents a United States citizen or a lawful permanent resident, the Notice of Appearance should be signed by the represented party as well. See 5 U.S.C. §§ 552, 552a(a)(2). When the alien is not a lawful permanent resident, the alien's signature is not required but is highly recommended.

(iv) *Bar information.* – When an attorney is a member of a state bar which has a state bar number or corresponding court number, the attorney *must* provide that number on the Notice of Appearance. If the attorney has been admitted to more than one state bar, *each and every* state bar to which the attorney has ever been admitted – including states in which the attorney is no longer an active member or has been suspended, expelled, or disbarred – must be listed and the state bar number, if any, provided.

(v) *Discipline information.* – In every instance, one of the two check boxes regarding discipline action (under box 1 of the Notice of Appearance) must be checked. If the attorney is subject to discipline, then the attorney must provide information on the reverse of the form. (Attorneys may attach an explanatory supplement or other documentation to the form.) An attorney who fails to check one of the two boxes regarding discipline, or fails to provide discipline information, risks not being recognized by the Board and may be subject to disciplinary action.

(d) *Limited appearances.* — Once an attorney has made an appearance, he or she has an obligation to continue representation until such time as the alien terminates representation, another attorney enters an appearance, or a motion to withdraw as counsel has been granted by the Board. Therefore, outside the context of oral argument, the Board generally does not allow limited appearances. See subsections (e), (f), and (i), below. See also Chapter 8.6(b) (Multiple representation).

(e) *Single representative.* — An individual may have only one representative of record at any given time. In instances involving law offices or organizations, there must be an *individual* who serves as the named representative of record. Accordingly, in those instances in which a person in proceedings is represented by a law office, only the attorney whose signature appears on the Notice of Appearance (Form EOIR-27) is recorded. All submissions to the Board must thereafter bear the name of the representative of record and be signed by that attorney. See subsection (b), above. See also Chapter 3.3(b) (Signatures).

(i) *Change in firm.* — In the event that an attorney departs a law firm but wishes to continue as attorney of record, the attorney should promptly submit a new Notice of Appearance. The Notice of Appearance must reflect any change of address and should apprise the Board of his or her change in office affiliation. The attorney should check the "new address" box in the address block on the Notice of Appearance.

(ii) *Change in attorney.* — If the attorney of record leaves a law firm but the law firm wishes to retain the case, another attorney in the firm must file a Notice of Appearance (Form EOIR-27) and thereby become the attorney of record. Similarly, if a law firm wishes to reassign responsibility for a case from the attorney of record to another attorney in the firm, the new attorney must file a Form EOIR-27. Until such time as another attorney files a Form EOIR-27 (or a motion to withdraw is granted by the Board), the original attorney of record remains the attorney of record and is responsible for the case. See subsection (*i*), below.

(f) *Law firms.* —

(i) *Firm not the representative.* — Only individuals, not firms or offices, may represent parties before the Board. In every instance of representation, a named attorney must enter an appearance to act as the attorney of record. Accordingly, the Board does not accept appeals, motions, briefs, or other filings submitted by a law firm, law office, or other entity if they do not include the name and signature of the attorney of record. See subsection (e), above. See also Chapter 3.3(b)(ii) (Law firms).

(ii) *No filings "on behalf of."* — The Board only accepts filings *by* the attorney of record, not *on behalf of* the attorney of record. Thus, any filing from an attorney who is not the attorney of record *must* be accompanied by a completed Notice of Appearance (Form EOIR-27), whereupon that attorney will become the new attorney of record. See subsection (*i*), below. Limited appearances for purposes of filing an appeal, motion, brief, or other document are not recognized. See subsection (d), above.

(g) *Service upon counsel.* — Service of papers upon counsel of a represented party constitutes service on the represented party. 8 C.F.R. § 1292.5(a).

(h) *Address obligations of counsel.* — Attorneys who enter an appearance before the Board have an affirmative duty to keep the Board apprised of their current address and contact information. See 8 C.F.R. § 1003.38(e). Changes of address should be made by filing an updated Notice of Appearance (Form EOIR-27), *not* through the alien Change of Address Form (Form EOIR-33/BIA). An attorney filing a change of his or her address should check the "New Address" box in the address block on the Notice of Appearance.

(i) *Compound changes of address.* — Attorneys must submit a separate Notice of Appearance for each alien represented. An attorney may not submit a list of clients for whom his or her change of address should be entered.

(ii) *Address obligations of represented aliens.* — Even when an alien is represented, the alien is still responsible for keeping the Board apprised of his or her current address. Changes of address for the alien may not be made on the Notice of Appearance (Form EOIR-27) but must be made on the Change of Address Form (Form EOIR-33/BIA). See Chapter 2.2(c) (Address obligations).

(*i*) *Change in representation.* — A represented alien may substitute or release counsel at his or her discretion. A representative may withdraw from representation under certain conditions. Aliens and their representatives must keep the Board apprised of all changes in representation.

(i) *Substitution of counsel.* — A represented alien may substitute counsel at his or her discretion. Counsel is properly substituted through the filing by new counsel of a Notice of Appearance (Form EOIR-27). New counsel is expected to serve a copy of the executed Notice of Appearance on prior counsel and the opposing party. See Chapter 3.2 (Service).

Upon receipt of the new Notice of Appearance, the Board automatically recognizes new counsel, and prior counsel need not file a motion to withdraw. However, until such time

as a new Notice of Appearance has been filed, prior counsel remains the attorney of record and is accountable as such.

Extension requests that are based on substitution of counsel are not favored. See Chapter 4.7(c) (Extensions).

(ii) *Release of counsel.* — A represented alien may, at his or her discretion, terminate representation at any time.

If a represented alien dismisses his or her attorney and does not retain a new attorney immediately, the represented alien should notify the Board through correspondence with a cover page labeled "NOTICE OF DISMISSAL OF ATTORNEY." See Appendix F (Sample Cover Page). This "dismissal notice" should contain the full name, alien registration number ("A number"), and complete address of the alien, as well as the name of the attorney being dismissed. The dismissal notice should also contain Proof of Service indicating that both the attorney and DHS have been served. See Chapter 3.2 (Service). An updated Change of Address Form (Form EOIR-33 / BIA) should accompany the dismissal notice.

If a represented alien dismisses one attorney, but retains a new attorney who immediately files a Notice of Appearance (Form EOIR-27), the alien need not file a dismissal notice for the first attorney. See previous subsection.

If, after a dismissal notice has been filed, an alien retains a new attorney, the new attorney must file a Notice of Appearance (Form EOIR-27). See subsection (c), above.

(iii) *Withdrawal of counsel.* — Counsel seeking withdrawal should file a motion with a cover page labeled "MOTION TO WITHDRAW AS COUNSEL." See Chapter 3.2 (Service), Appendix F (Sample Cover Page). The motion should contain the following information:

- the last known address of the represented alien
- evidence that the attorney has notified or attempted to notify the alien of the request to withdraw as counsel
- evidence that either (a) the alien is aware of pending deadlines, existing obligations, and the consequences for failing to comply with those deadlines and obligations, or (b) the attorney attempted to notify the alien of those deadlines and obligations

See *Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988). Withdrawal should be effected in a timely fashion to avoid compromising the interests of the represented alien.

(j) *Attorney misconduct.* —The Board has the authority to impose disciplinary sanctions upon attorneys and representatives who violate rules of professional conduct in practice before the Board, the Immigration Courts, and DHS. See Chapter 11 (Discipline of Practitioners). Where an attorney in a case has been suspended from practice before the Board and the alien has not retained new counsel, the Board will treat the alien as pro se. All mailings from the Board, including briefing schedules and orders, will be mailed directly to the alien. Any filings from an attorney who has been suspended from practice before the Board will be rejected.

2.4 Accredited Representatives

An accredited representative is a person who is approved by the Board to represent aliens before the Board, the Immigration Courts, and DHS. He or she must be a person of good moral character who works for a specific nonprofit religious, charitable, social service, or similar organization which has been recognized by the Board to represent aliens. Accreditation is valid for a period of up to three years and can be renewed. See 8 C.F.R. § 1292.1(a)(4), 1292.2(d). Accredited representatives must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) in order to represent an individual before the Board. See Chapter 2.3(c) (Appearances). Accredited Representatives should be careful to use the most current version of the Notice of Appearance (Form EOIR-27), which can be found on the Executive Office for Immigration Review website at www.usdoj.gov/eoir.

(a) *Qualifying organizations.* — The Board officially recognizes certain nonprofit religious, charitable, social service, and similar organizations as legal service providers. See 8 C.F.R. § 1292.2(a). To be recognized by the Board, an organization must affirmatively apply for that recognition. Such an organization must establish to the satisfaction of the Board that its fees are only nominal, that it does not assess excessive membership dues for persons given assistance, and that it has at its disposal adequate knowledge, information, and experience in immigration law and procedure. The qualifications and procedures for organizations seeking Board recognition are set forth in the regulations. See 8 C.F.R. § 1292.2(a), (b). Questions regarding recognition may be directed to the Office of General Counsel of the Executive Office for Immigration Review. See Appendix B (Directory).

(b) *Qualifying representatives.* — The Board accredits persons of good moral character as representatives of qualifying organizations. See 8 C.F.R. § 1292.2(d). Representatives of recognized organizations are not, however, automatically accredited by the Board. Rather, the

recognized organization must affirmatively apply for accreditation on each representative's behalf. See 8 C.F.R. § 1292.2(d). No individual may apply on his or her own behalf.

Accreditation is not transferrable from one representative to another, and no individual retains accreditation upon his or her separation from the recognized organization.

(c) *Immigration specialists.* — Accredited representatives should not be confused with non-lawyer "immigration specialists," visa consultants, "notarios," and "asesorios." See Chapter 2.7 (Immigration Specialists). Accredited representatives must be expressly accredited by the Board and must be employed by a nonprofit institution specifically recognized by the Board.

(d) *Verification.* — To verify that an individual has been accredited by the Board, the public can either:

- consult the listing at www.usdoj.gov/eoir, or
- call the Office of General Counsel of the Executive Office for Immigration Review (see Appendix B (Directory))

(e) *Applicability of attorney rules.* — Except in those instances set forth in the regulations and this manual, accredited representatives are to observe the same rules and procedures as attorneys. See Chapter 2.3 (Attorneys).

(f) *Signatures.* — Only the accredited representative who is the representative of record may sign submissions to the Board. An accredited representative, even in the same organization, may not sign or file on another accredited representative's behalf. See Chapter 3.3(b) (Signatures).

(g) *Representative misconduct.* — Accredited representatives must comply with certain standards of professional conduct. See 8 C.F.R. § 1003.101 et seq.

(h) *Request to be removed from list of accredited representatives.* — An accredited representative who no longer wishes to represent aliens should write to the Chairman of the Board of Immigration Appeals and request to be removed from the list. See Appendix A (Addresses).

2.5 Law Students and Law Graduates

(a) *Generally.* — Law students and law graduates (law school graduates who are not yet admitted to practice law) may appear before the Board if certain conditions are met. Recognition by the Board is not automatic and must be requested in writing. See 8 C.F.R. § 1292.1(a)(2).

(b) *Law Students.* —

(i) *Notice of Appearance.* — A law student must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). He or she should check box 3 on the Notice of Appearance and provide on the reverse side of the form both the name of the supervising attorney or accredited representative and that person's business address, if different from that of the law student.

(ii) *Representation statement .* — A law student wishing to appear before the Board must file a statement that he or she is participating in a legal aid program or clinic conducted by a law school or nonprofit organization and is under the direct supervision of a faculty member, licensed attorney, or accredited representative. The statement should also state that the law student is appearing without direct or indirect remuneration from the alien being represented. 8 C.F.R. § 1292.1(a)(2). Such statement should be filed with the Notice of Appearance (Form EOIR-27).

(c) *Law Graduates.* —

(i) *Notice of Appearance.* — A law graduate must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). The law graduate should be careful to use the most current version of the form, which can be found on the Executive Office for Immigration Review website. He or she should check box 3 on the Notice of Appearance and provide on the reverse side of the form both the name of the supervising attorney or accredited representative and that person's business address, if different from that of the law graduate.

(ii) *Representation statement.* — A law graduate wishing to appear before the Board must file a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative. That statement should also state that the law graduate is appearing without direct or indirect remuneration from the alien being represented. 8 C.F.R. § 1292.1(a)(2). Such statement should be filed with the Notice of Appearance(Form EOIR-27).

(d) *Representative misconduct.* — Law students and law graduates must comply with standards of professional conduct. See 8 C.F.R. § 1003.101 et seq.

2.6 Paralegals

Paralegals are professionals who assist attorneys in the practice of law. They are not themselves licensed to practice law and therefore may not represent parties before the Board. Paralegals who do not work for an attorney risk being charged with the unauthorized practice of law.

2.7 Immigration Specialists

Immigration specialists – which include visa consultants, "notarios," and "asesorios" – are *not* authorized to practice law or appear before the Board. These individuals are generally violating the law by practicing law without a license. As such, they do not qualify either as accredited representatives or "reputable individuals" under the regulations. See Chapters 2.4 (Accredited Representatives), 2.9(a) (Reputable individuals).

2.8 Family Members

If a party is a child, then a parent or legal guardian may represent the child before the Board, provided the parent or legal guardian clearly informs the Board of their relationship. If a party is an adult, a family member may represent the party *only* when the family member has been authorized by the Board to do so. See Chapter 2.9(a) (Reputable individuals).

2.9 Others

(a) *Reputable individuals.* — In appropriate circumstances, the Board will allow a "reputable individual" to appear on behalf of an alien. See 8 C.F.R. § 1292.1(a)(3). To qualify as a reputable individual, an individual must meet all of the following criteria:

- be a person of good moral character
- appear on an individual basis, at the request of the alien
- receive no direct or indirect remuneration for his or her assistance

- file a declaration that he or she is not being remunerated for his or her assistance
- have a preexisting relationship with the alien (e.g., relative, neighbor, clergy), except in those situations where representation would otherwise not be available, and
- be officially recognized by the Board

Any individual who receives any sort of compensation or makes immigration appearances on a regular basis (such as a non-lawyer "immigration specialist," visa consultant, "notario," or "asesorio") does not qualify as a "reputable individual" as defined in the regulations.

To appear before the Board, a reputable individual must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). He or she should check box 3 on the Notice of Appearance and write on the reverse side of the form the words "REPUTABLE INDIVIDUAL". A person asking to be recognized as a reputable individual should file a statement attesting to each of the criteria set forth above. This statement should accompany the Notice of Appearance.

(b) *Fellow inmates.* — The regulations do not provide for representation by fellow inmates or other detained persons. Fellow inmates do not qualify under any of the categories of representatives enumerated in the regulations.

(c) *Accredited officials of foreign governments.* — An accredited official who is in the United States may appear before the Board, in his or her official capacity and with the alien's consent. See 8 C.F.R. § 1292.1(a)(5). To appear before the Board, an accredited official of a foreign government must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). An accredited official should check box 3 on the Notice of Appearance and write on the reverse side of the form the words "ACCREDITED OFFICIAL OF [name of country]".

(d) *Former employees of the Department of Justice.* — Former employees of the Department of Justice may be restricted in their ability to appear before the Board. See 8 C.F.R. § 1292.1(c).

(e) *Foreign student advisors.* — A foreign student advisor is not authorized to appear before the Board, unless the advisor is an accredited representative. See Chapter 2.4 (Accredited Representatives).

2.10 Amicus Curiae

The Board may grant permission to an amicus curiae to appear, on a case-by-case basis, if the public interest will be served thereby. 8 C.F.R. § 1292.1(d).

A person or organization wishing to make an appearance as an amicus curiae must file a written request with the Clerk's Office, preferably with a cover page labeled "REQUEST TO APPEAR AS AMICUS CURIAE." See Appendix B (Directory), Appendix F (Sample Cover Page). That request should specify the name and alien registration number ("A number") of the matter in which an amicus curiae wishes to appear and articulate why amicus curiae should be permitted to appear. The request should be served on all parties to the proceedings. See Chapter 3.2 (Service).

The Board generally limits the appearance of amici curiae to the filing of briefs. See Chapter 4.6(i) (Amicus curiae briefs). Amicus curiae may request an opportunity to present oral argument, but such requests are granted sparingly. See Chapter 8.7(d)(xiii) (Amicus curiae).

3 Filing with the Board

3.1 Delivery and Receipt

(a) *Filing.* — Most appeals and motions adjudicated by the Board are filed directly with the Board. Some appeals and motions, however, are filed with DHS. See Chapters 4.2(b) (Filing), 5.2 (Filing a Motion), 7.3(a) (Filing), 9.3(c)(ii) (Where to file), Appendix K (Where to File a Motion). No appeal, motion, correspondence, or other filing intended for the Board should ever be filed with an Immigration Court.

(i) *Receipt rule.* — For appeals and motions that must be filed with the Board, the appeal or motion is not deemed "filed" until it is *received* at the Board. The Board does not observe the "mailbox rule." Accordingly, receipt by any other entity — be it the U.S. Postal Service, commercial courier, or detention facility — does *not* suffice. See Chapter 1.5(a) (Office location), Appendix A (Mailing Addresses).

(ii) *Postage problems.* — All required postage or shipping fees must be paid *by the sender* before an item will be accepted by the Board. The sender is responsible for paying the proper postage in all instances. When using a courier or similar service, the sender is responsible for properly completing the packing slip, including the label and the billing information. The Board therefore rejects mailings for which the required postage has not been paid or the courier billing information has not been properly completed. See Chapter 3.1(c)(i) (Meaning of "rejected").

(iii) *Mail.* — The Board uses different addresses for different means of delivery. All mail sent through the U.S. Postal Service, except "Express Mail" (overnight delivery), should be sent to the Board's Post Office (P.O.) Box. See Appendix A (Mailing Addresses). An "attention" line indicating the intended recipient, if the name or office is known, should appear at the bottom left of the envelope or at the appropriate location on the mailing label or form. Parties must use the correct postage on all items mailed to the Board. See subsection (ii), above. The Board will not pay postage due, and the U.S. Postal Service will return any item with insufficient postage to the sender.

(iv) *Hand delivery and overnight delivery.* — The Board uses different addresses for different means of delivery. Courier, overnight delivery, U.S. Postal Service "Express Mail," and hand-delivered items must be addressed to the appropriate street address in Appendix A (Mailing Addresses).

Given the importance of timely filing, the Board encourages parties to use courier and overnight delivery services, whenever appropriate, to ensure timely filing. However, the failure of a courier or overnight delivery service does not excuse parties from meeting filing deadlines. See Chapter 3.1(b)(iv) (Delays in delivery).

(v) *Separate envelopes.* — Unrelated cases should *not* be sent in one envelope. To avoid confusion, each case should either be sent separately *or*, if mailed as a package, in its own envelope within that package.

(vi) *Faxes.* —

(A) *Sent directly to the Board.* — The Board does not accept faxes or other electronic transmissions without prior authorization. Unauthorized transmissions are discarded without consideration of the document or notice to the sender. Facsimiles ("faxes") transmitted directly to the Board will be accepted only when solicited *by the Board* in emergencies and other compelling circumstances. See generally Chapter 6 (Stays and Expedite Requests). Faxes must be sent to the attention of the person at the Board who authorized the fax.

(B) *Sent through a third party.* — Faxes that are sent to a third party, such as a local counsel or a local delivery agent, and then hand-delivered to the Board are acceptable under the following conditions:

- the original document must bear an original signature
- the original document must be available to the Board upon request
- the fax copy must be legible
- the filing must clearly reflect that the submission comes from the representative of record or the party to the proceeding, *not* the counsel receiving the fax or the agent who is delivering it
- fax header information will not be used to identify the filing party, the nature of the submission, or the timeliness of the submission

- the filing party is always responsible for the filing's legibility and timeliness

Signatures are discussed at Chapter 3.3(b) (Signatures).

(vii) *E-filing.* — The Board does not have electronic filing, or "e-filing," at this time. Certain forms can, however, be filled in on-line, but must be printed for hard copy submission to the Board. See Chapter 12.2(b) (Obtaining forms).

(b) *Must be "timely."* — The Board places a date stamp on all filings received by the Clerk's Office. See Appendix A (Mailing Addresses). Absent persuasive evidence to the contrary, the Board's date stamp is controlling in the computation of whether a filing is "timely." Because filings are date-stamped upon arrival at the Board, the Board strongly recommends that parties file as far in advance of the deadline as possible and, whenever possible, use overnight delivery couriers (such as Federal Express, United Parcel Service, Airborne Express, DHL) to ensure timely receipt.

(i) *Construction of "day."* — All due dates at the Board are calculated in calendar days. Thus, unless otherwise indicated, all references to "days" in this manual refer to calendar days, not business days.

(ii) *Computation of time.* — For purposes of computing appeal and motion deadlines, time is measured from the date of the decision (or the mailing date of the decision, if later) to the date that the appeal or motion is received by the Board.

When counting days, the day that the decision is made (or mailed) counts as "day 0." The day after the date the decision is made (or mailed) counts as "day 1." Because the Board uses calendar days to calculate deadlines, Saturdays, Sundays, and federal legal holidays *are* counted toward the computation of a deadline. If, however, a deadline date falls on a weekend or a legal holiday, the deadline is construed to fall on the next business day.

(iii) *Specific deadlines.* — Specific deadlines for specific types of filings are discussed elsewhere. See Appendix D (Deadlines).

(iv) *Delays in delivery.* — Postal or delivery delays do not affect existing deadlines, nor does the Board excuse untimeliness due to such delays, except in rare circumstances. Parties should anticipate all Post Office and courier delays, whether the filing is made through first class mail, priority mail, or any overnight or other guaranteed delivery service. Delays caused by incorrect postage or mailing error by the sending party do not affect existing deadlines. See Chapter 3.1(a)(ii) (Postage problems).

(v) *Effect of extension requests.* — All deadlines must be met. A pending extension request does not excuse a party from meeting a filing deadline. Unopposed requests are not automatically granted. Extensions must be affirmatively granted before a filing will be accepted past the original deadline. See Chapters 4.5 (Appeal Deadlines), 4.7(c) (Extensions).

(c) *Defective filings.* —

(i) *Meaning of "rejected."* — When the Board "rejects" a filing, the filing is returned to the sender. The term "rejected" means that the filing is defective, and the Board cannot consider the filing. It is *not* an adjudication of the filing or a decision regarding its content.

(ii) *Improperly filed.* — If an appeal, motion, or brief is not properly filed, it is rejected by the Clerk's Office and returned to the party with an explanation for the rejection. Parties wishing to correct the defect and refile after a rejection must do so by the original deadline, unless an extension is expressly granted by the Board. See Chapters 4.5(b) (Extensions), 4.7(c) (Extensions), 5.3 (Motion Limits). The most common reasons for rejecting an appeal or motion are (A) failure to pay a fee or submit a fee waiver application when a fee is required, and (B) failure to submit a proof of service on the opposing party, which is always required. See Chapters 3.2 (Service), 3.4 (Filing Fees), Appendix G (Sample Proof of Service).

(iii) *Untimely.* — If an appeal is untimely, the appeal is dismissed. See 8 C.F.R. §§ 1003.1(d)(2)(i)(G), 1003.38(b). If a motion is untimely, the motion is denied. See 8 C.F.R. § 1003.2(b)(2), (c)(2). If a brief is untimely, it is rejected and returned to the party with an explanation for the rejection. Parties wishing to refile an untimely filing must file a motion asking the Board to accept the untimely filing and attach the original submission. See, e.g., Chapter 4.7(d) (Untimely briefs). Parties must include documentary evidence to support their motion, including such evidence as affidavits and declarations under the penalty of perjury.

(d) *Filing receipts.* — The Board issues receipts for certain filings. Whether or not a receipt is issued, however, parties are encouraged to obtain and retain corroborative documentation of delivery, such as mail delivery receipts and courier tracking information. (As a precaution against loss, parties should also keep copies of all items sent to the Board.)

(i) *Receipt issued.* — The Board routinely issues receipts only for Notices of Appeal (Form EOIR-26), motions to reopen, and motions to reconsider. A receipt is *not* an adjudication of timeliness or a determination that a filing falls within the Board's jurisdiction, but merely an acknowledgment that a filing has been received by the Board.

If a filing receipt is not received within approximately two weeks, parties may call the Board's "800" number for current information on appeals or the Clerk's Office for current information on appeals or motions. See Appendix B (Directory).

(ii) *Receipt not issued.* — A receipt is not issued for filings other than Notices of Appeal, motions to reopen, and motions to reconsider. The Board does not provide written receipts for other motions, briefs, or memoranda. See Chapter 4.7(b) (Processing).

(iii) *Conformed copies.* — When a filing arrives at the Clerk's Office, a time-and-date stamp is placed on the filing. If a filing party desires a "conformed copy" (i.e., a copy of the filing bearing the Board's time-and-date stamp), the original must be accompanied by an accurate copy of the filing, prominently marked "CONFORMED COPY; RETURN TO SENDER." The filing must also contain a self-addressed stamped envelope or comparable return delivery packaging. The Board does not return conformed copies without a prepaid return envelope or packaging.

3.2 Service

(a) *Service requirement.* — For all filings before the Board, a party must:

- provide, or "serve," a copy on the opposing party (or, if the party is represented, the party's representative), *and*
- declare, in writing, that a copy has been served on the opposing party (or, if the party is represented, the party's representative)

For an alien in proceedings, the opposing party is the Department of Homeland Security (DHS). In most instances, a DHS Chief Counsel or a specific Assistant Chief Counsel is the designated officer to receive service. The opposing party is *never* the Board or the Immigration Judge.

This written declaration is called a "Proof of Service," which is also referred to as a "Certificate of Service." See subsection (d), below, and Appendix G (Sample Proof of Service). See also 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(1), 1003.3(c).

(b) *Method of service.* — Service may be accomplished by hand or by mail. Service is complete upon hand delivery of papers to a responsible person at the address of the person being served or upon the mailing of the papers.

(c) *Timing of service.* — The Proof of Service must bear the actual date of transmission and accurately reflect the means of transmission (e.g., regular mail, hand delivery, overnight courier or delivery). In all instances, service must be calculated to allow the other party sufficient opportunity to act upon or respond to the served material.

(d) *Proof of Service.* — An appeal or motion, and all subsequent filings in support of an appeal or motion, must be accompanied by Proof of Service on the opposing party. See 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(1), 1003.3(c). See also Appendix G (Sample Proof of Service). Some forms, such as the Notice of Appeal (Form EOIR-26), contain a Certificate of Service, which functions as a Proof of Service. The Board rejects any submission that is filed without Proof of Service on the opposing party. See Chapter 3.1(c)(i) (Meaning of "rejected"). The only exception is a motion that is agreed upon by all parties and jointly filed (because both parties are presumed to have seen the motion they are filing together).

A Proof of Service must specify the following:

- the name or title of the party served
- the precise and complete address of the party served
- the date of service
- the means of service (e.g., 1st class mail, overnight delivery, hand-delivery)
- the document or documents being served
- the name of the person serving the document

Every Proof of Service must be signed by the person serving the document. Unlike the document being served, the Proof of Service need not be signed by the party but may be signed by someone designated by the party.

(e) *Representatives and service.* —

(i) *Service upon a representative.* — Service upon a representative constitutes service upon the person or entity represented. For example, if an alien is represented by an attorney, DHS must serve the attorney and need not serve the alien. See 8 C.F.R. § 1292.5(a).

(ii) *Service by a represented alien.* — The Board recommends that, whenever an alien is represented, the alien allow his or her representative to handle all filings with the Board. See Chapter 2.1(d) (Filings and communications). If, however, a represented alien wishes to file a document without the assistance of his or her representative, the alien should serve copies of that document on both DHS and the representative, with a separate Proof of Service for each. See subsection (d), above.

(f) *Proof of Service and the Notice of Appearance.* — All filings with the Board must include a Proof of Service that identifies the item being filed. See subsection (d), above. Thus, the completed Proof of Service on counsel's Notice of Appearance (Form EOIR-27) by itself is *not* considered sufficient proof of service of documents accompanying the Notice of Appearance.

3.3 Documents

(a) *Language.* — All Notices of Appeal (Form EOIR-26) must be submitted in the English language or be accompanied by a certified English translation. 8 C.F.R. § 1003.3(a)(3).

All motions and documentation filed in support of an appeal or motion must either be in the English language or be accompanied by an English language translation and a certification signed by the translator, printed or typed, in accordance with the regulations. See 8 C.F.R. § 1003.2(g)(1). Such certification must include a statement that the translator is competent to translate the language of the document and that the translation is true and accurate to the best of the translator's abilities. See 8 C.F.R. § 1003.33. See also Appendix H (Sample Certificate of Translation).

(b) *Signatures.* — No appeal, motion, brief, or request for Board action is properly filed without a signature from either the alien, the alien's representative, or a representative of DHS. A Proof of Service also requires a signature, but may be signed by someone designated by the filing party. See Chapter 3.2(d) (Proof of Service).

A signature represents a certification by the signer that: he or she has read the document; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is grounded in fact; the document is submitted in good faith; and the document has not been filed for any improper purpose. See 8 C.F.R. § 1003.102(j)(1). A signature represents the signer's authorization, attestation, and accountability.

Every signature must be accompanied by a typed or printed version of the name.

(i) *Simulated signatures.* — Signature stamps and computer-generated signatures are *not* acceptable for documents filed with the Board. These signatures do not convey the

signer's personal authorization, attestation, and accountability for the filing. Reproductions of signatures *are* acceptable when contained in a photocopy or fax of an original document as long as the original is available to the Board upon request. See subsection (d), below. See also Chapter 3.1(a) (Filing).

(ii) *Law firms.* — Only the attorney of record — not a law firm, law office, or other attorney — may sign a submission to the Board. See Chapters 2.3(c) (Appearances), 2.3(e) (Single representative), 2.3(f) (Law firms).

(iii) *Accredited representatives.* — Accredited representatives must sign their own submissions. See Chapter 2.4(f) (Signatures).

(iv) *Paralegals and other staff.* — Paralegals and other staff are not authorized to practice before the Board and may not sign a submission to the Board. See Chapter 2.6 (Paralegals). However, paralegals may sign a Proof of Service when authorized by the filing party. See Chapter 3.2(d) (Proof of Service).

(v) *Other representatives.* — Only those individuals who have been authorized by the Board to represent a party and have submitted a Notice of Appearance (Form EOIR-27) may sign submissions to the Board. See Chapters 2.5 (Law Students and Law Graduates), 2.9 (Others). Immigration specialists, such as notarios and visa consultants, are not authorized to represent a party. See Chapter 2.7 (Immigration Specialists).

(vi) *Family members.* — A family member may sign submissions on behalf of a party only under certain circumstances. See Chapter 2.8 (Family Members).

(c) *Format.* — The Board prefers all filings and (where appropriate) supporting documents to be typed or printed, but will accept handwritten filings. The filing party should make sure that items submitted to the Board are legible.

(i) *Order of documents.* — Filings should be assembled as follows. All forms should be filled out completely.

(A) *Appeals.* — An appeal package should comply with the instructions on the Notice of Appeal (Form EOIR-26). The appeal package should contain (in order):

1. filing fee (if applicable, stapled to the Notice of Appeal)
2. Notice of Appeal (Form EOIR-26) (with its Certificate of Service completed)

3. Appeal Fee Waiver Request (Form EOIR-26A, if unable to pay the filing fee)
4. Notice of Appearance (Form EOIR-27, if the person appealing is represented)
5. supporting documentation (if any)

See Chapters 2.1(b) (Entering an appearance), 3.2(d) (Proof of Service), 3.4 (Filing Fees), 4.4 (Filing an Appeal).

(B) *Motions.* — A motion package should contain (in order):

1. filing fee (if applicable, stapled to the cover page of the motion)
2. motion (with appropriate cover page)
3. supporting documentation (if any)
4. Appeal Fee Waiver Request (Form EOIR-26A, if unable to pay the filing fee)
5. Notice of Appearance (Form EOIR-27, if the moving party is represented)
6. Change of Address (Form EOIR-33/BIA, which is recommended even if the alien's address has not changed)
7. Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(d) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.4 (Filing Fees), 5.1(b) (Representatives), 5.2 (Filing a Motion).

(C) *Supplementary filings.* — The Board accepts supplementary filings only in limited situations. See, e.g., Chapter 4.6(g) (Supplemental briefs). A supplementary filing should contain (in order):

1. supplementary filing (with cover page and caption)
2. supporting documentation, if being offered
3. Notice of Appearance (Form EOIR-27, if represented and a new appearance is being made)
4. Proof of Service

See also Chapters 2.1(b) (Entering an appearance), 3.2(d) (Proof of Service), 3.3(c)(vi) (Cover page and caption).

(ii) *Number of copies.* — Only the *original* of each appeal or motion need be filed with the Board. Similarly, only one set of supporting documents need be filed with the Board. Multiple copies of any appeal, motion, or supporting document should *not* be filed, unless otherwise instructed. Where there is a consolidated proceeding, only one copy need be filed for the entire group. See Chapters 4.6(e) (Consolidated briefs), 4.10(a) (Consolidated appeals).

(iii) *Number of pages.* — Briefs and other submissions should *always* be paginated. There are no limits or expectations on the number of pages in an appeal or motion filing. However, parties are encouraged to limit the body of their briefs or motions to 25 pages, provided that such length can adequately dispose of the issues in the case.

(iv) *Paper size and quality.* — All documents should be submitted on standard 8½" x 11" paper, in order to fit into the record of proceedings. See 8 C.F.R. § 1003.32(b). Use of legal size paper (8½" x 14") is discouraged, as is paper of other sizes. See subsection (x), below.

Paper should be of standard stock — white, opaque, and unglazed. Given its fragility and its tendency to fade, photo-sensitive facsimile paper should never be used. Ink should be dark, preferably black.

Briefs and motions should be one-sided. Supporting documentation should also be one-sided.

(v) *Tabs.* — Parties are strongly encouraged to use indexing tabs to separate the distinct portions of an appeal or motion package. Because Immigration Courts generally refer to court exhibits by number, the Board prefers that parties use alphabetic tabs to avoid confusion.

(vi) *Cover page and caption.* — All motions, briefs, and supplemental filings should include a cover page. The cover page should include a caption and contain the following information:

- the name and address of the filing party
- the title of the filing (such as "RESPONDENT'S MOTION TO REOPEN" or "DHS BRIEF ON APPEAL")
- the full name for each alien covered by the filing (as it appears on the charging document)

- the alien registration number ("A number") for each alien covered by the filing
- the type of proceeding involved (such as removal, deportation, exclusion, bond, visa petition)

See Appendix F (Sample Cover Page). If the filing involves special circumstances, that information should appear prominently on the cover page, preferably in the top right corner and highlighted (e.g., "DETAINED," "EXPEDITE REQUEST," "JOINT MOTION").

(vii) ***Fonts and spacing.*** **—** Font and type size must be easily readable. "Times Roman 12 point" font is preferred. Double-spaced text and single-spaced footnotes are also preferred. Both proportionally spaced and monospaced fonts are acceptable.

(viii) ***Binding.*** **—** The Immigration Courts and the Board use a two-hole punch system to maintain files. The Board appreciates receiving briefs and materials pre-punched with two holes along the top (centered and 2¾" apart). Submissions should neither be bound on the side nor commercially bound, as such items must be disassembled to fit into the record of proceedings and might be inadvertently damaged in the process. Submissions may be stapled in the top left corner. The use of removable binder clips is acceptable. The use of ACCO-type fasteners is discouraged.

(ix) ***Forms.*** — Forms should be completed in full and must comply with certain requirements. See Chapter 12 (Forms). See also Appendix E (Forms).

(x) ***Photographs and odd-sized documents.*** **—** The Board recommends that parties not submit original photographs or other original documents unless instructed to do so. See subsection (d), below. If a party nonetheless wishes to submit a photograph, the party should: print identifying information on the back of the photograph, including the alien's name and alien registration number ("A number"); mount the photograph on an 8½" x 11" sheet of paper; and print the same identifying information on the sheet of paper as well.

The Board also discourages the submission of other odd-sized materials, such as official certificates, and strongly advises that parties submit photocopies. See Chapter 3.3(d)(iv) (Supporting documents). If a party nonetheless wishes to submit an odd-sized document, the document should be prepared in the same way as a photograph.

(d) *Originals and reproductions.* —

(i) *Notices of Appeal.* — The original Notice of Appeal (Form EOIR-26) must always bear the original signature of the person filing the appeal or that person's representative. See Chapter 3.3(b) (Signatures). A copy of a signed original is acceptable, provided that the signed original is available to the Board upon request. See Chapter 3.1(a) (Filing).

(ii) *Motions.* — The original of a motion must always bear an original signature. See Chapter 3.3(b) (Signatures). A copy of a signed original is acceptable, provided that the signed original is available to the Board upon request. However, a Notice of Appeal (Form EOIR-26) may *not* be used to file a motion.

(iii) *Forms.* — The original of a form must always bear an original signature. See Chapter 3.3(b) (Signatures), 12.3 (Submitting Completed Forms).

(iv) *Supporting documents.* — The Board strongly recommends that parties submit copies of supporting documents, not originals, unless instructed otherwise. Parties should retain original documents in the event that an Immigration Judge or the Board requests them at a later date. The Board does not as a practice return original documents, nor can the Board ensure the return of any original documents submitted to it.

All reproductions should be clear, legible, and made on standard-sized paper. See Chapter 3.3(c)(iv) (Paper size and quality). Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. The Board prefers that all documents, unless voluminous, be one-sided.

Parties wishing to submit original photographs, certificates, or other odd-sized documents should consult Chapter 3.3(c)(x) (Photographs and odd-sized documents).

(e) *Source materials.* — When a party relies on a source of law that is not readily available, a copy of that source of law must be provided to the Board and the other party. When a party relies upon any supporting document, a copy of that document must be provided to the Board and the other party.

(i) *Source of law.* — When a party relies on a source of law that is not readily available, that source of law should be reproduced in or attached to the brief. Similarly, if citation is made to governmental memoranda, legal opinions, advisory opinions, communiques, or other ancillary legal authority or source, copies of such items should be provided by the citing party, along with the brief.

(ii) *Source of factual information.* — Photocopied secondary source material filed in support of an appeal or motion must be clearly marked and have identifying information, including the precise title, date, and page of the material being provided. The Board strongly encourages the submission of title pages containing identifying information for the published matter (e.g., author, year of publication). Identifying information should appear on the document itself and not just in a list of exhibits or table of contents. Any copy of the State Department Country Reports on Human Rights Practices must indicate the year of that particular report.

Regarding the propriety of submitting evidence, see Chapter 4.8 (Evidence on Appeal).

(iii) *Highlighting.* — When a party submits voluminous secondary source material, that party should highlight or otherwise indicate the pertinent passages of that secondary source material.

(f) *Circuit court or district court orders.* — When a federal court orders further action in a case before the Board, the parties are asked to provide a copy of the federal court order to the Board.

(g) *Criminal conviction documents.* — Documents regarding criminal convictions must comport with the requirements set forth in 8 C.F.R. § 1003.41.

3.4 Filing Fees

(a) *When required.* — A filing fee must be submitted together with an appeal or motion in the following instances:

- any appeal filed with the Board (except an appeal of a custody bond determination)
- a motion to reopen (except a motion that is based exclusively on a claim for asylum)
- a motion to reconsider (except a motion that is based on an underlying claim for asylum)

See 8 C.F.R. §§ 1003.2(g)(2)(i), 1003.3, 1003.8, 1103.7. For purposes of determining filing fee requirements, the term "asylum" here includes withholding of removal, withholding of deportation,

and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

If the filing party is unable to pay the fee, he or she should request that the fee be waived. See subsection (c), below.

Filing fees should not be confused with *application* fees. See subsection (i), below.

(b) *When not required.* — A filing fee is not required in the following instances:

- a custody bond appeal
- a motion to reopen that is based exclusively on a claim for asylum
- a motion to reconsider that is based on an underlying claim for asylum
- a motion filed while an appeal, a motion to reopen, or a motion to reconsider is already pending before the Board
- a motion requesting only a stay of removal, deportation, or exclusion
- a motion to recalendar
- any appeal or motion filed by DHS
- a motion that is agreed upon by all parties and is jointly filed (a "joint motion")
- an appeal or motion filed under a law, regulation, or directive that does not require a filing fee

See 8 C.F.R. §§ 1003.2(g)(2)(i), 1003.3, 1003.8, 1103.7. For purposes of determining filing fee requirements, the term "asylum" here includes withholding of removal, withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

(c) *When waived.* — When an appeal or motion normally requires a filing fee, the Board has the discretion to waive that fee upon a showing of economic hardship or incapacity.

Fee waivers are *not* automatic but must be requested through the filing of a Fee Waiver Request (Form EOIR-26A). The Fee Waiver Request form must be filed along with the Notice of Appeal (Form EOIR-26) or the motion. The form requests information about monthly income and expenses and requires the applicant to declare, under penalty of perjury, that he or she is unable to pay the fee due to personal economic hardship.

Fees are not reimbursed merely because the appeal is sustained or the motion is granted.

(d) *Amount of payment.* — The filing fee, in all cases in which a fee is required, is $110 and must be paid in the *precise* amount. If a fee is required, but is paid in any amount other than $110, the filing will be rejected. See Chapter 3.1(c)(i) (Meaning of "rejected").

(e) *Number of payments for a consolidated proceeding.* — Only one fee should be paid in a consolidated proceeding. See Chapter 4.10(a) (Consolidated appeals). For example, if family members appeared in a consolidated proceeding before an Immigration Judge, they need file only one appeal and pay only one filing fee on appeal.

If the proceedings were not consolidated below, a separate filing fee is required for each family member. For example, if spouses filed separate claims for relief and those claims were ruled upon separately by an Immigration Judge, their appeals would have to be filed separately, with a separate fee for each.

(f) *Form of payment.* — When a filing fee is required for an appeal or motion, the fee must be paid by check or money order in U.S. dollars and be drawn from a bank or institution that is located within the United States. 8 C.F.R. § 1003.8(a). Checks and money orders are to be made payable to the "United States Department of Justice."

Fee payment should *always* bear the full name and alien registration number ("A number") of the alien or, in the case of a consolidated proceeding, the lead alien. Fee payments in fine cases should bear the assigned case number.

The Board does not accept cash, credit cards, or any form of electronic payment.

(g) *Defective or missing payment.* — If a filing fee is required for an appeal or motion but is not submitted, the filing will be rejected. See Chapter 3.1(c)(i) (Meaning of "rejected"). If a fee payment is not in the correct amount of $110, the filing will be rejected. If a fee payment is uncollectible (for example, a check "bounces"), the appeal or motion will be dismissed or denied as improperly filed.

(h) *Attaching the fee.* — For appeals, any filing fee payment should be stapled to the Notice of Appeal (Form EOIR-26) as indicated on the form. For motions, any fee payment should be stapled to the cover sheet.

(i) *Application fees.* — The Board collects filing fees for appeals and motions *only*. The Board does not collect fees for underlying applications for relief (e.g., adjustment of status, cancellation of removal). Application fees should be paid to DHS or other agency in accordance with the instructions on the application form. The fee structure for applications for relief and other immigration benefits is set forth in the regulations at 8 C.F.R. § 1103.7.

When a motion before the Board is based upon newly available eligibility for relief, payment of the fee for the underlying application is not a prerequisite to filing the motion. Jurisdiction over an application for new relief lies with the Immigration Courts, and thus the application fee need not be paid unless and until the application comes before an Immigration Judge.

3.5 Briefs

The requirements for briefs are discussed elsewhere in this manual. See Chapters 4.6 (Appeal Briefs), 5.4 (Motion Briefs).

3.6 Expedite Requests

Parties seeking urgent Board action should follow the procedures set forth in Chapter 6 (Stays and Expedite Requests).

4 Appeals of Immigration Judge Decisions

4.1 Types of Appeal

The Board entertains appeals from the decisions of Immigration Judges and certain decisions of the Department of Homeland Security (DHS). See Chapter 1.4(a) (Jurisdiction). Unless otherwise indicated, this chapter is limited to appeals from the decisions of Immigration Judges pertaining to the removal, deportation, or exclusion of aliens.

Other kinds of appeals are discussed in the following chapters:

Chapter 7	Bond
Chapter 9	Visa Petitions
Chapter 10	Fines
Chapter 11	Discipline of Practitioners

4.2 Process

(a) ***Immigration Judge decision.*** **—** An Immigration Judge presides over courtroom proceedings in removal, deportation, exclusion, and other proceedings. See Chapter 1.2(c) (Relationship to the Immigration Courts). The parties in such proceedings are the alien and DHS. See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)).

(i) ***Oral vs. written.*** **—** The decision of an Immigration Judge may be rendered either orally or in writing. When a decision is rendered orally, the Immigration Judge recites the entire decision in the parties' presence and provides them with a written memorandum order summarizing the oral decision. When a decision is rendered in writing, the decision is served on the parties by first class mail or by personal service. See 8 C.F.R. § 1003.37.

(ii) ***Appeal to the Board vs. motion before the Immigration Judge.*** **—** After the Immigration Judge renders a decision, a party may either file an appeal with the Board or file a motion with the Immigration Judge. Once a party files an appeal with the Board, jurisdiction is vested with the Board, and the Immigration Judge is divested of jurisdiction over the case. Accordingly, once an appeal has been filed with the Board, an Immigration Judge may no longer entertain a motion to reopen or a motion to reconsider. For that reason, if a party first files a motion with the Immigration Judge and then files an appeal with

the Board, the Immigration Judge loses jurisdiction over the motion, and the record of proceedings is transferred to the Board for consideration of the appeal.

(iii) *Certification vs. appeal.* — Certification to the Board is entirely separate and distinct from the filing of an appeal, and the two should not be confused. See Chapter 4.18 (Certification by an Immigration Judge).

(b) *Filing.* — If an appeal is taken from the decision of an Immigration Judge, it must be filed properly and within the time allowed. See Chapters 3 (Filing with the Board), 4.5 (Appeal Deadlines). An appeal of an Immigration Judge decision must be filed directly with the Board, using the Notice of Appeal (Form EOIR-26). 8 C.F.R. § 1003.3(a). See Chapter 3.1 (Delivery and Receipt). The appeal may *not* be filed with DHS or an Immigration Court. Erroneous filing of an appeal with DHS or an Immigration Court does not constitute filing with the Board and will not excuse the filing party from the appeal deadline.

If an appeal is received by the Board but has not been properly filed (for example, the filing fee is missing or Proof of Service has not been completed), the appeal may be rejected. See Chapter 3.1(c) (Defective filings); Chapter 3.1(c)(i) (Meaning of "rejected"). Rejection does *not* extend the filing deadline. Instead, it can result in an untimely filing and, ultimately, dismissal of the appeal. See Chapter 4.5(b) (Extensions).

(c) *Stays.* — An alien may seek a stay of deportation or a stay of removal while an appeal is pending before the Board. Stays are automatic in some instances, but discretionary in others. Stays are discussed in Chapter 6 (Stays and Expedite Requests).

(d) *Processing.* — Once an appeal is properly filed, a written receipt is sent to both the alien and DHS. The Board will then obtain the record of proceedings from the Immigration Court. In appropriate cases, a briefing schedule is provided to both sides. Also, in appropriate cases, a transcript is prepared, and copies are sent to the parties along with the briefing schedule. See subsections (e), (f) below.

(e) *Briefing schedule.* — When a Notice of Appeal is filed, a receipt is issued to acknowledge receipt of the appeal. A briefing schedule is then issued in which the parties are notified of the deadlines for filing a brief. See Chapter 4.7 (Briefing Deadlines). The briefs must arrive at the Board by the dates set in the briefing schedule. See Chapter 3.1 (Delivery and Receipt). In the event that a briefing extension is requested and granted, a briefing extension notice is issued. See Chapter 4.7(c) (Extensions).

(f) *Transcription.* — The Board transcribes Immigration Court proceedings in appropriate cases.

(i) *Preparation of transcripts.* — The Board transcribes proceedings, where appropriate, after receiving a properly filed appeal from the decision of an Immigration Judge. Where a transcript is prepared, the transcript is sent to both parties along with the briefing schedule via regular mail. The Board does not entertain requests to send transcripts by overnight delivery or other means.

(ii) *Requests for transcripts.* — Transcripts are not normally prepared for the following types of appeals: bond determinations; denials of motions to reopen (including motions to reopen in absentia proceedings); denials of motions to reconsider; and interlocutory appeals.

Proceedings of these types may in some instances be transcribed at the discretion of the Board. If a party desires a transcript for any of these types of proceedings, he or she should send correspondence with a cover page labeled "REQUEST FOR TRANSCRIPTION." See Appendix F (Sample Cover Page). That correspondence should briefly state the reasons for the request. However, a request for transcription does *not* affect the briefing schedule. Parties are still required to meet briefing deadlines.

If the Board declines to transcribe a hearing, the parties may consult the tape recording of proceedings. Except for those periods when the Board is preparing a transcript of proceedings, the tape recordings of the proceedings remain in the possession of the Immigration Court. Parties wishing to review the tape recordings should contact the Immigration Court in which the proceedings were held.

(iii) *Defects in the transcript.* — Obvious defects in the transcript (e.g., photocopying errors, large gaps in the recorded record) should be brought to the immediate attention of the Clerk's Office. Such requests should be filed separately under a cover page titled "REQUEST FOR CORRECTION OF TRANSCRIPT." See Appendix B (Directory), Appendix F (Sample Cover Page). The Board, in its discretion, may remedy the defect where appropriate and feasible.

Defects do *not* excuse the parties from existing briefing deadlines. Those deadlines remain in effect until the parties are notified otherwise. See Chapter 4.7(c) (Extensions).

Where the Board does not or cannot remedy the purported defect in the transcript, and the party believes that defect to be significant to the party's argument or the adjudication of the appeal, the party should identify the defect and argue its significance with specificity

in the appeal brief. The Board recommends that the brief be supported by a sworn, detailed statement. The Board will consider any allegations of transcript error in the course of adjudicating the appeal.

(iv) *Stipulated record of proceedings.* — Whether or not a transcript is available, the alien and DHS may prepare and sign a stipulation regarding the facts or events that transpired below. The parties may also correct errors or omissions in the record by stipulation.

(g) *Oral argument.* — The Board occasionally grants oral argument at the request of one of the parties. In such cases, parties present their case orally to a panel of three or more Board Members in a courtroom setting. See Chapter 8 (Oral Argument).

(h) *Record on appeal.* — The actual contents of the record on appeal vary from case to case, but generally include the following items: charging documents; hearing notices; notices of appearance; applications for relief and any accompanying documents; court-filed papers and exhibits; transcript of proceedings and oral decision of the Immigration Judge, if prepared; written memorandum order or decision of the Immigration Judge; Notice of Appeal; briefing schedules; briefs; motions; correspondence; and any prior decisions by the Board.

(i) *Decision.* — Upon the entry of a decision, the Board serves its decision upon the parties. See Chapter 1.4(d) (Board decisions). The decision is sent by regular mail to the parties.

4.3 Parties

(a) *Parties to an appeal.* —

(i) *The alien.* — Only an alien who was the subject of an Immigration Court proceeding, or the alien's representative, may file an appeal. The Notice of Appeal (Form EOIR-26) must identify the names and alien registration numbers ("A numbers") of every person included in the appeal. *The appeal is limited to those persons identified.* 8 C.F.R. § 1003.3(a)(1). Thus, families should take special care -- in each and every filing -- to identify by name and alien registration number every family member included in the appeal. See Chapters 4.4(b)(iii) (How many to file), 4.10 (Combining and Separating Appeals).

(ii) *DHS.* — DHS is deemed a party to the Immigration Court proceeding. See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)). Thus, DHS is entitled to appeal an Immigration Judge decision and is deemed a party for any appeal

filed by the alien. An appeal filed by DHS must also identify the names and alien registration numbers of every person from whose proceeding DHS is filing that appeal.

(iii) *Other persons or entities.* — No other person or entity may file an appeal of an Immigration Judge decision.

(b) *Parties who have waived appeal.* —

(i) *Effect of appeal waiver.* — If the opportunity to appeal is knowingly and intelligently waived, the decision of the Immigration Judge becomes final. See 8 C.F.R. § 1003.39. If a party waives appeal at the conclusion of proceedings before the Immigration Judge, that party generally may not file an appeal thereafter. See 8 C.F.R. § 1003.3(a)(1); *Matter of Shih*, 20 I&N Dec. 697 (BIA 1993). See also 8 C.F.R. § 1003.1(d)(2)(i)(G).

(ii) *Challenging a waiver of appeal.* — Generally, a party who waives appeal cannot retract, withdraw, or otherwise undo that waiver. If a party wishes to challenge the validity of his or her waiver of appeal, the party may do so in one of two ways: either in a timely motion filed with the Immigration Judge that explains why the appeal waiver was not valid *or* in an appeal filed directly with the Board that explains why the appeal waiver was not valid. *Matter of Patino*, 23 I&N Dec. 74 (BIA 2001). Once an appeal is filed, jurisdiction vests with the Board, and the motion can no longer be ruled upon by the Immigration Judge. See Chapter 4.2(a)(ii) (Appeal to the Board vs. motion before the Immigration Judge).

(c) *Representation.* — A party to an appeal may appear without representation ("pro se") or with representation. See Chapter 2 (Appearances before the Board). If a party wishes to be represented, he or she may be represented by an individual authorized to provide representation under the regulations. See 8 C.F.R. § 1003.3(a)(1). See also Chapter 2 (Appearances before the Board). Whenever a party is represented, the party should submit all filings, documents, and communications to the Board through his or her representative. See Chapter 2.1(d) (Filings and communications).

(d) *Persons not party to the appeal.* — Only a party to an appeal, or a party's representative, may file an appeal, motion, or document or send correspondence regarding that appeal. Family members, employers, and other third parties may not file appeals.

If anyone who is not a party to the appeal wishes to make a submission to the Board regarding a particular case, that person or entity should make the submission through one of the parties. Third parties who wish to appear as amicus curiae should consult Chapter 2.10 (Amicus Curiae).

4.4 Filing an Appeal

(a) *Rules for filing.* — An appeal must be filed in accordance with the general rules for filing. See Chapter 3.1 (Delivery and Receipt). For the order in which documents should be filed, see Chapter 3.3(c)(i)(A) (Appeals).

(b) *Notice of Appeal.* — For any appeal of an Immigration Judge decision, a completed and executed Notice of Appeal (Form EOIR-26) must be timely filed with the Board. See Chapter 4.5 (Appeal Deadlines). See also 8 C.F.R. § 1003.3(a)(1). Parties must read carefully and comply with the instructions on the Notice of Appeal (Form EOIR-26).

(i) *When to file.* — See Chapter 4.5 (Appeal Deadlines).

(ii) *Where to file.* — For appeals of Immigration Judge decisions, the Notice of Appeal (Form EOIR-26) must be filed with the Board. It may *not* be filed with DHS or an Immigration Court. Filing an appeal of an Immigration Judge decision with DHS or an Immigration Court will not be accepted as proper filing with the Board. See Chapter 1.6(d) (Mail and other forms of delivery).

(iii) *How many to file.* — A single Notice of Appeal (Form EOIR-26) must be filed for each alien who is appealing the decision of an Immigration Judge, *unless* the appeal is from proceedings that were consolidated by the Immigration Judge. See Chapters 4.3(a) (Parties to an appeal), 4.10(a) (Consolidated appeals). Only the original Notice of Appeal must be filed. Additional copies of the Notice of Appeal need not be submitted.

(iv) *Completing the Notice of Appeal.* — For appeals of Immigration Judge decisions, the Notice of Appeal (Form EOIR-26) contains instructions on how to complete the form. Parties should be careful to complete the form accurately and completely.

(A) *A numbers.* — The alien registration number ("A number") of *every* person included in the appeal should appear on the form. If an individual alien has more than one alien registration number assigned to him or her, *every* number should appear on the form.

(B) *Important data.* — The party appealing should make sure the form is completed in full, including the parts of the form that request the date on the Immigration Judge's oral decision or written order, and the type of proceeding (removal, deportation, exclusion, asylum, bond, denial of a motion to reopen by an Immigration Judge, or denial of a motion to reconsider by an Immigration Judge).

(C) *Brief in support of the appeal.* — The appealing party must indicate on the Notice of Appeal (Form EOIR-26) whether or not a brief will be filed in support of the appeal. If a party indicates that a brief will be filed and thereafter fails to file a brief, the appeal may be summarily dismissed. See Chapters 4.7(e) (Decision not to file a brief), 4.16 (Summary Dismissal). The Board strongly encourages the filing of briefs. See Chapter 4.6 (Appeal Briefs).

(D) *Grounds for the appeal.* — Space is provided on the Notice of Appeal for a concise statement to identify the grounds for the appeal. The statement of appeal is not limited to the space on the form but may be continued on additional sheets of paper. Any additional sheets, however, should be attached to the Notice of Appeal (Form EOIR-26) and labeled with the name and alien registration number ("A number") of everyone included in the appeal.

Parties are advised that vague generalities, generic recitations of the law, and general assertions of Immigration Judge error are unlikely to apprise the Board of the reasons for appeal.

(E) *Summary dismissal.* — If neither the Notice of Appeal (Form EOIR-26) nor the documents filed with it adequately identify the basis for the appeal, the appeal may be summarily dismissed. See Chapter 4.16(b) (Failure to specify grounds for appeal). If a party indicates on the Notice of Appeal that a brief will be filed in support of the appeal and thereafter fails to file a brief, the appeal may be summarily dismissed. See Chapter 4.7(e) (Decision not to file a brief). There are other grounds for summary dismissal. See 8 C.F.R. § 1003.1(d)(2). See also Chapter 4.16 (Summary Dismissal).

(v) *Mistakes to avoid.* —

(A) *Mixing unrelated appeals.* — Parties and representatives should not "mix" unrelated appeals on one Notice of Appeal (Form EOIR-26). Each Immigration Judge decision must be appealed separately. For example, one Notice of Appeal should not combine the appeal of a bond determination and the appeal of an Immigration Judge decision regarding eligibility for relief. See Chapter 7.3(a)(i) (Separate Notice of Appeal). The appealing party should attach a copy of the decision being appealed to the Notice of Appeal.

(B) *Using the Notice of Appeal for motions.* — A Notice of Appeal (Form EOIR-26) may *not* be used to file a motion with the Board. See Chapter 5 (Motions before the Board).

(C) *Using the Notice of Appeal to appeal to a federal court.* — A Notice of Appeal (Form EOIR-26) may not be used to challenge a decision *made by* the Board. In this instance, the proper filing is a motion to reconsider with the Board or an action in the appropriate United States district or circuit court.

(c) *Proof of Service.* — The Certificate of Service portion of the Notice of Appeal (Form EOIR-26) must be completed. See Chapter 3.2(d) (Proof of Service).

(d) *Fee or fee waiver.* — The appeal must be accompanied by the appropriate filing fee or a completed Appeal Fee Waiver Request (Form EOIR-26A). 8 C.F.R. §§ 1003.3(a)(1), 1003.8. See Chapter 3.4 (Filing Fees).

(e) *Notice of Appearance.* — If a party is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) must accompany the Notice of Appeal (Form EOIR-26). See Chapter 4.3(c) (Representation).

(f) *Copy of order.* — Parties are encouraged to include a copy of either the memorandum order of the oral decision or the written decision being appealed.

(g) *Confirmation of receipt.* — The Board routinely issues receipts for Notices of Appeal (Form EOIR-26). The Board does not provide receipts for appellate briefs or supplemental filings. See Chapter 3.1(d) (Filing receipts).

4.5 Appeal Deadlines

(a) *Due date.* — A Notice of Appeal (Form EOIR-26) must be filed no later than 30 calendar days after the Immigration Judge renders an oral decision or mails a written decision. 8 C.F.R. § 1003.38(b).

The 30-day period is computed as described in Chapter 3.1(b)(ii) (Computation of time). The Board does not follow the "mailbox rule" but calculates deadlines according to the time of receipt at the Clerk's Office. See Chapter 3.1 (Delivery and Receipt). The 30-day deadline and method of computation applies to all parties, including persons detained by DHS or other federal or state authorities.

(b) *Extensions.* — The regulations set strict deadlines for the filing of an appeal, and the Board does not have the authority to extend the time in which to file a Notice of Appeal (Form EOIR-26). See 8 C.F.R. § 1003.38(b).

(c) *Detained persons.* — Detained persons are subject to the same 30-day appeal deadline. All appeals, regardless of origin, must be received by the Board in the time allotted. An appeal is not timely filed simply because it is deposited in the detention facility's internal mail system or is given to facility staff to mail prior to the deadline.

4.6 Appeal Briefs

(a) *Filing.* — An appeal brief must comply with the general requirements for filing. See Chapter 3.1 (Delivery and Receipt). The appeal brief must be timely. See Chapter 4.7 (Briefing Deadlines). It should have a cover page. See Appendix F (Sample Cover Page). The briefing notice from the Board should be stapled on top of the cover page or otherwise attached to the brief in accordance with the instructions on the briefing notice. The brief must be served on the other party. See Chapter 3.2(d) (Proof of Service). There is no fee for filing a brief.

(i) *Appeals from Immigration Judge decisions.* — For appeals from Immigration Judge decisions, the appeal brief must be filed directly with the *Board*. 8 C.F.R. § 1003.3(c)(1).

(ii) *Appeals from Department of Homeland Security decisions.* — For appeals from decisions of the Department of Homeland Security, the brief should be filed with DHS, not the Board, and in accordance with the instructions on the appeal form.

(b) *Brief-writing guidelines.* — A brief advises the Board of a party's position and arguments. A well-written brief is in any party's best interest and is therefore of great importance to the Board. The brief should be clear, concise, well-organized, and should cite the record and legal authorities fully, fairly, and accurately.

Briefs should always recite those facts which are appropriate and germane to the adjudication of the appeal, and should cite proper legal authority, where such authority is available. See Chapter 4.6(d) (Citation). Briefs should not belabor facts or law that are not in dispute. Parties are encouraged to expressly identify in their briefs when they agree with the Immigration Judge's recitation of facts or law.

There are no limits on the number of pages in an appeal brief. Parties are encouraged, however, to limit the body of their briefs to 25 pages, provided that such length can adequately dispose of the issues in the case. Briefs should *always* be paginated.

(c) *Format.* — Briefs should comport with the requirements set out in Chapter 3.3 (Documents).

(i) *Signature.* — Briefs should be signed by the person who prepared the brief. See Chapter 3.3(b) (Signatures).

(ii) *A Number.* — The alien registration number ("A number") of each alien should appear on the cover page of the brief and on the bottom right corner of each page thereafter.

If an alien has more than one alien registration number assigned to him or her, then every alien registration number should appear on the cover page of the brief.

If a brief is filed in a consolidated appeal and a comprehensive listing of alien registration numbers is impractical on every page, the first page of the brief should contain the name and alien registration number of every alien included in the appeal. The alien registration number of the lead alien, followed by "et al.", should appear as a footer on the bottom right corner of each page thereafter. See Chapter 4.10(a) (Consolidated appeals).

Unrelated proceedings should not be addressed in the same brief, *unless* proceedings have been consolidated by the Immigration Judge or the Board. If proceedings have been consolidated, this should be stated in the introductory portion of the brief. If proceedings have not been consolidated, a separate brief should be filed for each individual case. If a party wishes unrelated appeals to be considered together (but not consolidated), this may be requested in the introductory portion of the brief. See Chapter 4.10 (Combining and Separating Appeals).

(iii) *Caption.* — Parties should use captions and cover pages in all filings. See Chapter 3.3(c)(vi) (Cover page and caption), Appendix F (Sample Cover Page).

(iv) *Recommended contents.* — The following items should be included in the brief:

- a concise statement of facts and procedural history of the case
- a statement of issues presented for review
- the standard of review
- a summary of the argument
- the argument
- a short conclusion stating the precise relief or remedy sought

(v) *References to parties.* — To avoid confusion, use of "appellant" and "appellee" is discouraged. When litigation titles are desired or necessary, the following guidelines should be followed:

- removal proceedings: the alien is referred to as "respondent"
- deportation proceedings: the alien is referred to as "respondent"
- exclusion proceedings: the alien is referred to as "applicant"
- bond proceedings: the alien is referred to as "respondent"
- visa petition proceedings: the sponsoring individual or entity is referred to as "petitioner" and the alien being petitioned for is referred to as "beneficiary"
- all proceedings: the Immigration Judge should be referred to as "the Immigration Judge"
- all proceedings: the Department of Homeland Security should be referred to as "DHS," or "Department of Homeland Security"

Care must be taken not to confuse the Department of Homeland Security with the Immigration Court or the Immigration Judge. See Chapter 1.4(f) (Department of Homeland Security).

Complete names, titles, agency designations, or descriptive terms are preferred when referring to third parties.

(vi) *Statement of facts.* — A brief's statement of facts should be concise. If facts are not in dispute, the brief should simply and expressly adopt the facts as set forth in the decision of the Immigration Judge. If facts are in dispute or, in the party's estimation, are insufficiently developed in the decision of the Immigration Judge, the party's brief should set out the facts clearly and expressly identify the points of contention.

Facts, like case law, require citations. Parties should support factual assertions by citation to the record. When referring to the record, parties should follow Chapter 4.6(d) (Citation). Sweeping assertions of fact that are made without citation to their location in the record are not helpful. Likewise, facts that were not established on the record may not be introduced for the first time on appeal. *Matter of Fedorenko*, 19 I&N Dec. 57 (BIA 1984).

The Board admonishes all parties: Do not misstate or misrepresent the facts, or omit unfavorable facts that are relevant to the adjudication of the appeal. A brief's accuracy and integrity are paramount to the persuasiveness of the argument and the proper adjudication of the appeal.

(vii) *Footnotes.* — Substantive arguments should be restricted to the text of the brief. Excessive use of footnotes is discouraged.

(viii) *Headings and other markers.* — The brief should employ headings, subheadings, and spacing to make the brief more readable. Short paragraphs with topic sentences and proper headings facilitate the coherence and cohesion of an argument.

(ix) *Chronologies.* — A brief should contain a chronology of the facts, especially in those instances where the facts are complicated or involve several events. Charts or similar graphic representations that chronicle events are welcome.

(x) *Multiple briefs.* — The Board prefers that arguments in an appeal brief not incorporate by cross-reference arguments that have been made elsewhere, such as in a pretrial brief or motion brief. Whenever possible, arguments should be contained in full in the appeal brief.

(d) *Citation.* — Parties are expected to provide complete and clear citation to all authorities, factual or legal. The Board asks all parties to comply with the citation conventions articulated here and in Appendix J (Citation Guidelines).

(i) *Board decisions (precedent).* — In the past, the Board issued precedent decisions in slip opinion or "Interim Decision" form. See Chapter 1.4(d)(i)(C) (Interim Decisions). Citations to the Interim Decisions form are now greatly disfavored.

Precedent Board decisions are published in an "I&N Dec." form. See Chapter 1.4(d) (Board decisions). Citations to Board decisions should be made in accordance with their publication in *Administrative Decisions Under Immigration & Nationality Laws of the United States*. The proper citation form includes the volume number, the reporter abbreviation ("I&N Dec."), the first page of the decision, the name of the adjudicator (BIA, A.G., etc.), and the year of the decision. Example: *Matter of Gomez-Giraldo*, 20 I&N Dec. 957 (BIA 1995).

All precedent decisions should be cited as "*Matter of.*" The use of "*In re*" is not favored. Example: *Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002), not *In re Yanez*, 23 I&N Dec. 390 (BIA 2002).

Citations to a specific point in a precedent decision should include the precise page number(s) on which the point appears. Example: *Matter of Artigas*, 23 I&N Dec. 99, 100 (BIA 2001).

Citations to a separate opinion in a precedent decision should include a parenthetical identifying whether it is a dissent or concurrence. Example: *Matter of Artigas,* 23 I&N Dec. 99, 109-110 (BIA 2001) (dissent).

(ii) *Board decisions (non-precedent).* — Citation to non-precedent Board cases by parties not bound by the decision is discouraged. When it is necessary to refer to an unpublished decision, the reference should include the alien's full name, alien registration number, the adjudicator, and the decision date. Because the Board uses "*Matter of*" as a signal for a published case, its use with unpublished cases is discouraged. Example: Jane Smith, A12 345 678 (BIA July 1, 1999). A copy of the decision should be provided whenever possible. See Chapter 1.4(d)(ii) (Unpublished decisions).

(iii) *Board decisions (indexed).* — Indexed decisions are unpublished, non-precedent decisions that are compiled for the use of Executive Office for Immigration Review staff. Citation to non-precedent decisions, even when indexed, is discouraged. When it is necessary to refer to an indexed decision, the decision should be treated as a non-precedent case.

(iv) *Attorney General (precedent).* — When the Attorney General issues a precedent decision, the decision is published in the *Administrative Decisions Under Immigration & Nationality Laws of the United States.* Attorney General precedent decisions should be cited in accordance with the same rules set forth in subsections (i) and (ii), above.

(v) *Department of Homeland Security (precedent).* — Certain precedent decisions of the Department of Homeland Security, as well as those of the former Immigration and Naturalization Service, appear in the *Administrative Decisions Under Immigration & Nationality Laws of the United States.* These decisions should be cited in accordance with the same rules set forth in subsections (i) and (ii), above.

(vi) *Federal and state court cases.* — Federal and state court decisions should be cited according to standard legal convention, as identified by the latest edition of*A Uniform System of Citation*, commonly known as the "Blue Book." If the case being cited is unpublished, a copy of that case should be provided.

(vii) *Statutes, rules, regulations, and other legal authorities and sources.* — Statutes, rules, regulations, and other standard sources of law should be cited according

to standard legal convention, as identified by the latest edition of *A Uniform System of Citation*, commonly known as the "Blue Book." Sources of law or information that are peculiar to immigration law (e.g., the Foreign Affairs Manual) should be cited according to the convention of the immigration bar or cited in such a way as to make the source clear and accessible to the reader. Where citation is made to a source that is not readily available to the Board or the other party, a copy should be attached to the brief. See Chapter 3.3(e) (Source materials).

(viii) ***Transcript of proceedings.*** — If an argument on appeal is based on an error in fact, procedure, or conduct that is manifested in the transcript, the Notice of Appeal or brief should provide citations to the transcript. Passages in the transcript of proceedings should be cited according to page number: "Tr. at_____." Line citations are welcome, but not necessary.

(ix) ***Decision of the Immigration Judge.*** — If an argument on appeal is based on an error in the Immigration Judge's decision, the decision of the Immigration Judge, whether rendered orally or in writing, should be cited as "I.J. at _____." If the reference is to a decision other than the decision being appealed, the citation should indicate the nature of the proceeding and the date. Example: "I.J. bond decision at 5 (Jan. 1, 1999)."

(x) ***Text from briefs.*** — Text from the alien's brief should be cited as "Applicant's brief at_____" or "Respondent's brief at_____", whichever is appropriate. Text from the DHS brief should be cited as "DHS brief at _____."

(xi) ***Exhibits.*** — Exhibits designated during the hearing should be cited as they were designated by the Immigration Judge. Example: "Exh. _____." Exhibits accompanying an appeal, brief, or motion should identify the exhibit and what it is attached to. Example: "Motion to Reopen Exh. 2."

(e) ***Consolidated briefs.*** — Where cases have been consolidated, one brief may be submitted on behalf of all the aliens in the consolidated proceeding, provided that every alien's full name and alien registration number ("A number") appear on the consolidated brief. See generally Chapters 4.6(c)(ii) (A number), 4.10(a) (Consolidated appeals). A consolidated brief may not be filed if the cases have not been consolidated by the Board or an Immigration Judge.

(f) ***Response briefs.*** — When the appealing party files an appeal brief, the other party may file a "response brief," in accordance with the briefing schedule issued by the Board. See Chapter 4.7 (Briefing Deadlines).

If the appealing party fails to file a brief, the other party may nonetheless file one, provided it is filed in accordance with the briefing schedule issued by the Board.

(g) *Supplemental briefs.* — The Board usually does not accept supplemental briefs filed outside the period granted in the briefing schedule, except as described below.

(i) *New authorities.* — Whenever a party discovers new authority subsequent to the filing of a brief in a particular case, the party should notify the Board of the new authority through correspondence with a cover page entitled "STATEMENT OF NEW LEGAL AUTHORITIES." See Appendix F (Sample Cover Page). Such correspondence must be served upon the other party. See Chapter 3.2 (Service). It must also be limited to the citation of new authorities and may not contain any legal argument or discussion. Parties are admonished that the Board will not consider any correspondence that appears in form or substance to be a supplemental brief.

(ii) *New argument.* — If a party discovers new authority and wishes to file a supplemental brief, or in any way substitute for the original brief, the party should submit the brief along with a "MOTION TO ACCEPT SUPPLEMENTAL BRIEF" that complies generally with the rules for motions, including service on the opposing party. See Chapter 5.2 (Filing a Motion). The motion should set forth the reason or reasons why the Board should permit the moving party to supplement the original brief. (For example, if a motion to file a supplemental brief is based on a change in the law, the moving party would identify that change and argue the significance of the new authority to the appeal.)

(h) *Reply briefs.* — The Board does not normally accept briefs outside the time set in the briefing schedule, including any brief filed by the appealing party in reply to the response brief of the opposing party. See subsection (f), above.

The Board may, in its discretion, consider an appealing party's "reply brief" when the following conditions are met: (i) the brief is accompanied by a "MOTION TO ACCEPT REPLY BRIEF," (ii) the motion is premised upon and asserts surprise at the assertions of the other party, (iii) the brief identifies and challenges the assertions of the other party, and (iv) the motion and brief are filed with the Board within 21 days of the filing of the other party's brief. (If the appeal was filed by a detained alien, see Chapter 4.7(a)(ii) (Detained cases). The brief should comply generally with the rules for motions. See Chapter 5.2 (Filing a Motion).

The Board will not suspend or delay adjudication of the appeal in anticipation of, or in response to, the filing of a reply brief.

(i) *Amicus curiae briefs.* — Amicus curiae briefs are subject to the same rules as parties' briefs. The filing of multiple amici briefs that raise similar points in support of one party is disfavored. Prospective amici of similar perspectives are encouraged to file a joint brief. See generally Chapter 2.10 (Amicus Curiae).

4.7 Briefing Deadlines

(a) *Due Date.* — In appropriate cases, the Board sets briefing schedules and informs the parties of their respective deadlines for filing briefs. See Chapter 4.2 (Process). A party may not file a brief beyond the deadline set in the briefing schedule, unless the brief is filed with the appropriate motion. See Chapters 4.6(g) (Supplemental briefs), 4.6(h) (Reply briefs), 4.7(d) (Untimely briefs).

(i) *Non-detained cases.* — When the alien is not detained, the parties are generally granted 21 calendar days each, sequentially, to file their initial briefs. See Chapter 3.1(b)(i) (Construction of "day"). The appealing party is provided 21 days from the date of the briefing schedule notice to file an appeal brief, and the opposing party will have an additional 21 days (marked from the date the appealing party's brief was due) in which to file a response brief. 8 C.F.R. § 1003.3(c)(1).

If both parties file an appeal (i.e., cross-appeals), then both parties are granted the same 21-day period in which to file an appeal brief. See 8 C.F.R. § 1003.3(c)(1). If either party wishes to reply to the appeal brief of the other, that party should comply with the rules for reply briefs. See Chapter 4.6(h) (Reply briefs).

(ii) *Detained cases.* — When an appeal is filed in the case of a detained alien, the alien and DHS are both given the same 21 calendar days in which to file their initial briefs. The Board will accept reply briefs filed by DHS or by the alien within 14 days after expiration of the briefing schedule. However, the Board will not suspend or delay adjudication of the appeal in anticipation of, or in response to, the filing of a reply brief. See Chapter 4.6(h) (Reply briefs).

(b) *Processing.* — If a brief arrives at the Board and is timely, the brief is added to the record of proceedings and considered in the course of the adjudication of the appeal. If a brief arrives at the Board and is untimely, the brief is rejected and returned to the sender. See Chapter 3.1(c)(i) (Meaning of "rejected"). The Board may reject a brief as untimely at any time prior to the final adjudication of the appeal.

The Board does not issue receipts for briefs. If a party wishes to confirm the Board's receipt of a brief, the party should call the ASQ line for that information or, in the alternative, contact the Clerk's Office. See Chapter 1.6(b) (Telephone calls), Appendix B (Directory), Appendix I (Telephonic Information). If a party wishes to document the Board's receipt of a brief, the party should either (i) save proof of delivery (such as a courier's delivery confirmation or a return receipt from the U.S. Postal Service) or (ii) request a conformed copy. See Chapter 3.1(d)(iii) (Conformed copies).

(c) *Extensions.* — The Board has the authority to set briefing deadlines and to extend them. The filing of an extension request does *not* automatically extend the filing deadline, nor can the filing party assume that a request will be granted. Until such time as the Board affirmatively grants an extension request, the existing deadline stands.

(i) *Policy.* — In the interests of fairness and the efficient use of administrative resources, extension requests are not favored. A briefing deadline must be met unless the Board expressly extends it.

It is the Board's policy to grant one briefing extension per party, if requested in a timely fashion. It is also the Board's policy *not* to grant second briefing extension requests. Second requests are granted only in rare circumstances.

When a briefing extension is requested, the Board's policy is to grant an additional 21 days to file a brief, regardless of the amount of time requested. The 21 days are added to the *original* filing deadline. Extensions are *not* calculated from the date the request was made or the date the briefing notice was received.

(ii) *Request deadline.* — Extension requests must be received by the Board by the brief's original due date. Extension requests received after the due date will not be granted.

The timely filing of an extension request does not relieve the requesting party of the obligation to meet the filing deadline. Until the extension request is affirmatively granted by the Board, the original deadline remains in effect.

(iii) *Duty to avoid delay.* — All parties have an ethical obligation to avoid delay. The Board's deadlines are designed to provide ample opportunity for filing, and a conscientious party should be able to meet these deadlines.

(iv) *Contents.* — Extension requests should be labeled "BRIEFING EXTENSION REQUEST," and should be captioned accordingly. See Appendix F (Sample Cover Page). An extension request should indicate clearly:

- when the brief is due
- the reason for requesting an extension
- a representation that the party has exercised due diligence to meet the current deadline
- that the party will meet a revised deadline
- proof of service upon the other party

(d) *Untimely briefs.* — If a party wishes the Board to consider a brief despite its untimeliness, the brief must be accompanied by a "MOTION TO ACCEPT LATE-FILED BRIEF" and comply generally with the rules for motions. See Chapter 5.2 (Filing a Motion). If the motion is filed without the brief, the motion will be rejected. See Chapter 3.1(c)(i) (Meaning of "rejected"). Thus, the motion and the brief must be submitted together.

The Board has the discretion to consider a late-filed brief, but does so rarely. A motion to accept late-filed brief must set forth in detail the reasons for the untimeliness, and it should be supported by affidavits, declarations, or other evidence. If the motion is granted, the motion and brief are incorporated into the record, and the brief is considered by the Board. If the motion is denied, the motion is retained as part of the record, but the brief is returned without consideration. In either case, the parties are notified of the Board's decision on the motion.

Parties may file a motion to accept a late-filed brief only once. Subsequent late-filed brief motions will not be considered. Motions to reconsider denials of late-filed brief motions will also not be considered.

(e) *Decision not to file a brief.* — If a party indicates on a Notice of Appeal (Form EOIR-26) that a brief will be filed but later decides not to file a brief, that party should notify the Board in writing *before* the date the brief is due. The filing should have a cover page clearly labeled "BRIEFING WAIVER" and expressly indicate that the party will not be filing a brief. See Appendix F (Sample Cover Page).

Failure to file a brief after an extension request has been granted is highly disfavored . See Chapter 4.16 (Summary Dismissal).

(f) *Failure to file a brief.* — When a party indicates on the Notice of Appeal (Form EOIR-26) that he or she will file a brief and thereafter fails to file a brief and fails to explain the failure to do so,

the Board may summarily dismiss the appeal on that basis. 8 C.F.R. § 1003.1(d)(2)(i)(D). See Chapter 4.16 (Summary Dismissal).

4.8 Evidence on Appeal

(a) *Record evidence.* — The Board considers only that evidence that was admitted in the proceedings below.

(b) *New evidence on appeal.* — The Board does not consider new evidence on appeal. If new evidence is submitted, that submission may be deemed a motion to remand proceedings to the Immigration Judge for consideration of that evidence and treated accordingly. See Chapter 5.8 (Motions to Remand).

(c) *Administrative notice on appeal.* — The Board may, at its discretion, take administrative notice of commonly known facts not appearing in the record. For example, the Board may take administrative notice of current events and contents of official documents, such as country condition reports prepared by the State Department.

(d) *Representations of counsel.* — Representations made by counsel in a brief or motion are not evidence. *Matter of Fedorenko*, 19 I&N Dec. 57 (BIA 1984).

4.9 New Authorities Subsequent to Appeal

Whenever a party discovers new authority subsequent to the filing of a Notice of Appeal or brief, whether that authority supports or detracts from the party's arguments, that party should notify the Board of the new authority. See Chapter 4.6(g)(i) (New authorities). If either party wishes to brief new authority, that party should consult Chapter 4.6(g)(ii) (New argument).

4.10 Combining and Separating Appeals

(a) *Consolidated appeals.* — Consolidation of appeals is the administrative joining of separate appeals into a single adjudication for all the parties involved. Consolidation is generally limited to appeals involving immediate family members, although the Board may consolidate other appeals where the cases are sufficiently interrelated.

Most of the consolidated cases before the Board were consolidated by the Immigration Judge in the proceedings below. The Board may consolidate appeals at its discretion or upon

request of one or both of the parties, when appropriate. For example, the Board may grant consolidation when spouses or siblings have separate but overlapping circumstances or claims for relief. Consolidation must be sought through the filing of a written request that states the reasons for requesting consolidation. Such a request should include a cover page labeled "REQUEST FOR CONSOLIDATION OF APPEALS." See Appendix F (Sample Cover Page). A copy of the request should be filed for each case included in the request for consolidation. The request should be filed as soon as possible.

(b) *Concurrent consideration of appeals.* — Concurrent consideration is the adjudication of unrelated appeals in tandem for the purposes of consistent adjudication and administrative efficiency. The Board may concurrently consider unrelated appeals at its discretion or upon request of one or both of the parties. Concurrent consideration must be sought through the filing of a written request that states the reasons for concurrent consideration. Such a request should include a cover page labeled "REQUEST FOR CONCURRENT CONSIDERATION OF APPEALS." See Appendix F (Sample Cover Page). Concurrent consideration differs from consolidated appeals in that, however similar the cases or the adjudications, the appeals remain separate and distinct from one another. Concurrent consideration is appropriate, for example, when unrelated cases involve the same legal issue.

(c) *Severance of appeals.* — Severance of appeals is the division of a consolidated appeal into separate appeals, relative to each individual involved. The Board may sever appeals at its discretion or upon request of one or both of the parties. Severance must be sought through the filing of a written request that states the reasons for requesting severance. Such a request should include a cover page labeled "REQUEST FOR SEVERANCE OF APPEALS." See Appendix F (Sample Cover Page). Parties are advised, however, that such a request must be clear and filed as soon as possible.

4.11 Withdrawing an Appeal

(a) *Procedure.* — An appealing party may, at any time prior to the entry of a decision by the Board, voluntarily withdraw his or her appeal, with or without the consent of the opposing party. The withdrawal must be in writing and filed with the Board. The cover page to the withdrawal should be labeled "MOTION TO WITHDRAW APPEAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Board), Appendix F (Sample Cover Page).

(b) *Untimely withdrawal.* — If a withdrawal is not received by the Board prior to the Board's rendering of a decision, the withdrawal will not be recognized, and the Board's decision will become binding.

(c) *Effect of withdrawal.* — When an appeal is withdrawn, the decision of the Immigration Judge becomes immediately final and binding as if no appeal had ever been filed, and the alien is then subject to the Immigration Judge's original decision. See 8 C.F.R. § 1003.4. Thus, if the alien appeals an Immigration Judge's order of removal or deportation, and then withdraws the appeal, DHS may at that point remove or deport the alien. If the alien appeals an Immigration Judge's order in which the alien was granted voluntary departure, and then withdraws the appeal, the period of voluntary departure runs from the date of the Immigration Judge's decision, *not* the date of the appeal's withdrawal.

(d) *Distinction from motion to remand.* — Parties should not confuse a motion to withdraw appeal with a motion to remand. The two motions are distinct from one another and have very different consequences. While a motion to withdraw appeal is filed by a party who chooses to accept the decision of the Immigration Judge, a motion to remand is filed by a party who wants the case returned to the Immigration Judge for further consideration. See Chapter 5.8 (Motions to Remand).

(e) *Represented aliens.* — If a represented alien wishes to withdraw an appeal, the alien's representative should file the withdrawal. If a represented alien insists on filing the withdrawal himself or herself, the withdrawal should indicate whether it is being made with the advice and consent of the representative. The withdrawal should also be filed with Proof of Service on the alien's attorney. See Chapter 3.2(d) (Proof of Service), Appendix G (Sample Proof of Service).

4.12 Non-Opposition to Appeal

(a) *Failure to oppose.* — The failure of the opposing party to affirmatively oppose an appeal does not automatically result in the appeal being sustained. While the Board may consider the opposing party's silence in adjudicating the appeal, that silence does not dictate the disposition of the appeal.

(b) *Express non-opposition.* — The opposing party may affirmatively express non-opposition to an appeal at any time prior to the entry of a decision by the Board. Such non-opposition should be expressed either in the response to the appeal or in the form of a notice labeled "NON-OPPOSITION TO APPEAL" and should be properly served on the other party. See Chapter 3.2 (Service), Appendix F (Sample Cover Page). While the Board may weigh the opposing party's non-opposition in adjudicating the appeal, that non-opposition does not dictate the disposition of the appeal.

(c) *Withdrawal of opposition.* — The opposing party may withdraw opposition to an appeal at any time prior to the entry of a decision by the Board. Such non-opposition should be expressed

in the form of a notice labeled "WITHDRAWAL OF OPPOSITION TO APPEAL" and be properly served on the other party. See Chapter 3.2 (Service), Appendix F (Sample Cover Page). While the Board may weigh the opposing party's withdrawal of opposition in adjudicating the appeal, that withdrawal does not dictate the disposition of the appeal.

4.13 Effect of Departure

(a) *Alien appeal.* — Departure from the United States can jeopardize an alien's right to appeal, even when the departure is authorized or compelled by the Department of Homeland Security. Departure from the United States prior to filing an appeal may be construed as a waiver of the right to appeal. Departure from the United States while an appeal is pending may be construed as a withdrawal of that appeal. See 8 C.F.R. §§ 1003.3(e), 1003.4.

(b) *DHS appeal.* — The alien's departure from the United States while a DHS appeal is pending does not constitute a withdrawal of the DHS appeal, nor does it render the DHS appeal moot.

4.14 Interlocutory Appeals

(a) *Nature of interlocutory appeals.* — Most appeals are filed *after* the Immigration Judge issues a final decision in the case. In contrast, an interlocutory appeal asks the Board to review a ruling by the Immigration Judge *before* the Immigration Judge issues a final decision.

(b) *Bond appeals.* — Bond appeals should not be confused with interlocutory appeals. There are separate rules for bond appeals. See Chapter 7 (Bond).

(c) *Scope of interlocutory appeals.* — The Board does not normally entertain interlocutory appeals and generally limits interlocutory appeals to instances involving either important jurisdictional questions regarding the administration of the immigration laws or recurring questions in the handling of cases by Immigration Judges. See *Matter of K-*, 20 I&N Dec. 418 (BIA 1991).

(d) *Filing an interlocutory appeal.* — Interlocutory appeals should be timely filed on a Notice of Appeal (Form EOIR-26). Next to the words "What decision are you appealing?" in box 5, type or write in the words "INTERLOCUTORY APPEAL." Do not check any of the three options in box 5. The appeal must indicate the date of the Immigration Judge's decision, the precise nature and disposition of that decision, and the precise issue being appealed. If the interlocutory appeal is based upon a written decision, a copy of that decision should be included with the appeal.

(e) *Briefing.* — The Board does not normally issue briefing schedules for interlocutory appeals. If an appealing party wishes to file a brief, the brief should accompany the Notice of Appeal or be promptly submitted after the Notice of Appeal is filed. If an opposing party wishes to file a brief, the brief should be filed as soon as possible after the appeal is filed. The Board will not, however, suspend or delay adjudication of an interlocutory appeal in anticipation of, or in response to, the filing of a brief.

4.15 Summary Affirmance

Under certain circumstances, the Board may affirm, without opinion, the decision of an Immigration Judge or DHS officer. The Board may affirm a decision if all of these conditions are met:

- the Immigration Judge or DHS decision reached the correct result
- any errors in the decision were harmless or nonmaterial
- either (a) the issues on appeal are squarely controlled by existing Board or federal court precedent and do not involve the application of a precedent to a novel factual situation, or (b) the factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion

See 8 C.F.R. § 1003.1(e)(4). By regulation, a summary affirmance order reads: "The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. 3.1(e)(4)." 8 C.F.R. § 1003.1(e)(4)(ii).

A summary affirmance order will not contain further explanation or reasoning. Such an order approves the *result* reached by the Immigration Judge or DHS. Summary affirmance does not mean that the Board approves of all the reasoning of that decision, but it does reflect that any errors in the decision were considered harmless or not material to the outcome of the case. See 8 C.F.R. § 1003.1(a)(7), (e)(4).

Note that any motion to reconsider or motion to reopen filed after a summary affirmance order should be filed with the Board. See Chapters 5.6 (Motions to Reopen) and 5.7 (Motions to Reconsider). However, by regulation, the Board cannot entertain a motion based solely on an argument that the case should not have been affirmed without opinion. See 8 C.F.R. § 1003.2(b)(3).

4.16 Summary Dismissal

(a) ***Nature of "summary" dismissal.*** — Under certain circumstances, the Board is authorized to dismiss an appeal without reaching its merits. See 8 C.F.R. § 1003.1(d)(2)(i).

(b) ***Failure to specify grounds for appeal.*** — When a party takes an appeal, the Notice of Appeal (Form EOIR-26) must identify the reasons for the appeal. A party should be specific and detailed in stating the grounds of the appeal, specifically identifying the findings of fact, the conclusions of law, or both, that are being challenged. 8 C.F.R. § 1003.3(b). An appeal, or any portion of an appeal, may be summarily dismissed if the Notice of Appeal (Form EOIR-26), and any brief or attachment, fails to adequately inform the Board of the specific reasons for the appeal. 8 C.F.R. § 1003.1(d)(2)(i)(A).

(c) ***Failure to file a brief.*** — An appeal may be summarily dismissed if the Notice of Appeal (Form EOIR-26) indicates that a brief or statement will be filed in support of the appeal, but no brief, statement, or explanation for not filing a brief is filed within the briefing deadline. 8 C.F.R. § 1003.1(d)(2)(i)(E). See Chapter 4.7(e) (Decision not to file a brief).

(d) ***Other grounds for summary dismissal.*** — An appeal can also be summarily dismissed for the following reasons:

- the appeal is based on a finding of fact or conclusion of law that has already been conceded by the appealing party
- the appeal is from an order granting the relief requested
- the appeal is filed for an improper purpose
- the appeal does not fall within the Board's jurisdiction
- the appeal is untimely
- the appeal is barred by an affirmative
- the appeal fails to meet essential statutory or regulatory requirements
- the appeal is expressly prohibited by statute or regulation

See 8 C.F.R. § 1003.1(d)(2)(i).

(e) *Sanctions.* — Attorneys and accredited representatives are admonished that an appeal that is summarily dismissed may be deemed frivolous. 8 C.F.R. § 1003.1(d)(2)(iii). See Chapters 4.17 (Frivolous Appeals), 11 (Discipline of Practitioners).

4.17 Frivolous Appeals

If it appears to the Board, at any time, that an appeal is filed for an improper purpose or to cause unnecessary delay, the appeal may be dismissed. See 8 C.F.R. § 1003.1(d)(2)(i)(D). The filing of a frivolous appeal may be grounds for discipline against the attorney or accredited representative. See Chapter 11.4 (Conduct).

4.18 Certification by an Immigration Judge

An Immigration Judge may ask the Board to review his or her decision. 8 C.F.R. § 1003.7. To "certify" a case to the Board, an Immigration Court serves a notice of certification on the parties. That notice informs the parties that the case has been certified and sets a briefing schedule.

The right to appeal is separate and distinct from certification. To safeguard the opportunity to appeal and be heard by the Board, parties should file an appeal *even if* an Immigration Judge has certified the case. 8 C.F.R. § 1003.3(d).

5 Motions before the Board

5.1 Who May File

(a) *Parties.* — Only an alien who is the subject of an underlying appeal before the Board, the alien's representative, or DHS may file a motion. A motion must identify all parties covered by the motion and state clearly their full names and alien registration numbers ("A numbers"), including all family members. See Appendix F (Sample Cover Page). The Board will *not* assume that a motion includes all family members (or group members in a consolidated proceeding). See Chapter 4.10 (Combining and Separating Appeals).

(b) *Representatives.* — Motions may be filed either by a party, if unrepresented ("pro se"), or by a party's representative. See Chapter 2 (Appearances before the Board). Whenever a party is represented, the party should submit all motions to the Board through the representative. See Chapter 2.1(d) (Filings and communications).

(i) *Motions to reopen and motions to reconsider.* — All motions to reopen and motions to reconsider must be accompanied by a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27), even if the representative is already the representative of record. See Chapter 2 (Appearances before the Board).

(ii) *All other motions.* — On any motion that is not a motion to reopen or a motion to reconsider, if a representative is already the representative of record, the motion need not be accompanied by a Notice of Appearance. However, if a representative is appearing for the first time, the representative must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) along with that motion. See Chapter 2 (Appearances before the Board).

(c) *Persons not party to the proceeding.* — Only a party to a proceeding, or a party's representative, may file a motion pertaining to that proceeding. Family members, employers, and other third parties may not file a motion. If a third party seeks Board action in a particular case, the request should be made through one of the parties. Third parties who wish to appear as amicus curiae should consult Chapter 2.10 (Amicus Curiae).

5.2 Filing a Motion

(a) *Jurisdiction.* — Motions must be filed in the right place. See Appendix K (Where to File a Motion). The Board may entertain motions only in those cases in which it has jurisdiction.

(i) *Cases never before the Board.* — The Board cannot entertain motions for cases that have never been before it. Cases "never before the Board" include both appeals that were never filed and appeals that were rejected for a filing defect that was never remedied.

(ii) *Cases pending before the Board.* — Where an appeal is pending before the Board, all motions regarding that appeal should be filed with the Board.

(iii) *Cases already decided by the Board.* —

(A) *Motions to reopen and motions to reconsider.* — As a general rule, where an appeal has been decided by the Board and no case is currently pending, a motion to reopen or a motion to reconsider may be filed with the Board. See Chapters 5.6 (Motions to Reopen), 5.7 (Motions to Reconsider). Parties should be mindful of the strict time and number limits on motions to reopen and motions to reconsider. See Chapters 5.6(c) (Time limits), 5.6(d) (Number limits), 5.7(c) (Time limits), 5.7(d) (Number limits).

(B) *Motions subsequent to remand.* — Once a case has been remanded to the Immigration Judge, the only motion that the Board will entertain is a motion to reconsider the decision to remand. All other motions must be filed with the Immigration Judge. Motions to reconsider a remand order are not favored, and concerns regarding the decision to remand should be presented to the Immigration Judge.

(C) *Motions on appeals dismissed for lack of jurisdiction.* — Where an appeal has been dismissed for lack of jurisdiction, the Board cannot consider a motion to reopen. See *Matter of Mladineo*, 14 I&N Dec. 591 (BIA 1974). The only motion that the Board may entertain is a motion to reconsider the Board's finding that it lacks jurisdiction.

(D) *Motions on appeals dismissed as untimely.* — Where an appeal has been dismissed as untimely, the Board does not have jurisdiction to consider a motion to reopen. The only motion that the Board may entertain is a motion to

reconsider the Board's finding that the appeal was untimely. See *Matter of Lopez*, 22 I&N Dec. 16 (BIA 1998).

(E) *Motions on appeals affirmed without opinion.* — By regulation, the Board cannot entertain a motion based solely on an argument that the case should not have been affirmed without opinion. See Chapter 4.15 (Summary Affirmance). Otherwise, the Board retains jurisdiction over any motion to reconsider or motion to reopen filed after a summary affirmance order. See Chapters 5.6 (Motions to Reopen) and 5.7 (Motions to Reconsider).

(b) *Form.* — There is no official form for filing a motion before the Board. Motions should *not* be filed on a Notice of Appeal (Form EOIR-26), which is used exclusively for the filing of appeals.

Motions and supporting documents must comply with the general rules and procedures for filing. See Chapter 3 (Filing with the Board). The Board prefers that motions and supporting documents be assembled in a certain order. See Chapter 3.3(c)(i)(B) (Motions).

A motion should be characterized and labeled as accurately as possible. The Board construes a motion according to its content, not its title, and applies time and number limits accordingly. See Chapter 5.3 (Motion Limits).

Motions should clearly contain all pertinent information, and the Board recommends that parties use captions containing the following material:

- title (Example: "Respondent's Motion to Reopen")
- the full name (as it appears on the charging document) for each alien included in the motion
- the alien registration number ("A number") for each alien involved in the motion (if an alien has more than one number, all the numbers should appear on the motion)
- the type of hearing or adjudication underlying the motion (e.g., removal, deportation, exclusion, bond, visa petition)
- the adjudicator whose decision underlies the motion (e.g., the Immigration Court, the DHS officer, or the Board), where appropriate

All motions must be made in writing, signed, and served on all parties. A motion must identify *all* persons included in the motion. See Chapter 5.1(a) (Parties). A motion must state with particularity the grounds on which it is based and must identify the relief or remedy sought by the moving party.

If a motion involves a detained or incarcerated alien, the motion should clearly state that information. The Board recommends that the cover page to the motion be prominently marked "DETAINED" in the upper right corner and highlighted, if possible. See Appendix F (Sample Cover Page).

(c) *Proof of Service.* — All motions must be served on the other party and must contain Proof of Service. See Chapter 3.2 (Service), Appendix G (Sample Proof of Service).

(d) *Motion fee and fee waivers.* — Where required, a motion must be accompanied by the appropriate filing fee or Appeal Fee Waiver Request (Form EOIR-26A). See Chapter 3.4 (Filing Fees).

(e) *Copy of underlying order.* — Motions to reopen and motions to reconsider should be accompanied by a copy of the Board's order.

(f) *Evidence.* — Statements made in a motion are not evidence. If a motion is predicated upon evidence that was not made part of the record by the Immigration Judge, that evidence should be submitted with the motion. Such evidence includes sworn affidavits, declarations under the penalty of perjury, and documentary evidence. The Board will not suspend or delay adjudication of a motion pending the receipt of supplemental evidence.

Any material that is not in the English language must be accompanied by a certified English translation. 8 C.F.R. §§ 1003.2(g)(1), 1003.33. See Chapter 3.3(a) (Language). Documents regarding criminal convictions must comport with the requirements set forth in 8 C.F.R. § 1003.41.

(g) *Application for relief.* — A motion based upon eligibility for relief must be accompanied by a copy of the application for that relief, if an application is normally required. See 8 C.F.R. § 1003.2(c)(1).

The application for relief must be duly completed and executed, in accordance with the requirements for such relief. The original of an application for relief is generally not required, but should be held by the filing party for submission to the Immigration Judge or DHS following the Board's ruling on the motion. See Chapter 12.3 (Submitting Completed Forms). The copy that is submitted to the Board should be accompanied by a copy of the appropriate supporting documents.

If a certain form of relief requires an application, *prima facie eligibility for that relief cannot be shown without it.* For example, if a motion to reopen is based on adjustment of status, a copy of the application for that relief (Form I-485) should be filed *with* the motion, along with the necessary documents. See subsection (h), below.

Application fees are *not* paid to the Board and should not accompany the motion. Fees for applications should be paid if and when the case is remanded to the Immigration Judge in accordance with the filing procedures for that application. See Chapter 3.4(i) (Application fees).

(h) *Visa petitions.* — If a motion is based on adjustment of status and there is an underlying visa petition that has been approved, evidence of the approved visa petition should accompany the motion. When a petition is subject to visa availability, evidence that a visa is immediately available to the beneficiary should also accompany the motion (e.g., a copy of the State Department's Visa Bulletin reflecting that the petition is "current").

If a motion is based on adjustment of status and the underlying visa petition has not yet been adjudicated, a copy of that visa petition should accompany the motion. If the visa petition has already been filed with DHS, evidence of that filing should accompany the motion.

Parties are advised that, in certain instances, an approved visa petition is required. See, e.g., *Matter of H-A-*, 22 I&N Dec. 728 (BIA 1999), *modified by Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002).

Filing fees for visa petitions are *not* paid to the Board and should not accompany the motion. The filing fee for a visa petition is submitted to DHS when the petition is filed with DHS.

(i) *Oral argument.* — The Board generally does not grant requests for oral argument on a motion. See Chapter 8.2(b) (Motions).

(j) *Draft orders.* — Parties should not include draft orders in the motion filing. The Board always issues its own order.

(k) *Confirmation of receipt.* — The Board issues filing receipts for motions to reopen and motions to reconsider. The Board does not issue filing receipts for other types of motions. See Chapter 3.1(d) (Filing receipts). The Board will, however, return a conformed copy of a filed motion if it complies with Chapter 3.1(d)(iii) (Conformed copies).

5.3 Motion Limits

Certain motions are limited in time (when the motion must be filed) and number (how many motions may be filed). Motions to reopen and motions to reconsider are limited in both time and number. See Chapters 5.6 (Motions to Reopen), 5.7 (Motions to Reconsider). Motions to accept a late-filed brief are limited in number. See Chapter 4.7(d) (Untimely briefs). These time and number limits are strictly enforced.

A compound motion is a motion that combines a motion to reopen or a motion to reconsider with another motion (or with each other). Time and number limits on motions to reopen and motions to reconsider apply even when part of a compound motion, and the Board will consider only that portion of the motion that is not time or number barred. For example, if a motion seeks both reopening and reconsideration, and is filed more than 30 days after the Board's decision but within 90 days of that decision, the Board will entertain the portion of the motion that seeks reopening, but not the portion that seeks reconsideration.

5.4 Motion Briefs

A motion need not be supported by a brief. However, if a brief is filed, it should accompany the motion. See 8 C.F.R. § 1003.2(g)(3). A brief filed in opposition to a motion must be filed within 13 days from the date of service of the motion. 8 C.F.R. § 1003.2(g)(3).

Motion briefs should generally follow the filing requirements, writing guidelines, formatting requirements, and citation conventions set forth in Chapter 4.6 (Appeal Briefs). Motion briefs should also comport with the requirements set out in Chapter 3.3 (Documents).

The Board does not issue briefing schedules on motions.

5.5 Transcript Requests

The Board does not prepare a transcript of proceedings in response to a motion. If a party feels that a transcript is necessary, the party should file a motion articulating why a transcript is necessary. See generally Chapter 4.2(f) (Transcription).

Parties are reminded that tape recordings of proceedings are generally available for review at the Immigration Court at which the proceedings before the Immigration Judge were conducted.

5.6 Motions to Reopen

(a) *Purpose.* — A motion to reopen asks the Board to reopen proceedings in which the Board has already rendered a decision in order to consider new facts or evidence in the case.

(b) *Requirements.* —

(i) *Filing.* — Motions to reopen must comply with the general requirements for filing a motion. See Chapter 5.2 (Filing a Motion). Depending on the nature of the motion, a filing fee may be required. See Chapter 3.4 (Filing Fees).

(ii) *Content.* — A motion to reopen must state the new facts that will be proven at a reopened hearing, and the motion must be supported by affidavits or other evidentiary material. 8 C.F.R. § 1003.2(c)(1).

A motion to reopen will not be granted unless it appears to the Board that the evidence offered is material and was not available and could not have been discovered or presented at an earlier stage in the proceedings. See 8 C.F.R. § 1003.2(c)(1).

A motion to reopen based on an application for relief will not be granted if it appears the alien's right to apply for that relief was fully explained and the alien had an opportunity to apply for that relief at an earlier stage in the proceedings (unless the relief is sought on the basis of circumstances that have arisen subsequent to that stage of the proceedings). See 8 C.F.R. § 1003.2(c)(1).

(c) *Time limits.* — As a general rule, a motion to reopen must be filed within 90 days of the Board's final administrative decision. 8 C.F.R. § 1003.2(c)(2). (For cases decided by the Board before July 1, 1996, the motion to reopen was due on or before September 30, 1996. 8 C.F.R. § 1003.2(c)(2).) There are few exceptions. See subsection (f), below.

(d) *Number limits.* — A party is permitted only one motion to reopen. 8 C.F.R. § 1003.2(c)(2). There are few exceptions. See subsection (f), below.

(e) *Other limits.* — The Board will not entertain a motion to reopen made by or on behalf of a person in removal proceedings after that person has departed the United States. 8 C.F.R. § 1003.2(d).

(f) *Exceptions to the limits on motions to reopen.* — A motion to reopen may be filed outside the time and number limits in very specific circumstances. See 8 C.F.R. § 1003.2(c)(3).

(i) *Changed circumstances.* — When a motion to reopen is based on a request for asylum, withholding of removal, or relief under the Convention Against Torture, and it is premised on new circumstances, the motion must contain a complete description of the new facts that comprise those circumstances and articulate how those circumstances affect the party's eligibility for relief. See 8 C.F.R. § 1003.2(c)(3)(ii). Motions based on changed circumstances must also be accompanied by evidence of the changed circumstances alleged. See 8 C.F.R. § 1003.2(c).

(ii) *In absentia proceedings.* — There are special rules pertaining to motions to reopen following an alien's failure to appear for a hearing. An "in absentia" order (an order entered when the alien did not come to the hearing) cannot be appealed to the Board. *Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999). If an alien misses a hearing and the Immigration Judge orders the alien removed from the United States, the alien must file a motion to reopen with the Immigration Judge, explaining why he or she missed the hearing. (Unlike the in absentia order, the Immigration Judge's ruling on the motion can be appealed.) Such motions are subject to strict deadlines under certain circumstances. See 8 C.F.R. §§ 1003.2(c)(3)(i), 1003.23(b)(4)(ii), 1003.23(b)(4)(iii).

(iii) *Joint motions.* — Motions that are agreed upon by all parties and are jointly filed are not limited in time or number. See 8 C.F.R. § 1003.2(c)(3)(iii).

(iv) *DHS motions.* — For cases in removal proceedings, DHS may not be subject to time and number limits on motions to reopen. See 8 C.F.R. § 1003.2(c)(2), (3). For cases brought in deportation or exclusion, DHS is subject to the time and number limits on motions to reopen, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum. See 8 C.F.R. § 1003.2(c)(3)(iv).

(v) *Pre-9/30/96 motions.* — Motions filed before September 30, 1996, do not count toward the one-motion limit.

(vi) *Other.* — In addition to the regulatory exceptions for motions to reopen, exceptions may be created in accordance with special statutes, case law, directives, or other special legal circumstances. The Board may also reopen proceedings at any time on its own initiative. 8 C.F.R. § 1003.2(a).

(g) *Evidence.* — A motion to reopen must be supported by evidence. See Chapter 5.2(f) (Evidence).

(h) *Motions filed while an appeal is pending.* — Once an appeal is filed with the Board, the Immigration Judge no longer has jurisdiction over the case. See Chapter 4.2(a)(ii) (Appeal to

the Board vs. motion before the Immigration Judge). Thus, motions to reopen should not be filed with an Immigration Judge after an appeal is taken to the Board. A motion to reopen that is filed with the Board during the pendency of an appeal is generally treated as a motion to remand for further proceedings before an Immigration Judge. 8 C.F.R. § 1003.2(c)(4). See Chapter 5.8 (Motions to Remand).

(i) *Administratively closed cases.* — When proceedings have been administratively closed, the proper motion is a motion to recalendar, *not* a motion to reopen. See Chapter 5.9(h) (Motion to recalendar).

(j) *Automatic stays.* — A motion to reopen that is filed with the Board does not automatically stay an order of removal or deportation. See Chapter 6 (Stays and Expedite Requests).

(k) *Criminal convictions.* — A motion claiming that a criminal conviction has been overturned, vacated, modified, or disturbed in some way *must* be accompanied by clear evidence that the conviction *has actually been disturbed.* Thus, neither an intention to seek post-conviction relief nor the mere eligibility for post-conviction relief, without more, is sufficient to reopen proceedings.

5.7 Motions to Reconsider

(a) *Purpose.* — A motion to reconsider either identifies an error in law or fact in a prior Board decision or identifies a change in law that affects a prior Board decision and asks the Board to re-examine its ruling. A motion to reconsider is based on the existing record and does not seek to introduce new facts or evidence.

(b) *Requirements.* — Motions to reconsider must comply with the general requirements for filing a motion. See Chapter 5.2 (Filing a Motion). A filing fee or a fee waiver request may be required. See Chapter 3.4 (Filing Fees).

(c) *Time limits.* — A motion to reconsider must be filed within 30 days of the Board's decision. 8 C.F.R. § 1003.2(b)(2). (For cases decided by the Board before July 1, 1996, the motion to reconsider was due on or before July 31, 1996. 8 C.F.R. § 1003.2(b)(2).)

(d) *Number limits.* — As a general rule, a party may file only one motion to reconsider. See 8 C.F.R. § 1003.2(b)(2). Motions filed prior to July 31, 1996, do not count toward the one-motion limit. Although a party may file a motion to reconsider the denial of a motion to reopen, a party may not file a motion to reconsider the denial of a motion to reconsider. 8 C.F.R. § 1003.2(b)(2).

(e) ***Other limits.*** **—**

(i) ***Summary affirmance orders.*** **—** A motion to reconsider may not be based solely on an argument that an Immigration Judge's decision should not have been affirmed without opinion. See 8 C.F.R. § 1003.2(b)(3).

(ii) ***Persons outside the United States.*** **—** The Board does not entertain motions to reconsider made by or on behalf of a person in removal proceedings after that person has departed from the United States. 8 C.F.R. § 1003.2(d).

(f) ***Exceptions to the limits on motions to reconsider.*** **—**

(i) ***Alien motions.*** **—** There are no exceptions to the time and number limitations on motions to reconsider when filed by an alien.

(ii) ***DHS motions.*** **—** DHS motions to reconsider are subject to certain limitations. See 8 C.F.R. § 1003.2(b)(2).

(iii) ***Other.*** **—** Exceptions to the time and number limits on motions to reconsider may be created by statute, published case law, or regulation. The Board may also reconsider proceedings at any time on its own initiative. 8 C.F.R. § 1003.2(a).

(g) ***Identification of error.*** **—** A motion to reconsider must state with particularity the errors of fact or law in the prior Board decision, with appropriate citation to authority and the record. If a motion to reconsider is premised upon changes in the law, the motion should identify the changes and, where appropriate, provide copies of that law. See Chapter 4.6(d)(vii) (Statutes, rules, regulations, and other legal authorities and sources).

(h) ***Motions filed while an appeal is pending.*** **—** Once an appeal is filed with the Board, the Immigration Judge no longer has jurisdiction over the case. See Chapter 4.2(a)(ii) (Appeal to the Board vs. motion before the Immigration Judge). Thus, motions to reconsider should not be filed with an Immigration Judge after an appeal is taken to the Board. A motion to reconsider that is filed with the Board during the pendency of an appeal is generally treated as a motion to remand for further proceedings before an Immigration Judge. 8 C.F.R. § 1003.2(c)(4). See Chapter 5.8 (Motions to Remand).

(i) ***Automatic stays.*** **—** A motion to reconsider does not automatically stay an order of removal or deportation. See Chapter 6 (Stays and Expedite Requests).

(j) *Criminal convictions.* — When a criminal conviction has been overturned, vacated, modified, or disturbed in some way, the proper motion is a motion to reopen, not a motion to reconsider. See Chapter 5.6(k) (Criminal convictions).

5.8 Motions to Remand

(a) *Purpose.* — A motion to remand seeks to return jurisdiction of a case pending before the Board to the Immigration Judge. Parties may, in appropriate circumstances, move to remand proceedings to the Immigration Judge to consider newly available evidence or newly acquired eligibility for relief.

(b) *Requirements.* — Motions to remand are subject to the same substantive requirements as motions to reopen. See *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992). Accordingly, evidence and applications for relief, if involved, must be submitted with the motion.

The Board may deny a motion to remand where the evidence was discoverable at an earlier stage in the proceedings, is not material or probative, or is otherwise defective. As with motions to reopen, parties submitting new evidence should articulate the purpose of the new evidence and explain its prior unavailability. See Chapter 5.2(f) (Evidence).

(c) *Limitations.* — Unlike motions to reopen, motions to remand are not limited in time or number because they are made during the pendency of an appeal.

(d) *Remands to DHS.* — Where an appeal is taken from a decision made by a DHS officer, the Board may remand the case to DHS. For example, the Board may remand a visa petition denial to DHS for further development of the petition record. Where an appeal is taken from an Immigration Judge decision, however, the Board cannot remand proceedings to DHS. For example, the Board cannot remand proceedings to a DHS Asylum Office once an Immigration Judge has ruled on an asylum application.

(e) *Post-remand appeals.* — If the Board grants a motion to remand resulting in a new Immigration Judge decision, a party may file a new appeal. In that new appeal, the party may pursue any new issues or any unresolved issues from the prior appeal.

5.9 Other Motions

(a) *Motion to expedite.* — See Chapter 6.5 (Expedite Requests).

(b) *Motion to withdraw appeal.* — Motions to withdraw an appeal are discussed in Chapter 4.11 (Withdrawing an Appeal). Parties are reminded not to confuse a motion to withdraw an appeal with a motion to remand. If a party wishes a case returned to the Immigration Judge for consideration of a newly available form of relief (e.g., adjustment of status), the correct motion is a *motion to remand*. In contrast, when a motion to withdraw an appeal is filed, the decision of the Immigration Judge immediately becomes final as if no appeal had ever been filed. If an appeal is withdrawn, DHS may remove or deport the alien, if the Immigration Judge so ordered. See Chapter 4.11 (Withdrawing an Appeal), 5.8 (Motions to Remand).

(c) *Motion to withdraw as counsel or representative.* — See Chapter 2.3(i) (Change in representation).

(d) *Motion to stay deportation or removal.* — See Chapter 6 (Stays and Expedite Requests).

(e) *Motion to consolidate.* — See Chapter 4.10 (Combining and Separating Appeals).

(f) *Motion to sever.* — See Chapter 4.10 (Combining and Separating Appeals).

(g) *Motion to join.* — See Chapter 4.10 (Combining and Separating Appeals).

(h) *Motion to recalendar.* — When proceedings have been administratively closed or continued indefinitely and a party wishes to "reopen" those proceedings, the proper motion is a motion to recalendar, *not* a motion to reopen. A motion to recalendar should provide the date and the reason for the case being closed. If available, a copy of the closure order should be attached to the motion. Motions to recalendar should be properly filed, clearly captioned, and comply with the general motion requirements. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). To ensure that the Board has the alien's current address, a Change of Address Form (EOIR-33/BIA) should also be filed. Motions to recalendar are not subject to time and number restrictions.

(i) *Motion to hold in abeyance.* — The Board does not normally entertain motions to hold cases in abeyance while other matters are pending (e.g., waiting for a visa petition to become current, waiting for a criminal conviction to be overturned).

(j) *Motion to stay suspension.* — Motions involving the discipline of an attorney or accredited representative are discussed in Chapter 11 (Discipline of Practitioners).

(k) *Motion to amend.* — The Board will entertain a motion to amend a previous filing in limited situations (e.g., to correct a clerical error in a filing). The motion should clearly articulate

what needs to be corrected in the previous filing. The filing of a motion to amend does not affect any existing appeal or motion deadlines.

(l) *Other types of motions.* — The Board will entertain other types of motions, as appropriate to the facts and law of each particular case, provided that the motion is properly filed, is clearly captioned, and complies with the general motion requirements. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

5.10 Decisions

Upon the entry of a decision, the Board serves its decision upon the parties by regular mail. See Chapter 1.4(d) (Board decisions).

5.11 Effect of Departure

The alien's departure from the United States while a motion is pending, even if the departure is authorized or compelled by DHS, constitutes withdrawal of that motion. 8 C.F.R. § 1003.2(d). Subsequent return to the United States does not reinstate the motion or circumvent any applicable time and number limits. *Matter of Crammond*, 23 I&N Dec. 179 (BIA 2001).

5.12 Non-Opposition to Motion

A motion will be deemed unopposed unless the opposing party responds within 13 days from the date of service of the motion. See 8 C.F.R. § 1003.2(g)(3). However, the opposing party's failure to oppose a motion, or affirmative non-opposition to a motion, will not necessarily result in a grant of that motion. See Chapter 4.12 (Non-Opposition to Appeal).

6 Stays and Expedite Requests

6.1 Stays Generally

A stay prevents DHS 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 Immigration and Nationality Act § 240(b)(5); 8 C.F.R. §§ 1003.2(f), 1003.6, 1003.23(b)(1)(v), 1003.23(b)(4)(ii), 1003.23(b)(4)(iii)(C).

The Board also has the authority to stay the execution of an Immigration Judge's decision in bond proceedings. See Chapter 7.3(a)(iv) (Stays).

6.2 Automatic Stays

(a) *Qualifying appeals.* — There are limited circumstances in which an order of removal, deportation, or exclusion is automatically stayed:

- direct appeal of an Immigration Judge's decision on the merits of the case (not including bond and custody determinations)
- appeal of an Immigration Judge's denial of a motion to reopen *deportation* proceedings conducted in absentia under prior section 242B of the Immigration and Nationality Act
- the 30-day period for filing either of these appeals, unless the right to appeal has been waived

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

There are no other instances in which an automatic stay of removal, deportation, or exclusion takes effect.

(b) *Qualifying motions.* — There are no motions that are filed with the Board that result in an automatic stay of removal, deportation, or exclusion.

(c) *Duration.* — An automatic stay of removal, deportation, or exclusion expires when the Board renders a final decision in the case. Occasionally, when the Board grants a temporary stay, the Board may vacate or dissolve the stay before reaching the merits of the appeal or motion.

(d) *Adjudication and notice.* — When a stay is automatic, the Board does not issue a written order on the stay request.

6.3 Discretionary Stays

(a) *Jurisdiction.* — The Board is authorized to grant stays as a matter of discretion, but only for matters within the Board's jurisdiction. See Chapter 1.4 (Jurisdiction and Authority). The Board entertains stays only when an appeal, a motion to reopen, or a motion to reconsider is pending before the Board.

(b) *Motion required.* — A request for a discretionary stay of removal, deportation, or exclusion should be made in the form of a written motion. See Chapter 6.4 (Procedure for Requesting a Discretionary Stay). When circumstances require immediate attention from the Board, the Board may, at its discretion, entertain a telephonic stay request. See Chapter 6.4(d)(i) (Emergency). Motions requesting a discretionary stay are not automatically granted.

(c) *Pending motions.* — A pending motion to stay removal, deportation, or exclusion does not itself stay execution of the order. An order of removal, deportation, or exclusion remains executable unless and until such time as the Board *grants* the motion to stay.

(d) *Adjudication and notice.* — When a stay is granted as a matter of discretion, the Board issues a written order.

(e) *Duration.* — A discretionary stay of removal, deportation, or exclusion expires when the Board renders a final decision in the case.

6.4 Procedure for Requesting a Discretionary Stay

(a) *Who may request.* — An alien (or an alien's representative) may request a discretionary stay of removal, deportation, or exclusion only if the alien's case is currently before the Board and the alien is subject to a removal, deportation, or exclusion order.

(b) *Timing of request.* — A request to stay removal, deportation, or exclusion may be submitted at any time during the pendency of a case before the Board.

(c) *Form of request.* — Requests to stay removal, deportation, or exclusion must be made in writing. The Board prefers that stay requests be submitted in the form of a "MOTION TO STAY REMOVAL." See Appendix F (Sample Cover Page).

(i) *Contents.* — The motion should contain a complete recitation of the relevant facts and case history and indicate the current status of the case. The motion must also contain a specific statement of the time exigencies involved. Motions containing vague or general statements of urgency are not persuasive.

A copy of the existing Immigration Judge or Board order should be included, when available. When the moving party does not have a copy of the order, the moving party should provide the date of the Immigration Judge's decision and a detailed description of both the ruling and the basis of that ruling, as articulated by the Immigration Judge. If the facts are in dispute, the moving party should furnish evidence supporting the motion to stay.

(ii) *Format.* — The motion should comply with the general rules for filing motions. See Chapter 5.2 (Filing a Motion). The motion must include a Proof of Service. See Chapter 3.2 (Service), Appendix G (Sample Proof of Service).

(iii) *Fee.* — A motion to stay removal, deportation, or exclusion does not, by itself, require a filing fee. The underlying appeal or motion, however, may still require a fee. See Chapter 3.4 (Filing Fees).

(d) *Submitting the request.* — The Board categorizes stay requests into two categories: emergency and non-emergency.

(i) *Emergency.* — The Board may rule immediately on an "emergency" stay request. An emergency stay request may be submitted only by an alien in custody who is facing imminent removal, deportation, or exclusion. Accordingly, an alien not in DHS custody must surrender to DHS custody, pursuant to a request by DHS, before an emergency stay will be considered by the Board.

Instructions for filing a stay motion in an emergency situation can be obtained at any time by calling (703) 605-1007. The Board will entertain an emergency stay request only on weekdays from 9:00 a.m. to 5:30 p.m. (Eastern time), except federal holidays. When an emergency stay request is granted, the Board promptly notifies the parties.

(ii) *Non-emergency.* — The Board does not rule immediately on a "non-emergency" stay request, but considers the request during the normal course of adjudication. A non-emergency stay request may be submitted by an alien who either is not in detention or is in

detention but is not facing imminent removal, deportation, or exclusion. A non-emergency stay request may be submitted concurrently with an appeal or motion, or at a later date.

A non-emergency stay request may be supplemented by an emergency stay request if the qualifying circumstances transpire (such as when an alien reports to DHS custody for deportation).

6.5 Expedite Requests

(a) *Requirements.* — Appeals and motions may be expedited only upon the filing of a motion to expedite and a demonstration of impending and irreparable harm or similar good cause. The motion must contain a complete articulation of the reasons to expedite and the consequences to the moving party if the request is not granted.

Expedite requests are generally not favored and should be requested only in compelling circumstances. Examples of appropriate reasons to request expedited treatment include: (i) imminent removal from the Unites States; (ii) imminent ineligibility for relief, such as a minor alien "aging out" of derivative status; (iii) circumstances threatening to moot the appeal absent prompt action by the Board; and (iv) a health crisis precipitating a need for immediate Board action.

(b) *Procedure.* — Motions to expedite should be filed in accordance with the general rules and procedures for other motions. See Chapter 5.2 (Filing a Motion). Any request for expeditious processing should be made through a written "MOTION TO EXPEDITE" that bears the name and alien registration number ("A number") of the affected alien and articulates the grounds for the request. Use of a cover page is highly recommended. See Appendix F (Sample Cover Page). In a genuine emergency, a party may contact the Clerk's Office of the Board by telephone. See Appendix B (Directory). Even in such situations, the moving party must be prepared to file a written "MOTION TO EXPEDITE" immediately.

(c) *Response.* — The Board will consider all expedite requests that are properly filed. When a request is granted, the Board will expedite the case without notifying the parties that the request has been granted. For administrative reasons, the Board cannot reply to all requests.

7 Bond

7.1 Bond Appeals Generally

In certain circumstances, an alien detained by the Department of Homeland Security (DHS) can be released from custody. When an alien asks an Immigration Judge to review a DHS custody decision, it is called a "bond redetermination." Appeals from custody decisions are commonly called "bond appeals." Bond proceedings are separate from removal proceedings. See generally 8 C.F.R. §§ 1003.19, 1236.1.

Bond proceedings differ procedurally from other immigration proceedings. For example, an alien can request a bond redetermination without a formal motion, without paying a fee, and without the usual filing deadlines.

7.2 Jurisdiction

(a) *Continuing jurisdiction.* — An alien may ask the Immigration Judge or DHS to change a bond decision if:

- the alien is in detention (or was in detention within the last seven days),
- the alien's removal or deportation proceedings are still open before an Immigration Judge or the Board, and
- the request for a change in bond is not moot as described in Chapter 7.4 (Mootness)

The alien may ask even if:

- the alien has previously asked the Immigration Judge to change a bond decision, *provided* the alien can show that his or her circumstances have changed materially since the last bond decision
- the alien appealed a previous bond decision to the Board

(b) *Appellate jurisdiction.* —

(i) *Immigration Judge decisions.* — The Board has jurisdiction over appeals of Immigration Judge bond rulings. See 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3)(i). The Board also has general emergency stay authority when DHS appeals an Immigration Judge's custody decision. See 8 C.F.R. § 1003.19(h)(4)(i).

(ii) *DHS decisions.* — The Board has jurisdiction over certain appeals involving DHS bond decisions made subsequent to an Immigration Judge ruling. See 8 C.F.R. § 1236.1(d)(3). The Board does *not* have jurisdiction over appeals from DHS custody decisions involving:

- aliens in exclusion proceedings
- arriving aliens in removal proceedings
- aliens ineligible for release on security or related grounds
- aliens ineligible for release on certain criminal grounds

8 C.F.R. § 1003.19(h)(2)(i).

(iii) *Jurisdictional issues.* — The Board has jurisdiction to rule on whether an Immigration Judge has jurisdiction to make a bond determination.

(c) *No jurisdiction.* — The Board does not have authority to review a bond decision when the alien:

- departs the United States, whether voluntarily or involuntarily
- is granted relief by the Immigration Judge and DHS does not appeal
- is granted relief from removal by the Board
- is denied relief from removal by the Immigration Judge and the alien does not appeal
- is denied relief from removal by the Board
- is released on the conditions requested in the bond appeal
- is released on conditions more favorable than those requested in the bond appeal

- has a subsequent bond redetermination request granted by an Immigration Judge and DHS does not appeal

7.3 Procedure

(a) *Filing.* — When an alien may appeal the bond decision of an Immigration Judge, the appeal is filed in the same manner as any other appeal of an Immigration Judge decision. See Chapters 3 (Filing with the Board), 4 (Appeals of Immigration Judge Decisions). In those few instances in which an alien may appeal to the Board from the custody determination of DHS, the appeal is filed in the same manner as a visa petition appeal. See Chapters 7.2(b)(ii) (DHS decisions), 9 (Visa Petitions).

(i) *Separate Notice of Appeal.* — A bond appeal must be filed on its own Notice of Appeal (Form EOIR-26, if an Immigration Judge decision, or Form EOIR-29, if a DHS decision) and *must not* be combined with an appeal of a decision regarding the alien's removal or deportation (often referred to as the decision "on the merits" of the case). The Notice of Appeal should be completed in full and specify the date of the bond decision being appealed.

(ii) *Deadline.* —

(A) *Immigration Judge decision.* — When an Immigration Judge renders the bond decision, the appeal has the same 30-day deadline as any other appeal from an Immigration Judge decision. See Chapter 4.5 (Appeal Deadlines).

(B) *Department of Homeland Security decision.* — In the limited instances in which the Board has jurisdiction over the appeal from a DHS bond decision, the deadline for filing an appeal is 10 days from the date of the DHS bond decision. See 8 C.F.R. § 1236.1(d)(3). See also Chapter 3.1(b) (Must be "timely").

(iii) *Fee.* — Generally, there is no filing fee for a bond appeal. However, when an alien is appealing the amount of a voluntary departure bond in removal proceedings, there is a $110 filing fee.

(iv) *Stays.* —

(A) *Stays of deportation or removal.* — Stays of deportation or removal are not available in bond proceedings. See 8 C.F.R. § 1236.1(d)(4). See also Chapter 6 (Stays and Expedite Requests).

(B) *Stays of bond decisions.* — If an alien appeals a bond decision, that decision remains in effect while the appeal is pending. The same is true for a DHS appeal, unless the decision is "stayed" by regulation (which here means that the Immigration Judge's decision does not go into effect and the DHS decision to detain the alien remains in effect until the Board decides the appeal). See 8 C.F.R. § 1003.19(i)(2).

A bond decision is stayed by regulation when either:

- DHS has determined that an alien should not be released, but the Immigration Judge authorizes the alien's release, or
- DHS sets a bond of $10,000 or more, but the Immigration Judge sets a bond lower than $10,000

For such a stay to take effect, DHS must file a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) with the Immigration Court within one business day of the Immigration Judge's bond order.

When a stay is not automatic, DHS may ask the Board to grant an emergency stay. See 8 C.F.R. § 1003.19(i)(1), *Matter of Joseph*, 22 I&N Dec. 660 (BIA 1999).

(b) *Processing.* — Appeals of bond decisions made by Immigration Judges are briefed and processed in the same manner as appeals of Immigration Judge removal decisions, except that bond hearings are not transcribed. See Chapters 3 (Filing with the Board), 4 (Appeals of Immigration Judge Decisions). Appeals of bond decisions made by DHS officers are briefed and processed in the same manner as visa petition appeals. See Chapter 9 (Visa Petitions).

(i) *Briefing schedule.* — Where the appeal is taken from an Immigration Judge decision, the Board issues a filing receipt and a briefing schedule. See Chapter 4.2(e) (Briefing schedule). Where the appeal is taken from a DHS decision, DHS is responsible for the briefing. See Chapter 9.3(d)(ii) (Briefing schedule). Briefs, when submitted, should comply with the general rules for briefing. See Chapter 4.6 (Appeal Briefs).

(ii) *Transcripts.* — Bond proceedings are less formal than other Immigration Court proceedings. See *Matter of Chirinos*, 16 I&N Dec. 276 (BIA 1977). Bond hearings are seldom recorded and are not routinely transcribed. See generally Chapter 4.2(f) (Transcription).

(iii) *Decision.* — Upon entry of a decision regarding a bond appeal, the Board serves the decision on the parties by regular mail.

7.4 Mootness

A bond appeal is deemed moot whenever the alien:

- departs the United States, whether voluntarily or involuntarily
- is granted relief by the Immigration Judge and the INS does not appeal
- is granted relief by the Board
- is denied relief by the Immigration Judge and the alien does not appeal
- is denied relief by the Board
- is released on the conditions requested in the appeal
- is released on conditions more favorable than those requested in the appeal
- has a subsequent bond redetermination request granted by an Immigration Judge

When a bond appeal is moot, the Board issues an order to that effect.

8 Oral Argument

8.1 Oral Argument Coordinator

All inquiries and requests (not coming from the news media) regarding the scheduling, attendance, seating, and administration of oral argument should be directed to the Oral Argument Coordinator. News media should contact the Public Affairs Office. See Chapter 8.5(c) (News media).

Correspondence sent by first-class mail should be addressed as follows:

Oral Argument Coordinator
Clerk's Office
Board of Immigration Appeals
P.O. Box 8530
Falls Church, Virginia 22041

Correspondence sent by overnight delivery, courier service, or personal delivery should be addressed as follows:

Oral Argument Coordinator
Clerk's Office
Board of Immigration Appeals
5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

The Oral Argument Coordinator may also be reached at (703) 605-1007.

8.2 Selection of Cases

(a) *Appeals.* — Oral argument is held at the discretion of the Board and is rarely granted. When an appeal has been taken, oral argument, if desired, must be requested on the Notice of Appeal. 8 C.F.R. § 1003.1(e)(7). Oral argument must be requested at the outset of the appeal, or oral argument may be deemed waived. In either the Notice of Appeal or a brief, the appealing party should explain the reason for requesting oral argument and articulate how oral argument would supplement any written submissions. While the Board reserves the authority to solicit oral argument, the Board generally does not solicit oral argument from parties who did not initially request it.

(b) *Motions.* — Oral argument is available, though infrequently granted, to parties moving to have the Board reopen or reconsider their case. 8 C.F.R. § 1003.2(h). The moving party should request oral argument in a separate but accompanying document with a cover page labeled "REQUEST FOR ORAL ARGUMENT." See Appendix F (Sample Cover Page). The request must explain the reason for requesting oral argument and articulate how oral argument would supplement any written submissions. While the Board reserves the authority to solicit oral argument, the Board generally does not solicit oral argument from parties who did not initially request it.

(c) *Requests by responding parties.* — Either party to an appeal or motion may request oral argument.

(i) *Appeals.* — In the event the party opposing the appeal wishes to request oral argument, the request must be made prior to the expiration of the briefing schedule. That party should request oral argument in a separate but accompanying document with a cover page labeled "REQUEST FOR ORAL ARGUMENT." See Appendix F (Sample Cover Page). The request must explain the reason for requesting oral argument and articulate how oral argument would supplement any written submissions.

(ii) *Motions.* — In the event that a party responding to a motion wishes to request oral argument, the request should accompany the reply to the motion, which itself must be filed in accordance with the deadline set in the regulations. See 8 C.F.R. § 1003.2(g)(3). That party should request oral argument in a separate, but accompanying document with a cover page labeled "REQUEST FOR ORAL ARGUMENT." See Appendix F (Sample Cover Page). The request must explain the reason for requesting oral argument and articulate how oral argument would supplement any written submissions.

(d) *Criteria.* — Cases are selected for oral argument because they meet one or more of a number of criteria, including but not limited to: (i) the resolution of an issue of first impression; (ii) alteration, modification, or clarification of an existing rule of law; (iii) reaffirmation of an existing rule of law; (iv) the resolution of a conflict of authority; and (v) discussion of an issue of significant public interest.

8.3 Notification

(a) *Request granted.* — If a request for oral argument is granted, the Board notifies the parties through a notice of selection sent after the briefing schedule has concluded. The notice will specify the time and place scheduled for oral argument. Parties are generally provided at least 30 days' advance notice of the date scheduled for oral argument. The parties are also provided with

a copy of this chapter, a copy of the document "Questions and Answers Regarding Oral Argument Before the Board," and any other materials the Board deems appropriate.

The selection notice directs the requesting party to confirm that oral argument is still desired. In most cases, the requesting party is provided at least 15 days in which to respond to the selection notice. In cases involving detained aliens, however, the requesting party is expected to respond to the selection notice immediately, in light of the exigencies of such cases.

(i) *Confirmation received.* — Once a party confirms interest in oral argument, the oral argument calendar is fixed, and the parties are subject to the rules and obligations that attach to oral argument. Supplemental briefs may be filed, but the parties are not sent a supplemental briefing schedule. See Chapter 8.7(c)(vi) (Additional authorities).

(ii) *Confirmation not received.* — If a party does not confirm an interest in oral argument, the Board deems the party's request waived and adjudicates the case on the existing record.

(iii) *Continuance or postponement.* — Parties are expected to make all reasonable efforts to resolve conflicts in their schedules to permit them to attend oral argument as scheduled. In view of the difficulty in meeting the scheduling needs of the Board and the parties, the Board disfavors motions for continuance or postponement.

(b) *Request denied.* — If a request for oral argument is denied, the Board does not specifically notify the parties but simply adjudicates the merits of the appeal or motion. Thus, parties should never assume that oral argument will be granted. The Board will notify the parties when a request for oral argument has been granted.

8.4 Location

Oral argument is conducted on site at the Board in Falls Church, Virginia. In rare instances, the Board may conduct oral argument in a location other than Falls Church. 8 C.F.R. § 1003.1(e)(7).

8.5 Public Access

(a) *General public.* —

(i) *Open argument.* — With the exceptions noted below, oral argument is generally open to the public and employees of the Department of Justice, subject to space limitations and priorities given to the parties and the news media. See generally 8 C.F.R. § 1003.27(a).

(ii) *Closed argument.* — Absent the express consent of the alien (or the alien's representative, if represented) and the agreement of the Board, oral argument is not open to the general public or the news media in cases involving the following:

- exclusion proceedings
- applications for asylum
- applications for withholding of deportation / removal
- an abused spouse or child
- claims brought under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

See generally 8 C.F.R. §§ 1003.27, 1208.6, 1240.10(b), 1240.11(c)(3)(i), 1240.32, 1240.33(c)(1). Only parties, their representatives, and persons authorized by the Board in advance, including employees of the Department of Justice, may attend a closed argument.

The Board may limit attendance or hold a closed hearing if appropriate to protect parties or witnesses, or when a closed hearing is otherwise in the public interest. See generally 8 C.F.R. § 1003.27(b).

(iii) *Requests to open oral argument.* — In appropriate cases, parties may waive their right to a closed hearing and permit oral argument to be open to the public. The request must be made in writing at least 15 days prior to the scheduled date of oral argument and must be served upon the other party. See Chapter 3.2 (Service). The request should be phrased as follows:

> "I hereby request and consent that oral argument in the matter of [name of party] be open to the public and, further, I hereby consent that information contained within the record of proceedings may be released to the public. I acknowledge that this waiver of confidentiality may not be withdrawn after oral argument has begun."

Parties may not retract their request within 24 hours of the scheduled time for oral argument. Also, parties may not request that specific persons be excluded from an open oral argument.

(iv) *Requests to close oral argument.* — Certain types of oral argument cases are automatically closed to the public. See Chapter 8.5(a)(ii) (Closed argument). The Board may, at its discretion, close oral argument. See generally 8 C.F.R. § 1003.27(b). A party may request that oral argument be closed, but must do so in writing at least 15 days prior to the time of oral argument and serve the request on the other party. See Chapter 3.2 (Service). The request must set forth in detail the rationale for closing the hearing.

(v) *Reserved seating.* — A party may request that the Board reserve up to 5 gallery seats for the party's invitees. A reserved seating request must be made to the Oral Argument Coordinator at least 15 days prior to the scheduled date of oral argument. The Board tries to accommodate all reasonable requests for additional seating, subject to space limitations and any special considerations that may arise.

(b) *Recording and broadcasting.* — The public, including the parties and the news media, may not bring any recording or broadcasting devices into oral argument, whether photographic, audio, video, or electronic in nature. See generally 8 C.F.R. § 1003.28.

(c) *News media.* — Representatives of the news media may attend oral argument that is open to the public. The Board reserves 10 gallery seats for members of the media. The news media are subject to the general prohibition on recording and broadcasting. See subsection (b), above. The news media are welcome to contact the Public Affairs Office for information about cases selected for oral argument and to request reserved seating. Seating reservations should be made at least 24 hours in advance of the scheduled time for oral argument. See Appendix B (Directory).

8.6 Appearances

(a) *Notices of Appearance.* — Only parties, their representatives, and amicus curiae invited by the Board may participate in oral argument. See generally Chapter 2 (Appearances before the Board). Every representative who wishes to argue before the Board must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). See Chapter 2.1(b) (Entering an appearance). If, at any time after the filing of the appeal, there is a change in representation, the new representative must immediately file a Notice of Appearance. See Chapters 2.1(b) (Entering an appearance), 2.3(c) (Appearances), 2.3(i) (Change in representation).

(b) *Multiple representation.* — Parties are limited to one representative of record. See Chapter 2.3(e) (Single representative). If a representative of record wishes to share oral argument with another person, or wishes another person to argue in his or her place, he or she must make

arrangements with the Oral Argument Coordinator in advance. That person must both satisfy the appearance requirements and file a separate Notice of Appearance (Form EOIR-27). See Chapter 2.1 (Representation Generally). The Notice of Appearance should reflect that his or her appearance is solely for the purpose of participating in oral argument, which is done by writing in large letters next to the name block the words: "ORAL ARGUMENT ONLY." The Notice of Appearance must be sent directly to the Oral Argument Coordinator.

Representatives who appear solely for the purpose of oral argument are advised that, once oral argument is concluded, all notices and Board correspondence will be sent only to the representative of record. The representative of record is responsible for providing copies of notices or correspondence to the representative who entered an appearance strictly for oral argument purposes.

(c) *Motions to withdraw.* — Once oral argument is scheduled, motions to withdraw as counsel are entertained only where good cause is shown. See Chapter 2.3(i)(iii) (Withdrawal of counsel). Substitution of counsel is permitted. See Chapter 2.3(i)(i) (Substitution of counsel).

8.7 Rules of Oral Argument

(a) *Attire.* — The Board expects all persons to respect the decorum of the court. Representatives are expected to appear in business attire. All others in attendance are expected to dress in proper attire.

(b) *Conduct.* — All persons attending oral argument must respect the dignity of the proceedings. Talking is not permitted in the gallery during oral argument, nor may attendees depart or enter the room once oral argument has begun. Disruptive behavior is not tolerated.

(i) *Representatives.* — Attorneys and other representatives are expected to observe the professional conduct rules and regulations of their licensing authorities and to present, at all times, a professional demeanor becoming an officer of the court.

(ii) *Represented parties.* — Parties who are represented are welcome, but not required, to attend oral argument. Represented parties are permitted to observe but may not speak during oral argument.

(iii) *Detained aliens.* — Detained aliens are not permitted to attend oral argument.

(iv) *Amici curiae.* — Amici curiae are subject to the same rules of conduct as representatives. See Chapter 8.7(d)(xiii) (Amicus curiae).

(c) *Prior to oral argument.* —

(i) *Check in.* — On the day of oral argument, parties are required to check in at least 30 minutes prior to the scheduled time for oral argument. The Oral Argument Coordinator will advise the parties regarding the procedures for check in.

(ii) *Adverse weather conditions.* — In the event of adverse weather conditions, parties should contact the Oral Argument Coordinator for guidance or otherwise comply with the instructions provided in the selection notice.

(iii) *Failure to appear for oral argument.* — In the event that either party fails to appear for oral argument, the Board may hear the argument of the side that does appear, in which case the argument is entered into the record and considered by the Board in rendering its decision. Given the administrative burden of scheduling oral argument, the Board considers an unexplained failure to appear to be a serious discourtesy to both the Board and the other party and will sanction representatives accordingly. The party whose representative fails to appear will not be penalized for that failure, except insofar as that party will be deprived of the benefit of his or her case being argued.

(iv) *Late arrival for oral argument.* — If a party is unable to arrive for oral argument at the appointed time due to extenuating circumstances, such as travel delays, the party should immediately contact the Oral Argument Coordinator or, if the Oral Argument Coordinator is not available, the Board's main telephone number. See Appendix B (Directory).

(v) *Supplemental briefs.* — While the Board generally does not accept supplemental briefs, an exception is made for cases that have been granted oral argument. Parties may submit supplemental briefs in anticipation of oral argument, but parties are not sent a supplementary briefing schedule. Parties may submit supplemental briefs until 15 days prior to the date of oral argument. Parties may reply to supplemental briefs up until 7 days prior to the date of oral argument. Supplemental briefs should be directed to the Oral Argument Coordinator. Supplemental briefs are subject to the same requirements as other briefs. See generally Chapters 3 (Filing with the Board), 3.2 (Service), 4.6 (Appeal Briefs), 5.4 (Motion Briefs). Supplemental briefs must be served on the opposing party as expeditiously as they are served on the Board.

(vi) *Additional authorities.* — Both oral argument and any supplemental briefs should be based on a thorough research of legal authorities and should include all legal authority that a party might wish to rely upon in oral argument. In the event that a party

locates additional legal authority subsequent to the filing of a supplemental brief, parties should observe the following:

(A) ***Supplemental authorities.*** — If a party inadvertently omits a legal authority and wishes to refer to it at oral argument, that party must so notify the Board (and provide a copy, where appropriate) in advance of oral argument. See Chapter 3.2 (Service). Opposing parties must be informed (and provided a copy, where appropriate) as expeditiously as the Board. Parties may not use supplemental authority, however, as an excuse to file a supplemental brief after the time for briefing has expired. Once the supplemental briefing deadline has passed, see subsection (v), above, the Board will not consider any filing that appears in form or substance to be a brief.

(B) ***New authorities.*** — If a party discovers a newly available authority, that party should inform the Oral Argument Coordinator and the opposing party immediately. Parties should promptly submit a statement regarding the significance, or lack thereof, of the new authority to the matter being argued. The Board will thereafter determine what action, if any, will be taken in light of the new authority.

(vii) ***Exhibits.*** — The Board accepts no new evidence on appeal. If a party wishes to display exhibits used in the proceeding below, or wishes to use presentation aids that do not constitute evidence, the party must make prior arrangements with the Oral Argument Coordinator for delivery and display. The party is also responsible for removing any exhibits or presentation aids at the conclusion of the proceeding.

(viii) ***Reviewing the record of proceedings.*** — Parties wishing to review the record of proceedings should make arrangements with the Oral Argument Coordinator prior to oral argument. Absent special arrangements, the record is not available for review in the 2 hours prior to the scheduled time for oral argument.

(d) ***Oral argument.*** — Oral argument should be approached as an opportunity to expand upon, and not merely repeat, a party's written arguments. Parties arguing before the Board should follow the rules and guidelines below.

(i) ***Oral argument tables.*** — Parties are generally limited to two legal staff each at the oral argument tables. This limit includes representatives, paralegals, and all other personnel. Represented parties who attend oral argument may not sit at the oral argument tables but are provided priority seating in the gallery.

(ii) ***Addressing the Board.*** — Individual Board Members are to be referred to as either "Board Member _____" or "Your Honor." Titles, such as "Chairman _____" and "Vice Chairman _____," may also be used. The Board Members as a group may be referred to either as "the Board" or "Your Honors."

(iii) ***Standing and sitting.*** — Parties must stand when addressing the Board. Where a podium is provided, parties must speak from that podium during opening and closing statements. At other times, parties may respond to the Board's questions from the oral argument table, provided that they stand when doing so. The only exception to this protocol is when a Board Member's question elicits a brief response, such as a "yes-or-no" answer. At all other times, parties may remain seated.

(iv) ***Familiarity with the record.*** — Parties are expected to be thoroughly familiar with the record. Parties should prepare oral argument with the understanding that the Board Members have studied the briefs and are also thoroughly familiar with the record.

(v) ***Opening statements.*** — At the commencement of oral argument, persons to argue before the Board should rise and introduce themselves. Opening statements are encouraged. An opening statement should include a brief introduction to the case and the core issue or issues being argued. Parties should not read at length from briefs, authorities, or the record.

(vi) ***Recitation of facts.*** — A brief chronological statement of the pertinent facts, where warranted, is welcome at the outset of oral argument. Extensive recitation of facts, however, is discouraged.

(vii) ***Recitation of law.*** — Oral argument should focus upon the critical points of law that can be properly addressed during the time for oral argument. In their oral presentation, parties may not cite to any case, reported or otherwise, that does not appear in either of the parties' briefs, unless one of two conditions is met: the Board and opposing counsel have been notified in advance of the intention to cite to that case, or the citation is in response to a Board Member's question or the opposing party's oral argument. See Chapter 8.7(c)(vi) (Additional authorities).

(viii) ***Argument.*** — Parties are generally allotted 30 minutes per side to present their arguments. If a party anticipates needing more than 30 minutes, the party should submit a request for additional time, in writing, to the Oral Argument Coordinator at least 15 days prior to the date of oral argument. A copy of the request should be served on the opposing party as well.

If oral argument will be shared by two representatives, the allotted time may be apportioned between them according to their discretion. Representatives should not duplicate each other's arguments.

(ix) ***Rebuttal.*** **—** At the outset of oral argument or at the conclusion of his or her presentation, a party may reserve time for rebuttal, provided there is time remaining.

(x) ***Questions from the bench.*** **—** Board Members may ask questions at any time during oral argument. Parties should answer the Board's questions as directly as possible. Board Member questions apply toward the 30 minutes allotted for argument and do not extend that time.

(xi) ***Marking of time.*** **—** Parties are notified when their time for oral argument has elapsed. Parties are expected to monitor their own time, especially when reserving time for co-counsel or rebuttal. In the event of disagreement, the Board's timekeeping is controlling.

(xii) ***Cessation of oral argument.*** **—** At any point during oral argument, the Board may terminate oral argument if further argument appears unnecessary. The Board may terminate oral argument even if a party's allotted time has not expired.

(xiii) ***Amicus curiae.*** **—** Amicus curiae may present oral argument only upon advance permission of the Board. Such permission is granted sparingly. The time allotted to amicus curiae is determined on a case-by-case basis. Amicus curiae argue after both sides have concluded their arguments. Amicus curiae are subject to the same oral argument rules and limitations as the parties.

Where appropriate, the Board may provide parties an opportunity to respond to the oral argument of amicus curiae.

8.8 Conclusion of Oral Argument

(a) ***Decision of the Board.*** **—** Decisions are normally not rendered on the day of oral argument. Subsequent to oral argument, cases are processed in the standard manner. See Chapter 1.4(d) (Board decisions).

(b) ***Supplemental briefs.*****—** The Board expects all issues to be fully briefed and argued by the conclusion of oral argument. Parties may not file supplemental briefs after oral argument, unless they are expressly solicited by the Board or warranted by emergent developments in the law or the case.

(c) *Transcripts.—* The Board always records oral argument, but a transcript is prepared only when a Board decision is under review by a federal court.

9 Visa Petitions

9.1 Visa Petitions Generally

A visa petition is the first step toward obtaining lawful permanent residence for a foreign born individual or family. It is usually filed by a United States citizen, lawful permanent resident, or employer. Visa petitions are adjudicated by DHS and, once approved, may be revoked or revalidated by DHS under certain circumstances. If a visa petition is denied or revoked, or the revalidation of a visa petition is denied, an appeal may be taken to the Board in some instances.

For visa petition appeals within the Board's jurisdiction, DHS is initially responsible for management of the appeal, including the processing of briefs. The Board's role in the appeal process does not begin until the completed record is received from DHS.

9.2 Jurisdiction Generally

Visa petitions are adjudicated by the appropriate District Director or Service Center Director of the DHS office having jurisdiction over the petition. Upon adjudication of a visa petition, revocation of a visa petition approval, or revalidation of a visa petition approval, the District Director or Service Center Director will notify the petitioner in writing of the decision. An appeal may be taken to the Board where authorized by statute and regulation. See 8 C.F.R. §§ 1003.1(b)(5), 1205.2(d). See also Chapter 1.4 (Jurisdiction and Authority).

9.3 Visa Petition Denials

(a) *Jurisdiction.* — The Board has appellate jurisdiction over family-based immigrant petitions filed in accordance with section 204 of the Immigration and Nationality Act, with the exception of petitions on behalf of certain orphans. See 8 C.F.R. § 1003.1(b)(5). See generally Chapter 1.4 (Jurisdiction and Authority). The Board does not have jurisdiction over employment-based visa petitions. See 8 C.F.R. §§ 103.2, 103.3, 1205.2(d). See also Chapters 1.2(g) (Relationship to the Administrative Appeals Office (AAO)), 1.4 (Jurisdiction and Authority).

(b) *Standing.* — Only the petitioner, not the beneficiary or a third party, may appeal the denial of a visa petition. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). Self-petitioners — including battered spouses, battered children, and certain spouses of deceased citizens — also have

standing to appeal. See Immigration and Nationality Act § 204(a)(1)(A)(ii), (iii), (iv) and 204(a)(1)(B)(ii), (iii); 8 C.F.R. § 204.2.

(c) *Filing the appeal.* —

(i) *How to file.* — Appeals of all visa petition decisions are made on the Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer (Form EOIR-29). 8 C.F.R. § 1003.3(a)(2). (This form is different from the Form EOIR-26 used in Immigration Court proceedings.) This form is also used for petition-based appeals from the decisions of Service Center Directors. The appeal form must be signed by the petitioner, not the beneficiary. The rare exceptions to that rule are those cases in which the alien "self-petitions," such as battered spouses and children, certain widows and widowers, and applicants for temporary admission despite inadmissibility (section 212(d)(3) waiver).

(ii) *Where to file.* — Unlike appeals from the decisions of Immigration Judges, appeals of visa petition denials are filed directly with DHS, in accordance with the applicable regulations, any instructions that appear on the DHS decision, and any instructions that appear on the reverse of the Notice of Appeal (Form EOIR-29). See generally 8 C.F.R. § 1003.3(a)(2). The appeal must be filed with the DHS office having administrative control over the petition record.

(iii) *When to file.* — The deadline for the appeal appears in the written decision or its transmittal letter.

(iv) *Fee.* — The filing fee for a petition-based appeal is $110. See 8 C.F.R. §§ 1003.8(b), 1103.7. Unlike appeals of Immigration Judge decisions, the fee for a petition-based appeal is filed directly with DHS, in accordance with DHS instructions. The fee should be paid in the manner instructed by DHS.

(v) *Representation.* — A petitioner may be represented by an attorney or other authorized representative. See generally Chapter 2 (Appearances before the Board). If a petitioner is represented, the appeal should be accompanied by a completed and executed Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR-27). See 8 C.F.R. § 1292.4(a).

(vi) *Supporting briefs.* — Briefs, if desired, are filed with DHS, at the same office as the Notice of Appeal (Form EOIR-29) and in accordance with any briefing schedule set by DHS. See 8 C.F.R. § 1003.3(c)(2). Requests to extend the time for filing a brief should be directed to DHS. The Board may, in its discretion, authorize briefs to be filed directly with the Board. 8 C.F.R. § 1003.3(c)(2).

Absent special instructions from DHS, briefs on visa petition appeals should generally follow the guidelines set forth in Chapters 3.3 (Documents) and 4.6 (Appeal Briefs).

(vii) *Evidence.* — The Board does not consider new evidence on appeal. If new evidence is submitted in the course of an appeal, the submission may be deemed a motion to remand the petition to DHS for consideration of that new evidence. If the petitioner wishes to submit new evidence, the petitioner should articulate the purpose of the new evidence and explain its prior unavailability. Any document submitted to the Board should comport with the guidelines set forth in Chapter 3.3 (Documents).

However, the Board will not consider evidence — or remand the petition — where the proffered evidence was expressly requested by DHS and the petitioner was given a reasonable opportunity to provide it before the petition was adjudicated by DHS. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(viii) *Stipulations.* — The Board encourages the parties, whenever possible, to stipulate to any facts or events that pertain to the adjudication of the visa petition.

(d) *Processing.* — Once an appeal has been properly filed with DHS and the petition record is complete, DHS forwards the petition record to the Board for adjudication of the appeal.

(i) *Record on appeal.*— The record on appeal consists of all decisions and documents in the petition record, including some or all of the following items: visa petition and supporting documentation, DHS notices, DHS decision, the Notice of Appeal, any briefs on appeal, the record of any prior DHS action, and the record of any prior Board action.

(ii) *Briefing schedule.*— Briefing schedules are issued by DHS and are to be completed prior to the forwarding of the petition record to the Board. Accordingly, the Board generally does not issue briefing schedules in visa petition cases. See Chapter 9.3(c)(vi) (Supporting briefs).

(iii) *Status inquiries* / DHS. — Until the petition record is received by the Board, all status inquiries must be directed to the DHS office where the appeal was filed. *The Board has no record of the appeal until the record is received by the Board.* Since the Board and DHS are distinct and separate entities, the Board cannot track or provide information on cases that remain within the possession of DHS.

(iv) *Status inquiries / Board.* — Confirmation that the Board has received a petition record from DHS can be obtained from the Clerk's Office. See Appendix B

(Directory). The Board tracks petition-based appeals by the beneficiary's name and alien registration number ("A number"). All status inquiries must contain this information. See generally Chapter 1.6(a) (All communications).

(v) *Adjudication.* — Upon the entry of a decision, the Board serves the decision upon the parties by regular mail. An order issued by the Board is final, unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. An order is deemed effective as of its issuance date, unless the order provides otherwise.

(e) *Motions.* — Motions filed during the pendency of an appeal should be filed where the visa petition record is located. Motions may not be filed with the Board until the petition and record have been received by the Board. See Chapter 9.3(d)(iv) (Status inquires / Board).

All motions filed subsequent to the Board's adjudication of an appeal, including motions to reopen and motions to reconsider the Board's decision, are to be filed with the DHS office having administrative control over the petition record, not with the Board. 8 C.F.R. § 1003.2(g)(2)(ii).

(f) *Withdrawal of appeal.* — The petitioner may, at any time prior to the entry of a decision by the Board, voluntarily withdraw the appeal. To withdraw an appeal, the petitioner should file a written request, with a cover page labeled "WITHDRAWAL OF VISA PETITION APPEAL" with either DHS or the Board, whichever holds the file at the time the withdrawal is submitted. See Chapter 4.11 (Withdrawing an Appeal), Appendix F (Sample Cover Page).

9.4 Visa Revocation Appeals

(a) *Jurisdiction.* — The Board has appellate jurisdiction over the discretionary revocation of visa petition approvals. 8 C.F.R. §§ 1003.1(b)(5), 1205.2(d). The Board does not have jurisdiction over automatic revocations of visa petitions. 8 C.F.R. § 1205.1. See *Matter of Zaidan*, 19 I&N Dec. 297 (BIA 1985).

(b) *Standing.* — Only the petitioner, not the beneficiary or a third party, may appeal the revocation of a visa petition approval. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). Self-petitioners —including battered spouses, battered children, and certain spouses of deceased citizens— also have standing to appeal. 8 C.F.R. § 1205.2(d).

(c) *Filing the appeal.* — Revocation appeals are filed according to the same rules as appeals of visa petition denials. See Chapter 9.3(c) (Filing the appeal). The only difference is that

the petitioner or self-petitioner must file the appeal within 15 days after the service of notice of the revocation. 8 C.F.R. § 1205.2(d).

(d) *Processing.* — Revocation appeals are processed in the same manner as visa petition denials. See Chapter 9.3(d) (Processing).

(e) *Motions.* — Motions related to revocation appeals are handled in the same manner as motions for visa petition denials. See Chapter 9.3(e) (Motions).

(f) *Withdrawal of appeal.* — Withdrawals of revocation appeals are handled in the same manner as withdrawals of visa petition appeals. See Chapter 9.3(f) (Withdrawal of appeal).

9.5 Visa Revalidation Appeals

(a) *Jurisdiction.* — Certain immigrant petitions are valid for a limited period of time, after which they expire unless revalidated. See 8 C.F.R. § 214.2(k)(5). The Board has appellate jurisdiction over the revalidation of visa petitions that fall within the Board's jurisdiction. See Chapter 9.2 (Jurisdiction Generally). See also 8 C.F.R. § 1003.1(b)(5).

(b) *Standing.* — Only the petitioner, not the beneficiary or a third party, may appeal a visa petition revalidation decision. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985).

(c) *Filing the appeal.* — Appeals of visa revalidation decisions are filed in the same manner as appeals of visa petition denials. See Chapter 9.3(c) (Filing the appeal).

(d) *Processing.* — Revalidation appeals are processed in the same manner as visa petition denials. See Chapter 9.3(d) (Processing).

(e) *Motions.* — Motions related to revalidation appeals are handled in the same manner as motions for visa petition denials. See Chapter 9.3(e) (Motions).

(f) *Withdrawal of appeal.* — Withdrawals of revalidation appeals are handled in the same manner as withdrawals of visa petition appeals. See Chapter 9.3(f) (Withdrawal of appeal).

10 Fines

10.1 Fines Generally

Certain provisions of the Immigration and Nationality Act render individuals and carriers liable for transporting unauthorized aliens into the United States. See Immigration and Nationality Act § 273; 8 C.F.R. part 1280. Fines may be assessed by a DHS Special Agent in Charge, the DHS Associate Director for Operations, U.S. Citizenship and Immigration Services, or the DHS National Fines Office. 8 C.F.R. § 1280.1.

In fines cases, DHS is initially responsible for appeal management, including initial briefing. The Board's role in the appeal process does not begin until the completed record is received from DHS.

10.2 Jurisdiction

Where a DHS officer enters an adverse decision against an individual or carrier in a fines case, an appeal may be taken to the Board. 8 C.F.R. § 1280.13(b).

10.3 Processing

(a) *Standing.* — Only the individual or carrier being fined may file an appeal. However, if that individual or carrier admits the allegations in the Notice of Intent to Fine or does not answer it, the opportunity to appeal is waived. 8 C.F.R. § 1280.13(a).

(b) *Filing the appeal.* —

(i) *How to file.* — Fine appeals are made on the Notice of Appeal (Form EOIR-29). 8 C.F.R. § 1003.3(a)(2). (This form is different from the Form EOIR-26 used in Immigration Court proceedings.)

(ii) *Where to file.* — Unlike appeals from the decisions of Immigration Judges, fine appeals are filed with DHS, in accordance with the applicable regulations and any instructions that appear on the DHS decision. See generally 8 C.F.R. § 1003.3(a)(2). The appeal must be filed with the DHS office having administrative control over the fine record.

(iii) *When to file.* — A fine appeal must be filed within 15 days after the date of the DHS decision or, if mailed, 18 days after that decision. See 8 C.F.R. §§ 103.5a(b), 1280.13(b).

(iv) *Fee.* — The filing fee for a fine appeal is $110. See 8 C.F.R. § 1003.8(b). Unlike appeals of Immigration Judge decisions, the fee is filed directly with DHS, in accordance with DHS instructions. The fee should be paid in the manner instructed by DHS.

(v) *Representation.* — An individual or carrier appealing a fine decision may be represented by an attorney or other authorized representative. See generally Chapter 2 (Appearances before the Board). If that individual or carrier is represented, the appeal should be accompanied by a completed and executed Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR-27). See 8 C.F.R. § 1292.4(a).

(vi) *Supporting briefs.* — Briefs, if desired, are filed with DHS, at the same office as the Notice of Appeal (Form EOIR-29) and in accordance with any briefing schedule set by DHS. See 8 C.F.R. § 1003.3(c)(2). Requests to extend the time for filing a brief should be directed to DHS. The Board may, in its discretion, authorize briefs to be filed directly with the Board. 8 C.F.R. § 1003.3(c)(2).

Absent special instructions from DHS, briefs on fine appeals should generally follow the guidelines set forth in Chapters 3.3 (Documents) and 4.6 (Appeal Briefs).

(vii) *Evidence.* — The Board does not consider new evidence on appeal. If new evidence is submitted in the course of an appeal, the submission may be deemed a motion to remand the matter to DHS for consideration of that new evidence. If the individual or carrier wishes to submit new evidence, that individual or carrier should articulate the purpose of the new evidence and explain its prior unavailability. Any document submitted to the Board should comport with the guidelines set forth in Chapter 3.3 (Documents).

However, the Board will not consider evidence or remand the matter where the proffered evidence was expressly requested by DHS and a reasonable opportunity to provide it was given before the matter was adjudicated by DHS. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(viii) *Stipulations.* — The Board encourages the parties, whenever possible, to stipulate to any facts or events that pertain to the adjudication of the appeal.

(c) *Processing.* — Once an appeal has been properly filed with DHS and the record is complete, DHS forwards the record to the Board for adjudication of the appeal.

(i) *Record on appeal.*— The record on appeal consists of all decisions and documents in the record, including some or all of the following items: the Notice of Intent to Fine, any written defense or correspondence, any documentary evidence submitted to DHS, the record of any personal interviews, the DHS decision, the Notice of Appeal, any briefs on appeal, the record of any prior DHS action, and the record of any prior Board action.

(ii) *Briefing schedule.*— Briefing schedules are issued by DHS and are to be completed prior to the forwarding of the record to the Board. Accordingly, the Board generally does not issue briefing schedules in fine cases.

(iii) *Status inquiries* / DHS. — Until the record is received by the Board, all status inquiries must be directed to the DHS office where the appeal was filed. *The Board has no record of the appeal until the record is received by the Board.* Since the Board and DHS are distinct and separate entities, the Board cannot track or provide information on cases that remain within the possession of DHS.

(iv) *Status inquiries / Board.* — Confirmation that the Board has received a fine record from DHS can be obtained from the Clerk's Office. See Appendix B (Directory). The Board tracks fine appeals by the name and an assigned case number for the individual or carrier. All status inquiries should contain this information. See generally Chapter 1.6(a) (All communications).

(v) *Adjudication.* — Upon the entry of a decision, the Board serves the decision upon the parties by regular mail. An order issued by the Board is final, unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. An order is deemed effective as of its issuance date, unless the order provides otherwise.

(d) *Motions.* — Motions filed during the pendency of an appeal should be filed where the fine record is located. Motions may not be filed with the Board until the record has been received by the Board. See Chapter 10.3(c)(iv) (Status inquiries / Board).

All motions filed subsequent to the Board's adjudication of an appeal, including motions to reopen and motions to reconsider the Board's decision, are to be filed with the DHS office having administrative control over the record, not with the Board. 8 C.F.R. § 1003.2(g)(2)(ii).

(e) *Withdrawal of appeal.* — The appeal may, at any time prior to the entry of a decision by the Board, be voluntarily withdrawn. To withdraw an appeal, the individual or carrier should file a written request, with a cover page labeled "WITHDRAWAL OF FINE APPEAL," with either DHS or the Board, whichever holds the file at the time the withdrawal is submitted. See Chapter 4.11

(Withdrawing an Appeal), Appendix F (Sample Cover Page). If the appeal is before the Board, Proof of Service on DHS should be submitted with the withdrawal. See Chapters 3.2(d) (Proof of Service), 4.11 (Withdrawing an Appeal).

10.4 Personal Interviews

(a) *Remand.* — The Board has the authority to request or direct a personal interview of the individual or carrier. 8 C.F.R. § 1280.12. A remand may be warranted when DHS enters a decision without granting a personal interview, either initially or on remand. See 8 C.F.R. §§ 1280.12, 1280.13(b). A remand may also be warranted when the DHS decision does not adequately state the reasons for assessing the fine. *Matter of Air India "Flight No. 101"*, 21 I&N Dec. 890 (BIA 1997).

(b) *Invalidation of fine.* — If DHS fails to grant an interview, the Board may invalidate the fine. *Matter of "Beechcraft B-95, #N21JC"*, 17 I&N Dec. 147 (BIA 1979).

11 Discipline of Practitioners

11.1 Practitioner Discipline Generally

The Board has the authority to impose disciplinary sanctions upon attorneys and accredited representatives who violate rules of professional conduct in practice before the Board, the Immigration Courts, and the Department of Homeland Security (DHS). 8 C.F.R. §§ 1003.1(d)(2)(iii), 1003.1(d)(5), 1003.101-106; 1292.3. See also *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

11.2 Definition of Practitioner

For purposes of this Chapter, the term "practitioner" is defined as an attorney or accredited representative, as defined in 8 C.F.R. § 1001.1(f), (j).

11.3 Jurisdiction

(a) *Practitioners.* — The Board is authorized to discipline any practitioner if the Board finds it to be in the public interest to do so. 8 C.F.R. §§ 1003.101(a), 1292.3(a). Pursuant to regulations, it is in the public interest to discipline any practitioner who has engaged in criminal, unethical, or unprofessional conduct or in frivolous behavior. 8 C.F.R. §§ 1003.101(a), 1003.102, 1292.3(b).

(b) *DHS attorneys.* — The Board's disciplinary authority does not extend to attorneys who represent DHS.

(c) *Immigration Judges.* — The Board's disciplinary authority does not extend to Immigration Judges. The conduct of Immigration Judges falls under the jurisdiction of the Department of Justice's Office of Professional Responsibility. 8 C.F.R. § 1003.109.

(d) *Immigration specialists.* — The Board does not have authority to discipline individuals such as "immigration specialists," "visa consultants," "notarios," "asesorios," and other individuals who engage in the unauthorized practice of law. However, the Board has the authority to discipline practitioners who assist in the unauthorized practice of law. 8 C.F.R. § 1003.102(m). The Board encourages anyone harmed by the unauthorized practice of law to report it to the appropriate law enforcement, consumer protection, and other authorities.

11.4 Conduct

The following conduct may result in discipline by the Board:

- frivolous behavior, as defined in 8 C.F.R. § 1003.102(j) and discussed at 8 C.F.R. § 1003.1(d)(2)(iii)
- ineffective assistance of counsel as provided in 8 C.F.R. § 1003.102(k)
- misconduct resulting in disbarment from, suspension by, or resignation with an admission of misconduct from a state or federal licensing authority
- conviction of a serious crime
- a false statement of material fact or law made knowingly or with reckless disregard
- false certification of a copy of a document made knowingly or with reckless disregard
- assisting the unauthorized practice of law
- grossly excessive fees
- bribery, coercion, or an attempt at either, with the intention of affecting the outcome of an immigration case
- improper solicitation of clients or using "runners"
- misrepresenting qualifications or services
- repeated failure to appear for scheduled hearings in a timely manner without good cause
- courtroom conduct that would constitute contempt of court in a judicial proceeding

See 8 C.F.R. § 1003.102. This list is not exhaustive or exclusive, and other grounds for discipline may be identified by the Board. 8 C.F.R. § 1003.102.

11.5 Complaints

(a) *Who may file.* — Anyone may file a complaint against a practitioner, including aggrieved clients, adjudicators, DHS personnel, and other practitioners. 8 C.F.R. § 1003.104(a)(1).

(b) *What to file.* — Complaints must be submitted *in writing* on the Immigration Practitioner Complaint Form (Form EOIR-44), which can be downloaded from the Internet. See Chapter 12.2(b) (Obtaining forms), Appendix E (Forms). The complaint form provides important information about the complaint process, confidentiality, and the kinds of misconduct that the Board can discipline. Complaints should be specific and as detailed as possible, providing supporting documentation when it is available.

(c) *Where to file.* —

(i) *Misconduct before Board or Immigration Judge.* — Complaints alleging misconduct before the Board or an Immigration Court are filed with the Office of General Counsel of the Executive Office for Immigration Review (EOIR). 8 C.F.R. § 1003.104(a)(1). The completed form and supporting documents should be sent to:

Office of General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

Attn: Bar Counsel

EOIR's Office of General Counsel decides whether or not to initiate disciplinary proceedings. 8 C.F.R. § 1003.104(b).

(ii) *Misconduct before DHS.* — Complaints involving such conduct before DHS are to be filed with the appropriate DHS Office of the Principle Legal Advisor. 8 C.F.R. §§ 1003.104(a)(2); 1292.3(d).

(d) *When to file.* — Complaints based on ineffective assistance of counsel must be filed within one year of a finding of ineffective assistance of counsel by the Board or the Immigration Court. 8 C.F.R. § 1003.102(k).

11.6 Duty to Report

Any attorney or accredited representative who practices before the Board, the Immigration Courts, or DHS has an affirmative duty to report whenever he or she:

- has been found guilty of, or pled guilty or *nolo contendere* to, a serious crime (as defined in 8 C.F.R. § 1003.102(h)), *or*
- has been suspended or disbarred, or has resigned with an admission of misconduct

8 C.F.R. §§ 1003.103(c), 1292.3(c)(4). The practitioner must report the misconduct, criminal conviction, or discipline both to the EOIR Office of General Counsel and to the appropriate DHS Office of the Principal Legal Advisor within 30 days of the issuance of the relevant initial order. The duty applies even if an appeal of the conviction or discipline is pending.

11.7 Procedure

The regulations provide the procedures for filing complaints and imposing sanctions for misconduct before the Board and the Immigration Courts. See 8 C.F.R. §§ 1003.101 et seq. The regulations also contain procedures for filing complaints regarding misconduct before DHS. 8 C.F.R. § 1292.3.

(a) *Initiation of Proceedings. —*

(i) *Notice of Intent to Discipline.* — Disciplinary proceedings begin when the EOIR Office of General Counsel files a Notice of Intent to Discipline with the Board and serves a copy on the practitioner. The Notice contains a statement of the charge(s) against the practitioner, a copy of the inquiry report (if any), proposed disciplinary sanctions, the procedure for filing an answer to the Notice or requesting a hearing, and the contact information for the Board. 8 C.F.R. § 1003.105(a).

(ii) *Petition for Immediate Suspension.* — When the Notice of Intent to Discipline concerns an attorney who has either been convicted of a serious crime or is subject to suspension or disbarment by a state or federal licensing authority, the Office of General Counsel petitions for the immediate suspension of that attorney. 8 C.F.R. § 1003.103(a)(1).

Usually filed in conjunction with the Notice of Intent to Discipline, the petition for immediate suspension seeks the practitioner's immediate suspension from practice before

the Board and the Immigration Courts. 8 C.F.R. § 1003.103(a)(1). DHS may ask that the practitioner be similarly suspended from practice before DHS.

The regulations direct that, upon the filing of a petition for immediate suspension, the Board will suspend the respondent for as long as disciplinary proceedings are pending. 8 C.F.R. § 1003.103(a)(2). The regulations permit the immediate suspension to be set aside when the Board deems it in the interest of justice to do so. 8 C.F.R. § 1003.103(a)(2). The usual hardships that accompany a suspension from practice (e.g., loss of income, duty to complete pending cases) are generally not sufficient to set aside an immediate suspension order.

(b) *Response.* — The subject of a Notice of Intent to Discipline has 30 days from the date of service to file a written answer to the Notice and to request a hearing. 8 C.F.R. § 1003.105(c)(1). An answer is deemed filed at the time it is *received* by the Board. See Chapter 3.1(b) (Must be "timely"). The answer should be served on both the EOIR Office of General Counsel and the appropriate DHS Office of Principal Legal Advisor. The time in which to file an answer may be extended for good cause shown through the filing of a motion no later than 3 working days *before* the filing deadline. 8 C.F.R. § 1003.105(c)(1). Second extension requests are rarely granted.

(i) *Timely answer.* — If an answer is timely received by the Board, the matter will be referred to an appropriate adjudicator, generally an Immigration Judge, to conduct a disciplinary hearing. 8 C.F.R. § 1003.106. The answer must specifically admit or deny each of the allegations in the Notice of Intent to Discipline. Each allegation not denied is deemed admitted. 8 C.F.R. § 1003.105(c)(2).

If the practitioner wishes to have a hearing, the request for a hearing must be contained in the written answer. Otherwise, the opportunity to request a hearing will be deemed waived. 8 C.F.R. § 1003.105(c)(3).

(ii) *No answer or untimely answer.* — If the Board does not receive a timely answer, the failure to answer is deemed an admission of the allegations in the Notice of Intent to Discipline, and the practitioner is thereafter precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d). The regulations require the Board to enter a default order imposing the discipline recommended by the EOIR Office of General Counsel and the DHS Office of Principal Legal Advisor, absent the presence of special considerations. 8 C.F.R. § 1003.105(d)(2).

A practitioner subject to a default order may move to set aside that order, provided that the motion is filed within 15 days of the date of service of the default order and that his or her failure to answer was due to exceptional circumstances beyond the control of the

practitioner (e.g., the attorney's serious illness, death of an immediate relative). 8 C.F.R. § 1003.105(d)(2).

(c) *Hearing.* — If a practitioner timely requests a hearing, the record is forwarded to an Immigration Judge or other appropriate adjudicator to conduct a disciplinary proceeding, which is described at 8 C.F.R. § 1003.106. For the most part, disciplinary hearings will be conducted in the same manner as immigration proceedings. 8 C.F.R. § 1003.106. However, the Immigration Judge presiding over the disciplinary proceeding will not be one before whom the practitioner regularly appears. 8 C.F.R. § 1003.106(a)(1)(i).

(d) *Appeals.* — The regulations provide that the Board may entertain an appeal filed by a practitioner wishing to challenge the adjudicator's disciplinary ruling. 8 C.F.R. § 1003.106(c). The appeal must be received by the Board within 30 days of the oral decision or, if no oral decision was rendered, 30 days of the date of mailing of the written decision. The proper form for filing a practitioner discipline appeal is the Notice of Appeal (Form EOIR-45), which can be downloaded from the Internet. See Chapter 12.2(b) (Obtaining forms), Appendix E (Forms). (This form is specific to disciplinary proceedings and is different from the Notices of Appeal in other types of proceedings. See Appendix E (Forms).) The parties must comply with all of the other standard provisions for filing appeals with the Board. 8 C.F.R. § 1003.106(c). See Chapter 4 (Appeals of Immigration Judge Decisions).

(e) *Motions.* — As with most motions in immigration proceedings, motions should be filed with the adjudicator who has jurisdiction over the case.

(i) *Prior to the entry of a default order or a timely request for a hearing.* — In this instance, motions should be filed with the Board.

(ii) *After a timely response has been made.* — In this instance, motions should be filed with the Immigration Judge, unless an appeal to the Board has been taken.

(iii) *If a default order has been entered.* — In this instance, motions should be filed with the Board.

11.8 Sanctions

The Board is authorized to impose a broad range of sanctions, including "expulsion" (permanent suspension) from immigration practice, public or private censure, and other sanctions deemed appropriate by the Board. 8 C.F.R. § 1003.101(a). The Board may even increase the level of disciplinary sanction. *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003). When a practitioner has

been expelled or suspended, that information is made available to the public on the EOIR website, at the Board, and at the Immigration Courts. See Chapter 11.9 (Confidentiality).

11.9 Confidentiality

The regulations discuss confidentiality and public disclosure at the various stages of disciplinary proceedings. See 8 C.F.R. § 1003.108. As a general rule, action taken on a Notice of Intent to Discipline may be disclosed to the public. 8 C.F.R. § 1003.108(c).

11.10 Effect on Cases before the Board

(a) *Duty to advise clients.* — A practitioner who is disciplined is obligated to advise all clients with a case pending before either the Board or an Immigration Court that he or she has been disciplined by the Board.

(b) *Pending cases deemed unrepresented.* — Once a practitioner has been disciplined by the Board and is currently not authorized to practice before the Board and the Immigration Courts, the Board will deem that practitioner's pending cases to be unrepresented. Filings that are submitted after a practitioner has been expelled or suspended will be rejected and returned to the party whenever possible. If the practitioner is later reinstated by the Board, he or she must file a new Notice of Entry of Appearance (Form EOIR-27) in every case, even if he or she previously represented that party. See Chapter 11.12(c) (Cases pending at the time of reinstatement).

(c) *Ineffective assistance of counsel.* —The imposition of discipline on an attorney does not constitute *per se* evidence of ineffective assistance of counsel in any case formerly represented by that attorney.

(d) *Filing deadlines.* — An order of practitioner discipline does not automatically excuse parties from meeting any applicable filing deadlines.

11.11 List of Suspended and Expelled Attorneys

A list of practitioners who have been suspended or expelled from immigration practice appears at www.usdoj.gov/eoir. The list is updated periodically. Copies are also posted at the Board and in the Immigration Courts.

11.12 Reinstatement

(a) *Expiration of suspension.* — When a period of suspension has run, reinstatement is not automatic. 8 C.F.R. § 1003.107(a). An practitioner who has been suspended from immigration practice and who wishes to be reinstated must:

- file a motion with the Board requesting to be reinstated
- show that he or she can meet the definition of "attorney" set forth in 8 C.F.R. § 1001.1(f) (or § 1001.1(j) if an "accredited representative")

Certain attorneys must meet additional criteria to be reinstated. See subsection (b), below.

(b) *Petition for reinstatement.* — A practitioner who has been expelled or has been suspended for a year or more may seek reinstatement with the Board if he or she:

- petitions after one year or one-half of the term of suspension has expired, whichever is greater
- can meet the regulatory definition in 8 C.F.R. § 1001.1(f) or § 1001.1(j)
- can demonstrate by clear, unequivocal, and convincing evidence that he or she possesses the moral and professional qualifications required to return to immigration practice
- can show that reinstatement will not be detrimental to the administration of justice

8 C.F.R. § 1003.107(b)(1). Failure to meet any one of these criteria will result in the request for reinstatement being denied. Once a request for reinstatement is denied, the attorney may not seek reinstatement for another full year. 8 C.F.R. § 1003.107(b)(2). The Board may, in its discretion, hold a hearing to determine if the attorney meets all the regulatory requirements for reinstatement.

All requests for reinstatement must be served on the EOIR Office of General Counsel and the appropriate DHS Office of Principal Legal Advisor. 8 C.F.R. § 1003.107(b)(1).

(c) *Cases pending at the time of reinstatement.* — Suspension or expulsion by the Board terminates representation. A practitioner reinstated to immigration practice by the Board who wishes to represent cases before the Board or the Immigration Courts must enter a new

appearance in each case, *even if* he or she was the attorney of record at the time that discipline was imposed. The practitioner should include proof of reinstatement with each new appearance. See Chapter 2.3(c) (Appearances).

12 Forms

12.1 Forms Generally

There is an official form that must be used to:

- file an appeal — see Chapter 4.4(b) (Notice of Appeal)
- request a fee waiver — see Chapter 3.4 (Filing Fees)
- appear as a representative — see Chapter 2.1(b) (Entering an appearance)
- report a change of address — see Chapter 2.2(c) (Address obligations)
- request most kinds of relief — see 8 C.F.R. parts 299, 1299

There is an official form that should be used to:

- file a practitioner complaint — see Chapter 11.5 (Complaints)

There is *no* official form to:

- file a motion — see Chapter 5.2(b) (Form)

An appeal form, such as the Form EOIR-26, should *never* be used to file a motion.

12.2 Obtaining Blank Forms

(a) *Identifying EOIR forms.* — Many forms used by the Executive Office for Immigration Review (EOIR) do not appear in the regulations. Form names and numbers can be obtained from the clerks of most Immigration Courts and the Clerk's Office of the Board. See Appendix B (Directory). All of the forms most commonly used by the public are identified in this manual. See Appendix E (Forms).

(b) *Obtaining forms.* — Appendix E (Forms) contains a list of frequently requested forms and information on where to obtain them. In general, EOIR forms are available from the following sources:

- the Internet at www.usdoj.gov/eoir
- the local Immigration Court

- the Clerk's Office of the Board
- certain Government Printing Office (GPO) Bookstores

Parties should be sure to use the most recent version of each form, which will be available from the sources listed here.

(c) *Photocopied forms.* — Photocopies of blank EOIR forms may be used, provided that they are an accurate duplication of the government-issued form and are printed on the correct size and stock of paper. See 8 C.F.R. §§ 299.4(a), 1299.1. The filing party is responsible for the accuracy and legibility of the form. If colored paper is used, it should comply with subsection (e), below. The paper used to photocopy the form should also comply with Chapter 3.3(c)(iv) (Paper size and quality). The most recent version of the form *must be used* and is available from the sources listed in subsection (b), above.

(d) *Computer-generated forms.* — Computer-generated versions of EOIR forms may be used, provided that they are an accurate duplication of the government-issued form and are printed on the correct size and stock of paper. See 8 C.F.R. §§ 299.4(a), 1299.1. The filing party is responsible for the accuracy and legibility of the form. If colored paper is used, it should comply with subsection (e), below. The paper used should also comply with Chapter 3.3(c)(iv) (Paper size and quality). The most recent version of the form *must be used* and will be available from the sources listed in subsection (b), above. At this time, forms cannot be filed electronically with the Board.

(e) *Form colors.* —The Board no longer requires forms to be filed on paper of a specific color. All forms may now be filed on white paper. Any submission that is not a form must be on white paper.

The use of colored paper is still welcome, but *only* in the following instances:

blue	-	EOIR-26	(Notice of Appeal / Immigration Judge decision)
tan	-	EOIR-26A	(Appeal Fee Waiver Request)
yellow	-	EOIR-27	(Notice of Appearance)
pink	-	EOIR-29	(Notice of Appeal / DHS decision)
pink	-	EOIR-33/BIA	(Change of Address)

(f) *Non-form filings.* — Where a filing is not form-based (e.g., a motion or a request), the Board strongly recommends the use of a cover page. See Appendix F (Sample Cover Page).

12.3 Submitting Completed Forms

The Board will accept photocopies of completed forms, provided that the original completed form bears an original signature and is available to the Board upon request. The most recent version of the form *must be used* and is available from the sources listed in Chapter 12.2(b) (Obtaining forms). All filing requirements should be observed. See Chapter 3 (Filing with the Board). See also Chapters 4 (Appeals of Immigration Judge Decisions), 5 (Motions before the Board), 7(Bond), 9 (Visa Petitions), 10 (Fines).

13 Freedom of Information Act (FOIA)

13.1 Generally

The Freedom of Information Act (FOIA) provides the public access, with certain exceptions, to federal agency records. See 5 U.S.C. § 552. The Office of General Counsel, Executive Office for Immigration Review, responds to FOIA requests for Board records. See Appendix B (Directory).

13.2 Requests

(a) *Who may file.* —

(i) *Parties.* —

(A) *Inspecting the record.* — Parties to a proceeding, and their legal representatives, may inspect the official record of proceedings by prior arrangement with the Clerk's Office. A FOIA request is not required. See Chapter 1.5(d) (Records).

(B) *Obtaining copies of record.* — As a general rule, parties who want a copy of the record of proceedings must file a FOIA request. See subsection (b), below. However, when the record is small or only a portion of the record is needed, parties may contact the Clerk's Office for assistance in obtaining a copy. See Chapter 1.5(d) (Records).

(ii) *Non-parties.* — Persons who are not party to a proceeding before the Board must file a request with the Office of General Counsel, Executive Office for Immigration Review, if they wish to see or obtain copies of the record of proceedings.

(b) *How to file.* —

(i) *Form.* — FOIA requests must be made in writing. See 28 C.F.R. § 16.1 et seq. Requests may be sent to:

Executive Office for Immigration Review
Office of General Counsel, FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

(ii) *Information required.* — Requests should thoroughly describe the records sought and include as much identifying information as possible regarding names, dates, subject matter, and location of proceedings. For example, if a request pertains to an alien in removal proceedings, the request should contain the full name and alien registration number ("A number") of that alien. The more precise and comprehensive the information provided in the FOIA request, the better and more expeditiously the request can be processed.

(iii) *Fee.* — There is no fee to file a FOIA request, but fees may be charged for the review, search, and reproduction of records. See 28 C.F.R. § 16.3(c).

(iv) *Processing times.* — Processing times for FOIA requests vary, depending on such factors as the nature of the request and the location of the record.

(c) *When to file.* —

(i) *Timing.* — A FOIA request should be filed as soon as possible, especially when a party is facing a filing deadline. Parties should not wait to receive a briefing schedule or other response from the Board before submitting a FOIA request.

(ii) *Effect on filing deadlines.* — Parties should not delay the filing of an appeal, motion, brief, or other document while awaiting a response to a FOIA request. Failure to receive FOIA materials prior to a filing deadline does not excuse the party from meeting a filing deadline.

(d) *Limitations.* —

(i) *Statutory exemptions.* — Certain information in agency records, such as classified material and information that would cause a clearly unwarranted invasion of personal privacy, is exempted from release under the Freedom of Information Act. 5 U.S.C. § 552(b)(1)-(9). Where appropriate, records are redacted (e.g., removed or cut out), and copies of the redacted material are provided to the requesting person. When material is redacted, the reason or reasons for the redaction are indicated.

(ii) *Agency's duty.* — The FOIA statute does not require the Executive Office for Immigration Review, its Office of General Counsel, or the Board to perform legal research, nor does it entitle the requesting person to copies of documents that are available for sale or on the Internet.

(iii) *Subject's consent.* — When a FOIA request seeks information that is exempt from disclosure on the grounds of personal privacy, the subject of the record (e.g., the alien, the petitioner, the carrier) must consent in writing to the release of that information.

13.3 Denials

If a FOIA request is denied, in whole or in part, the requesting party may appeal that decision to the Office of Information and Privacy, Department of Justice. Information on how to appeal the denial of a FOIA request is available on the Office of Information and Privacy's website at www.usdoj.gov/oip. The rules regarding FOIA appeals can be found at 28 C.F.R. § 16.9.

14 Other Information

14.1 Reproduction of the Practice Manual

The Practice Manual is a public document and may be reproduced without advance authorization from the Board. Similarly, the "Questions and Answers Regarding Proceedings before the Board" ("Q&As") may be reproduced without advance authorization from the Board.

14.2 Updates to the Practice Manual

The current version of the Practice Manual, which includes all updates, is posted on the Internet on the Executive Office for Immigration Review's web site at www.usdoj.gov/eoir. The Practice Manual can be read, downloaded, and/or printed from that site. Questions about accessing the Practice Manual should be directed to the Law Library and Legal Research Center. See Appendix B (Directory).

14.3 Updates of the Q&As

The current version of the "Questions and Answers Regarding Proceedings before the Board" ("Q&As") is available on the Executive Office for Immigration Review's web site at www.usdoj.gov/eoir.

14.4 Public Input

(a) *Practice Manual and Q&As.* — The Board welcomes and encourages the public to provide comments on this manual, to identify errors or ambiguities in this text, and to propose revisions to improve this text in the future. The Board welcomes similar public input on the "Questions and Answers Regarding Proceedings before the Board" ("Q&As").

Correspondence should be addressed to the Chairman of the Board of Immigration Appeals. See Appendix A (Addresses). The public is asked *not* to combine comments on the Practice Manual or the Q&As with inquiries regarding specific cases pending before the Board.

(b) *Regulations and Published Rules.* — Periodically, the Executive Office for Immigration Review engages in federal rulemaking in the *Federal Register.* Immigration regulations are revised

to better effectuate existing law and to comport with new law as it is promulgated. The public is encouraged to participate in the rulemaking process. The *Federal Register* is available in most law libraries and many public libraries. Copies of the *Federal Register* are available from the Government Printing Office (GPO), either through telephonic orders or purchase at a GPO bookstore. Call (202) 512-1800 for more information on GPO publications and bookstore locations.

APPENDIX A

Mailing Addresses

	If sending by:	Use this address:	Remember that:
A	courier hand delivery same day delivery overnight or express delivery (including U.S. Postal Service "Express Mail")	Board of Immigration Appeals Clerk's Office 5201 Leesburg Pike, Ste. 1300 Falls Church, Virginia 22041	Deliveries *must be received* during normal window hours. Window hours are: 8:00 am-4:30 pm (Eastern time), Monday-Friday, except federal holidays. For further information, call (703) 605-1007.

	If sending by:	Use this address:	Remember that:
B	U.S. Postal Service, any class (except "Express Mail") priority mail certified mail registered mail return receipt requested mail	Board of Immigration Appeals Clerk's Office P.O. Box 8530 Falls Church, VA 22041	Use caution when there is a filing deadline. Deadlines are determined by when the mailing is *received* by the Clerk's Office. When there is a filing deadline, try to use a delivery method from Table A.

When the intended recipient of correspondence is a particular person or office within the Board, the sender should label the envelope or packaging to the attention of that person or office. Example: "ATTN: Oral Argument Coordinator"

APPENDIX B

Directory

Automated Status Query System (ASQ) . . . . . (800) 898-7180
24 hours
7 days a week

BIA Telephonic Instructions and Procedures System (BIA TIPS) . . . . . (703) 605-1007
24 hours
7 days a week

Clerk's Office . . . . . (703) 605-1007
8:00 a.m. to 4:30 p.m.
Monday - Friday, except holidays

Emergency Stay Information . . . . . (703) 605-1007
24 hours
7 days a week

Oral Argument Coordinator . . . . . (703) 605-1007
8:00 a.m. to 4:30 p.m.
Monday - Friday, except holidays

Law Library and Immigration Research Center (LLIRC) . . . . . (703) 605-1103
9:00 a.m. to 4:00 p.m.
Monday - Friday, except holidays

Office of General Counsel, EOIR . . . . . (703) 305-0470
9:00 a.m. to 5:30 p.m.
Monday - Friday, except holidays

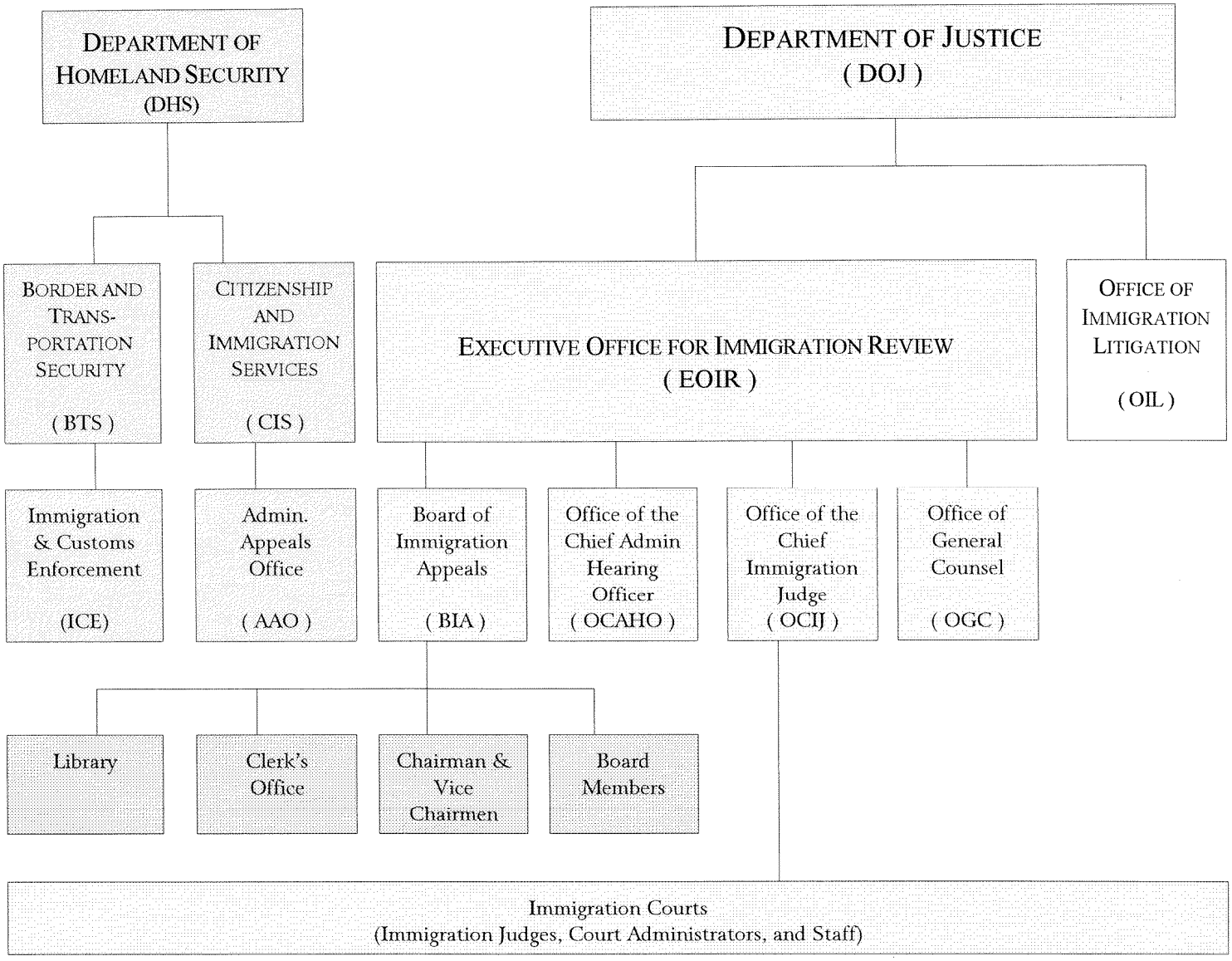
Public Affairs Office, EOIR . . . . . (703) 305-0289
9:00 a.m. to 5:00 p.m.
Monday - Friday, except holidays

Internet Address . . . . . www.usdoj.gov/eoir

All times indicated are Eastern time.

APPENDIX C

Organizational Chart



This chart is a general illustration of the organizational relationship between certain components of the Department of Justice and the Department of Homeland Security. The chart does not display all components of the agencies or offices displayed, nor does it represent their relative authority. See Chapters 1.2 (Function of the Board) and 1.3 (Composition of the Board). These components were selected because of their practical importance to persons appearing before the Board.

APPENDIX D

Deadlines

This table is provided for general guidance *only*. To determinate the particular deadlines in a given case, parties *must* consult the pertinent regulations and the text of this manual. Note that this table contains only the most common deadlines for filings before the Board.

Type of filing		Must be filed within	Chapter
Changes of address	alien	5 days of the alien's change of address	2.2(b)
	representative	promptly	2.3(g)
Immigration Judge decision appeals	Notice of Appeal (Form EOIR-26)	30 days of the decision being rendered orally or mailed	4.5(a)
	appeal brief (by appealing party)	21 days of the date of the briefing notice	4.7(a)
	response brief (by opposing party)	21 days of the appealing party's briefing deadline 21 days of date of briefing notice if the appeal is filed by a detained alien	4.7(a)
	reply brief (by appealing party)	21 days of the filing of the response brief, with motion 14 days of the expiration of the briefing schedule, if the appeal is filed by a detained alien, with motion	4.6(h)
	cross appeal brief (by either party)	21 days of the date of the briefing notice (both parties)	4.7(a)
Motions before the Board	motion to reopen	90 days of a final administrative order by the Board, with certain exceptions	5.6(c)
	motion to reconsider	30 days of a final administrative order by the Board	5.7(c)
	motion brief	filed with motion	5.4
	response brief	13 days of the date of service of the motion brief	5.4

Type of filing		Must be filed within	Chapter
Bond appeals	appeal of Immigration Judge decision	30 days of the decision being rendered orally or mailed	7.3(a)(ii)
	appeal of INS decision	10 days of the date of the INS decision	7.3(a)(ii)
Discipline cases	response to a Notice of Intent to Discipline	30 days from the date of service of the Notice of Intent to Discipline	11.7(b)
	motion to set aside default order	15 days after date of service of default order	11.7(b)(ii)
	appeal of final order of discipline	30 days of the decision being rendered orally or mailed	11.7(d)
Fine appeals	INS fine decision	15 days after date of mailing of the INS decision	10.3(b)(iii)
Visa-related appeals	visa petition denial	consult denial notice	9.3(c)(iii)
	visa revocation	15 days after service of the revocation notice	9.4(c)
	visa revalidation denial	consult denial notice	9.5(c)

Note: The construction of "day" is discussed in Chapter 3.1(b)(i).

APPENDIX E

Forms

This appendix contains a list of frequently requested immigration forms and the best sources for obtaining copies of those forms.

On-line copies of forms. Many forms can be downloaded or printed from the website of the agency responsible for that form. For example, forms beginning with "EOIR-" can be found at www.usdoj.gov/eoir. Many forms beginning with "I-" can be found at www.immigration.gov.

Paper copies of forms. If an immigration form is not available on-line, the best source for obtaining one is the agency that is responsible for that form. The table below identifies those agencies. (Local offices often provide forms on a walk-in basis.) Other sources for forms include voluntary agencies (VOLAGs), public service organizations, law offices, and certain Government Printing Office Bookstores. See 8 C.F.R. § 299.2, 299.3.

Reproducing forms. Forms may be photocopied, computer-generated, or downloaded, but they must comply with the requirements for that form. See Chapter 12.2 (Obtaining Blank Forms).

Abbreviations

AAO	=	Administrative Appeals Office, DHS
CIS	=	Citizenship and Immigration Services, DHS
BIA	=	Board of Immigration Appeals
DHS	=	Department of Homeland Security
EOIR	=	Executive Office for Immigration Review
IC	=	Immigration Court
IJ	=	Immigration Judge
OGC	=	Office of General Counsel, EOIR

PURPOSE	FORM	NAME	GET FROM
accredited representative application	Form EOIR-31	Request for Recognition as a Nonprofit Religious, Charitable, Social Service, or Similar Organization Established in the United States	BIA
adjustment of status	Form I-485	Application to Register Permanent Residence or Adjust Status	CIS
appeal of attorney discipline decision	Form EOIR-45	Notice of Appeal to the Board of Immigration Appeals of Decision of Adjudicating Official in Practitioner Discipline Case	BIA
appeal of IJ decision	Form EOIR-26	Notice of Appeal from a Decision of an Immigration Judge	IC BIA
appeal of DHS decision (AAO jurisdiction)	Form I-290B	Notice of Appeal to the Administrative Appeals Unit (AAU)	CIS
appeal of INS decision (BIA jurisdiction)	Form EOIR-29	Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer	CIS
appearance as representative (before the BIA)	Form EOIR-27	Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals	IC BIA
appearance as representative (before an IJ)	Form EOIR-28	Notice of Entry of Appearance as Attorney or Representative before the Immigration Court	IC
asylum	Form I-589	Application for Asylum and for Withholding of Removal	IC CIS
attorney / representative complaint form	Form EOIR-44	Immigration Practitioner Complaint Form	IC BIA OGC

PURPOSE	FORM	NAME	GET FROM
attorney / representative complaint appeal form	Form EOIR-45	Notice of Appeal to the Board of Immigration Appeals of Decision of Adjudicating Official in Practitioner Disciplinary Case	IC BIA OGC
cancellation of removal (non-permanent residents)	Form EOIR-42B	Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents	IC CIS
cancellation of removal (permanent residents)	Form EOIR-42A	Application for Cancellation of Removal for Certain Permanent Residents	IC CIS
change of address (cases pending before BIA)	Form EOIR-33 / BIA	Alien's Change of Address Form / Board of Immigration Appeals	IC BIA
change of address (cases pending before an IJ)	Form EOIR-33 / IC	Alien's Change of Address Form / Immigration Court	IC
fee waiver (appeals or motions)	Form EOIR-26A	Fee Waiver Request	IC BIA
motion to reopen or any other kind of motion	none	*There is no official form for motions filed before an IJ or the BIA. Do not use the Notice of Appeal (Form EOIR-26) for motions.*	n/a
suspension of deportation	Form EOIR-40	Application for Suspension of Deportation	IC
visa petition (employment-based)	Form I-140	Immigrant Petition for Alien Worker	CIS
visa petition (family-based)	Form I-130	Petition for Alien Relative	CIS

APPENDIX F
Sample Cover Page

A. Torney, Esquire
1234 Center Street
Anytown, ST 99999

Filing party. If pro se, the alien should provide his or her own name and address in this location. If a representative, the representative should provide his or her name and complete business address.

DETAINED

Detention status. If the alien is detained, the word "DETAINED" should appear prominently in the top right corner, preferably highlighted.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

Court. The Board prefers that filings be addressed in this way.

In the Matter of:

Jane Smith
John Smith
Jill Smith

In removal proceedings

File Nos.: **A 12 345 678**
A 12 345 679
A 12 345 680

A numbers. The alien registration number of every person included in the appeal or motion should be listed.

Names and type of proceeding. The full name of every alien included in the appeal or motion should be listed.

RESPONDENTS' MOTION TO REOPEN

Filing title. The Board prefers that the title of the brief or motion be placed in the middle and bottom of the page.

APPENDIX G

Sample Proof of Service

By law, every appeal, motion, or other document filed with the Board *must* be filed with a "Proof of Service" (or "Certificate of Service"). This Appendix provides guidelines on how to satisfy this requirement.

What is required. To satisfy the law, you must do *both* of the following:

1. *Serve the opposing party.* Every time you file an appeal, motion, or other document with the Board, you must give, or "serve," a copy on the opposing party. If you are an alien in proceedings, the opposing party is the Department of Homeland Security.

2. *Give the Board a completed Proof of Service.* You must submit a signed "Proof of Service" to the Board along with your document. The Proof of Service tells the Board that you have given a copy of the document to the opposing party.

Sample Proof of Service. You do not have to use the sample contained in this Appendix. You may write up your own Proof of Service if you like. However, if you use this sample, you will satisfy the Proof of Service requirement.

Sending the Proof of Service. When you have to supply a Proof of Service, be sure to staple or otherwise attach it to the form, motion, or document that you are serving.

Forms that contain a Proof of Service. Some forms, such as the Notice of Appeal (Form EOIR-26), include a Proof of Service (or Certificate of Service) as part of the form. You must complete that part of the form to satisfy the Proof of Service requirement *for that form.*

Forms that do not contain a Proof of Service. Forms that do not contain a Proof of Service are treated like any other document, and therefore you must supply the Proof of Service.

Sample Proof of Service

_____
(Name of alien or aliens)

_____
("A number" of alien or aliens)

PROOF OF SERVICE

On _____, I, _____
(date of mailing or delivery) (printed name of person signing below)

mailed or delivered a copy of this _____
(name of document being served)

and any attached pages to _____
(name of party served)

at the following address: _____

_____
(address of party served)

by _____
(method of delivery, for example: overnight courier, hand-delivery, first class mail)

_____ _____
(signature) (date)

APPENDIX H

Sample Certificate of Translation

CERTIFICATE OF TRANSLATION

I,_____, am competent to translate from
(name of translator)

_____ into English, and certify that the translation
(language)

is true and accurate to the best of my abilities.

_____
(signature of translator)

_____
(typed/printed name of translator)

APPENDIX I

Telephonic Information

Do you want to know the status of your case before an Immigration Judge or the Board of Immigration Appeals?

All you have to do is

ASQ

(800) 898-7180

The Automated Status Query System contains information regarding your case, including your next hearing date, asylum processing, the Immigration Judge's decision, or your case appeal.

This service is available 24 hours a day, 7 days a week.

Need information on how to file an appeal, motion, or anything else with the Board of Immigration Appeals?

Let us give you some

BIA TIPS

(703) 605-1007

Call the Board of Immigration Appeals Telephonic Instructions and Procedures System for recorded information on how to file an appeal, motion, brief, change of address, and other documents with the Board.

This service is available 24 hours a day, 7 days a week.

APPENDIX J

Citation Guidelines*

When filing papers before the Board, parties should keep in mind that accurate and complete legal citations strengthen the argument made in the appeal, motion, or brief. This Appendix provides guidelines for frequently cited sources of law.

The Board generally follows *A Uniform System of Citation* (also known as the "Blue Book"), but digresses from that convention in certain instances. The Board appreciates but does not require citations that follow the examples used in this Appendix. The citation categories are:

I. Cases
II. Regulations
III. Statutes/laws
IV. Legislative history
V. Treaties and international materials
VI. Publications and communications by governmental agencies, and
VII. Commonly cited commercial publications

Note that, for the convenience of filing parties, some of the citation formats in this Appendix are less formal than those used in the Board's published cases. Once a source has been cited in full, the objective is brevity without compromising clarity.

This Appendix concerns the citation of legal authority. For guidance on citing to the record and other sources, review Chapter 3.3(e) (Source materials) and Chapter 4.6(d) (Citation).

As a practice, the Board prefers italics in case names and publication titles, but underlining is an acceptable alternative.

□ □ □ □ □

* The Board wishes to thank Thomas Hutchins, Esquire, and Wan Chen, law student intern, of the Immigrant and Refugee Appellate Center (IRAC) for their invaluable assistance in preparing this appendix.

I. *Cases*

General guidance: *Abbreviations in case names.* As a general rule, well-known agency abbreviations (e.g., INS, FBI, Dep't of Justice) may be used in a case name, but without periods. If an agency name includes reference to the "United States," it is acceptable to abbreviate it to "U.S." However, when the "United States" is named as a party in the case, do not abbreviate "United States." For example:

INS v. Smith ..... not *I.N.S. v. Smith*
U.S. Dep't of Justice v. Smith ..... not *United States Department of Justice v. Smith*
United States v. Smith ..... not *U.S. v. Smith*

Short form of case names. After a case has been cited in full, a shortened form of the name may be used thereafter. For example:

full: *INS v. Phinpathya*, 464 U.S. 183 (1984)

short: *Phinpathya*, 464 U.S. at 185

full: *Matter of Nolasco*, 22 I&N Dec. 632 (BIA 1999)

short: *Nolasco*, 22 I&N Dec. at 635

Board decisions: *Published decisions.* Board precedent decisions should be cited in the "I&N Dec." form illustrated below. The citation must identify the adjudicator (BIA, A.G., etc.) and the year of the decision. Note that there are no spaces in "I&N" and that only "Dec." has a period. For example:

Matter of Balsillie, 20 I&N Dec. 486 (BIA 1992)

Unpublished decisions. Citation to unpublished decisions is discouraged because these decisions are not controlling on any other case. When citation to an unpublished case is necessary, a copy of the case should be provided, and the citation should include the alien's full name, the alien registration number, the adjudicator, and the precise date of the decision. Italics, underlining, and "*Matter of*" should not be used. For example:

Jane Smith, A12 345 678 (BIA July 1, 1999)

"Interim Decision." In the past, the Board issued precedent decisions in slip opinion or "Interim Decision" form. See Chapter 1.4(d) (Interim Decisions). Because all published cases are now available in final form (as "I&N Decisions"), citations to "Interim Decisions" are no longer appropriate and are disfavored.

"Matter of" and not "In re." All precedent decisions should be cited as *"Matter of."* The use of *"In re"* is not favored. For example: *Matter of Yanez*, and not *In re Yanez*.

Federal & State Courts:

Generally. Federal and state court decisions should generally be cited according to the standard legal convention, as set out in the latest edition of *A Uniform System of Citation* (also known as the "Blue Book"). For example:

INS v. Phinpathya, 464 U.S. 183 (1984)

Saakian v. INS, 252 F.3d 21 (1st Cir. 2001)

Smith v. United States, __ F.3d __, No. 03-1234 (5th Cir. 2003)

McDaniel v. United States, 142 F. Supp. 2d 219 (D. Conn. 2001)

U.S. Supreme Court. The Supreme Court Reporter citation ("S.Ct.") should be used only when the case has not yet been published in the United States Reports ("U.S.").

Unpublished cases. Citation to unpublished cases is discouraged. When citation to an unpublished case is necessary, a copy of the case should be provided, and the citation should include the docket number, court, and precise date. For example:

Stokes v. INS, No. 74 Civ. 1022 (S.D.N.Y. Sept. 10, 1976)

□ □ □ □ □

II. *Regulations*

General guidance: *Regulations generally.* There are two kinds of postings in the Federal Register: those that are simply informative in nature (such as "notices" of public meetings) and those that are regulatory in nature (referred to as "rules"). There are different types of "rules," including "proposed," "interim," and "final." The type of rule will determine whether or not (and for how long) the regulatory language contained in that rule will be in effect. Generally speaking, proposed rules are not law and do not have any effect on any case, while interim and final rules do have the force of law and, depending on timing, may affect a given case.

Federal Register and Code of Federal Regulations. Regulations appear first in the Federal Register (Fed. Reg.) and then in the Code of Federal Regulations (C.F.R.). Once regulations appear in a volume of the C.F.R., do not cite to the Federal Register *unless* there is a specific reason to do so (discussed below).

C.F.R.: For the Code of Federal Regulations, always identify the volume, the section number, and the year. The year need not be given after the first citation, unless a subsequent citation refers to a regulation published in a different year. Always use periods in the abbreviation "C.F.R." For example:

full: 8 C.F.R. § 1003.1 (2002)

short: 8 C.F.R. § 1003.1

Fed. Reg.: Citations to regulatory material in the Federal Register should be used only when:

- the citation is to information that will never appear in the C.F.R., such as a public notice or announcement
- the rule contains regulatory language that will be, but is not yet, in the C.F.R.

- the citation is to information associated with the rule, but which will not appear in the C.F.R. (e.g., a preamble or introduction to a rule)

- the rule contains proposed or past language of a regulation that is pertinent in some way to the filing or argument

The first citation to the Federal Register should always include (i) the volume, (ii) the abbreviated form "Fed. Reg.", (iii) the page number, (iv) the date, and (v) important identifying information such as "proposed rule," "interim rule," "supplementary information," or the citation where the rule will appear. For example:

full: 67 Fed. Reg. 52627 (Aug. 13, 2002) (proposed rule)

full: 67 Fed. Reg. 38341 (June 4, 2002) (to be codified at 8 C.F.R. §§ 100, 103, 236, 245a, 274a, and 299)

short: 67 Fed. Reg. at 52627-28; 67 Fed. Reg. 38343

Since the Federal Register does not use commas in its page numbers, do not use a comma in page numbers. Use abbreviations for the month.

When citing the preamble to a rule, identify it exactly as it is titled in the Federal Register, e.g., 67 Fed. Reg. 54878 (Aug. 26, 2002) (supplementary information).

□ □ □ □ □

III. *Statutes / Laws*

General guidance:

Full citations. Whenever citing a statute for the first time, be certain to include all the pertinent information, including the name of the statute, its public law number, statutory cite, and a parenthetical identifying where the statute was codified (if applicable). The only exception is the Immigration and Nationality Act, which is illustrated below.

Short citations. The use of short citations is encouraged, but only after the full citation has been used.

Special rule for U.S.C. and C.F.R. There are two abbreviations that never need to be spelled out: "U.S.C." for the U.S. Code and the "C.F.R." for the Code of Federal Regulations. Always use periods with these abbreviations.

Special rule for the INA. Given the regularity with which the Immigration and Nationality Act is cited before the Board, there is generally no need to provide the Public Law Number, the Stat. citation, or U.S.C. citation. The Board will presume INA citations refer to the current language of the Act unless the year is provided.

Sections of law. Full citations are often lengthy, and filing parties are sometimes uncertain where to put the section number in the citation. For the sake of simplicity, use the word "section" and give the section number in front of the full citation to the statute. Once a full citation has been given, use the short citation form with a section symbol "§." This practice applies whether the citation is used in a sentence or after it. For example:

> The definition of the term "alien" in section 101(a)(3) of the Immigration and Nationality Act applies to persons who are not citizens or nationals of the United States. The term "national of the United States" is expressly defined in INA § 101(a)(22), but the term "citizen" is more complex. *See* INA §§ 301-309, 316, 320.

INA:

full: section xxx of Immigration and Nationality Act

short: INA § xxx

USA PATRIOT:

full: section xxx of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272

short: USA PATRIOT Act § xxx

LIFE:

full: section xxx of Legal Immigration and Family Equity Act, Pub. L. No. 106-553, 114 Stat. 2762 (2000), *amended by* Pub. L. No. 106-554, 114 Stat. 2763 (2000)

short: LIFE Act § xxx

CCA:

full: section xxx of Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631

short: CCA § xxx

NACARA:

full: section xxx of Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2193 (1997), *amended by* Pub. L. No. 105-139, 111 Stat. 2644 (1997)

short: NACARA § xxx

IIRIRA:

full: section xxx of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546

short: IIRIRA § xxx

AEDPA:

full: section xxx of Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214

short: AEDPA § xxx

INTCA:

full: section xxx of Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305, *amended by* Pub. L. No. 105-38, 111 Stat. 1115 (1997)

short: INTCA § xxx

MTINA:

full: section xxx of Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733

short: MTINA § xxx

IMMACT90:

full: section xxx of Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978

short: IMMACT90 § xxx

ADAA:

full: section xxx of Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181

short: ADAA § xxx

IMFA:

full: section xxx of Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537

short: IMFA § xxx

IRCA:

full: section xxx of Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359

short: IRCA § xxx

□ □ □ □ □

IV. *Legislative History*

General guidance: *Difficult to locate.* Because sources of legislative history are often difficult to locate, err on the side of providing more information, rather than less. If a source is difficult to locate, include a copy of the source with your filing (or an Internet address for it) and make clear reference to that source in your filing.

Sources. To locate legislative history, try the Library of Congress web site (www.thomas.loc.gov) or commercial services. Citation to common electronic sources is encouraged.

Bills: Provide the following information the first time a bill is cited: (i) the bill number, (ii) the number of the Congress, (iii) the session of that Congress, (iv) the section number of the bill, if you are referring to a specific section, (v) the Congressional Record volume, (vi) the Congressional Record page or pages, (vii) the date of that Congressional Record, and (viii) the edition of the Congressional Record, if known. For example:

full: S. 2104, 100th Cong., 2d Sess. § 102, 134 Cong. Rec. 2216 (daily ed. Mar. 15, 1988)

short: 134 Cong. Rec. at 2218

Reports: Provide the following information the first time a report is cited: (i) whether it is a Senate or House report, (ii) the report number, (iii) the year, and (iv) where it is reprinted (a reference to where the document is available electronically is acceptable). The short form may refer either to the page numbers of the report or the page numbers where the report is reprinted. For example:

full: H.R. Conf. Rep. No. 104-828 (1996), *available in* 1996 WL 563320

short: H.R. Conf. Rep. No. 104-828, at 5

full: S. Rep. No. 98-225 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182

short: 1984 U.S.C.C.A.N. at 3183

Many committee reports are available on-line through the Library of Congress web site (www.thomas.loc.gov) or commercial services. Copies of the U.S. Code Congressional & Administrative News (U.S.C.C.A.N.), which compiles many legislative documents, are available in some public libraries.

Hearings: Provide the following information the first time a hearing is cited: (i) name of the hearing, (ii) the committee or subcommittee that held it, (iii) the number of the Congress, (iv) the session of that Congress, (v) the page or pages of the hearing, (vi) the date or year of the hearing, and (v) information about what is being cited (such as the identity of the person testifying and context for the testimony). For example:

> Operations of the Executive Office for Immigration Review (EOIR): Hearing before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary, 107th Cong., 2d Sess. 19 (2002) (testimony of EOIR Director)

□ □ □ □ □

V. *Treaties and International Materials*

CAT:

full: Article 3 of the Convention Against Torture, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988)

short: Convention Against Torture, art. 3

UNHCR Handbook:

full: Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Geneva 1992)

short: UNHCR Handbook ¶ xxx
[use paragraph symbol "¶" or abbreviation "para."]

U.N. Protocol on Refugees:

full: Article xxx of the United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U.S.T. 6223

short: U.N. Refugee Protocol art. xxx

U.N. Convention on Refugees:

full: Article xxx of the United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259

short: U.N. Refugee Convention art. xxx

□ □ □ □ □

VI. *Publications and Communications by Governmental Agencies*

General guidance: *No universal citation form.* In immigration proceedings, parties cite to a wide variety of administrative agency publications and communications, and there is no one format that fits all such documents. For that reason, use common sense when citing agency documents, and err on the side of more information, rather than less.

Difficult to locate material. If the document may be difficult for the Board to locate, include a copy of the document with your filing.

Internet material. If a document is posted on the Internet, identify the website where the document can be found or include a copy of the document with a legible Internet address.

Practice Manual: The BIA Practice Manual is not legal authority. However, if there is reason to cite it, the preferred form is to identify the specific provision by chapter and section along with the date at the bottom of the page on which the cited section appears. For example:

full: BIA Practice Manual, Chapter 8.5(a)(iii) (June 15, 2004)

short: Practice Manual, Chap. 8.5(a)(iii)

Forms: Forms should first be cited according to their full name and number. A short citation form may be used thereafter. See Appendix E (Forms) for a list of common immigration forms. For example:

full: Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26)

short: Notice of Appeal *or* Form EOIR-26

If a form does not have a name, use the form number as the citation.

Country reports: State Department country reports appear both as compilations in Congressional committee prints and as separate reports and profiles. Citations to country reports should always contain the publication date and the specific page numbers (if available). Provide an Internet address when available. The first citation to any country report should contain all identifying information, and a short citation form may be used thereafter. For example:

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Nigeria Country Reports on Human Rights Practices - 2001* (Mar. 2002), *available at* http://www.state.gov/g/drl/rls/hrrpt/2001/af/8397.htm

short: *2001 Nigeria Country Reports*

full: Committees on Foreign Relations and International Relations, 104th Cong., 1st Sess., *Country Reports on Human Rights Practices for 1994* xxx (Joint Comm. Print 1995)

short: *1994 Country Reports* at page xxx

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *The Philippines - Profile of Asylum Claims and Country Conditions* xxx (June 1995)

short: *1995 Philippines Profile* at page xxx

Visa Bulletin: Citations to the State Department's Visa Bulletin should include the volume, number, month, and year of the specific issue being cited. For example:

full: U.S. Dep't of State Visa Bulletin, Vol. VIII, No. 55 (March 2003)

short: Visa Bulletin (March 2003)

Internal documents:

Any citation to an internal government document, such as a memo or a cable, should contain as much identifying information as possible. Be sure to include any identifying heading (e.g., the "re" line in a memo) and the precise date of the document being cited. Include a copy of the document with the filing or indicate where it has been reprinted publicly. For example:

> Dep't of State cable (no. 97-State-174342) (Sept. 17, 1997) (copy attached)
>
> Office of the General Counsel, INS, U.S. Dep't of Justice, Compliance with Article 3 of the Convention Against Torture in the cases of removable aliens (May 14, 1997), *reprinted in* 75 *Interpreter Releases* 375 (Mar. 16, 1998)

□ □ □ □ □

VII. *Commonly Cited Commercial Publications*

General guidance: *No universal citation form.* In immigration proceedings, parties cite to a wide variety of commercial texts and publications. Use common sense when citing these documents. If a document is difficult to locate, include a copy of the document with your filing (or an Internet address for it) and make clear reference to that document in your filing.

No endorsements or disparagements. The following list contains citations to specific publications that are frequently cited in filings before the Board. Their inclusion in the list is not an endorsement of the publication, nor is omission from this list a disparagement of any other publication.

Use of quotation marks, italics or underlining, and first initials. For purposes of appeals, motions, briefs, and other filings, the Board recommends using a single format for all publications – quotation marks around any article title (whether in a book, law review, or periodical), italics or underlining for the name of any publication (whether a book, treatise, or periodical), and reference to authors' last names only (although use of first initials is appropriate where there are multiple authors with the same last name).

Shortened names. Many publications have long titles. It is acceptable to use a shortened form of the title *after* the full title has been used. Be certain to use a short form that clearly refers back to the full citation. Page and/or section numbers should always be used, whether the publication is cited in full or in shortened form.

Articles in Books: Articles in books should identify the author (by last name only), title of the article, and the publication that contains that article (including the editor and year). For example:

full: Massimino, "Relief from Deportation Under Article 3 of the United Nations Convention Against Torture," *in* 2 *1997-98 Immigration & Nationality Law Handbook* 467 (American Immigration Lawyers Association, ed., 1997)

short: Massimino at 469

Bender's: Bender's Immigration Bulletin should be cited by author (last name only), article, volume, publication, month, and year. For example:

full: Sullivan, "When Representations Cross the Line," 1 *Bender's Immigration Bulletin* (Oct. 1996)

short: Sullivan at 3

Immigration Briefings: This publication should be cited by author (last name only), article, volume, publication, month, and year. For example:

full: Elliot, "Relief From Deportation: Part I," 88-8 *Immigration Briefings* (Aug. 1988)

short: Elliot at 18

Immigration Law and Procedure: Citations to treatises require particular attention to detail because their pagination is often complex. The first citation to this treatise must be in full and contain the volume number, the section number, the page number, the edition, and year. For example:

full: 2 Gordon, Mailman & Yale-Loehr, *Immigration Law and Procedure* § 51.01(1)(a), at 51-3 (rev. ed. 1997)

short: 2 *Immigration Law and Procedure* § 51.01(1)(a), at 51-3

Interpreter Releases: Citations to this publication should indicate the volume, title, page number(s), and precise date. Provide a parenthetical explanation for the citation when appropriate. For example:

full: 75 *Interpreter Releases* 275-76 (Feb. 23, 1998) (regarding INS guidelines on when to consent to reopening of proceedings)

short: 75 *Interpreter Releases* at 276

If an article has a title and named author, provide that information. For example:

full: Wettstein, "Lawful Domicile for Purposes of INA § 212(c): Can It Begin with Temporary Residence," in 71 *Interpreter Releases* 1273 (Sept. 26, 1994)

short: Wettstein at 1274

Law Reviews: Law review articles should identify the author (by last name) and the title of the article, followed by the volume, name, page number(s), and year of the publication. For example:

full: Hurwitz, "Motions Practice Before the Board of Immigration Appeals," 20 San Diego L. Rev. 79 (1982)

short: Hurwitz, 20 San Diego L. Rev. at 80

Sutherland: Citations to this treatise should include the volume number, author, name of the publication, section number, page number(s), and edition. For example:

full: 2A Singer, *Sutherland Statutory Construction* § 47.11, at 144 (4th ed. 1984)

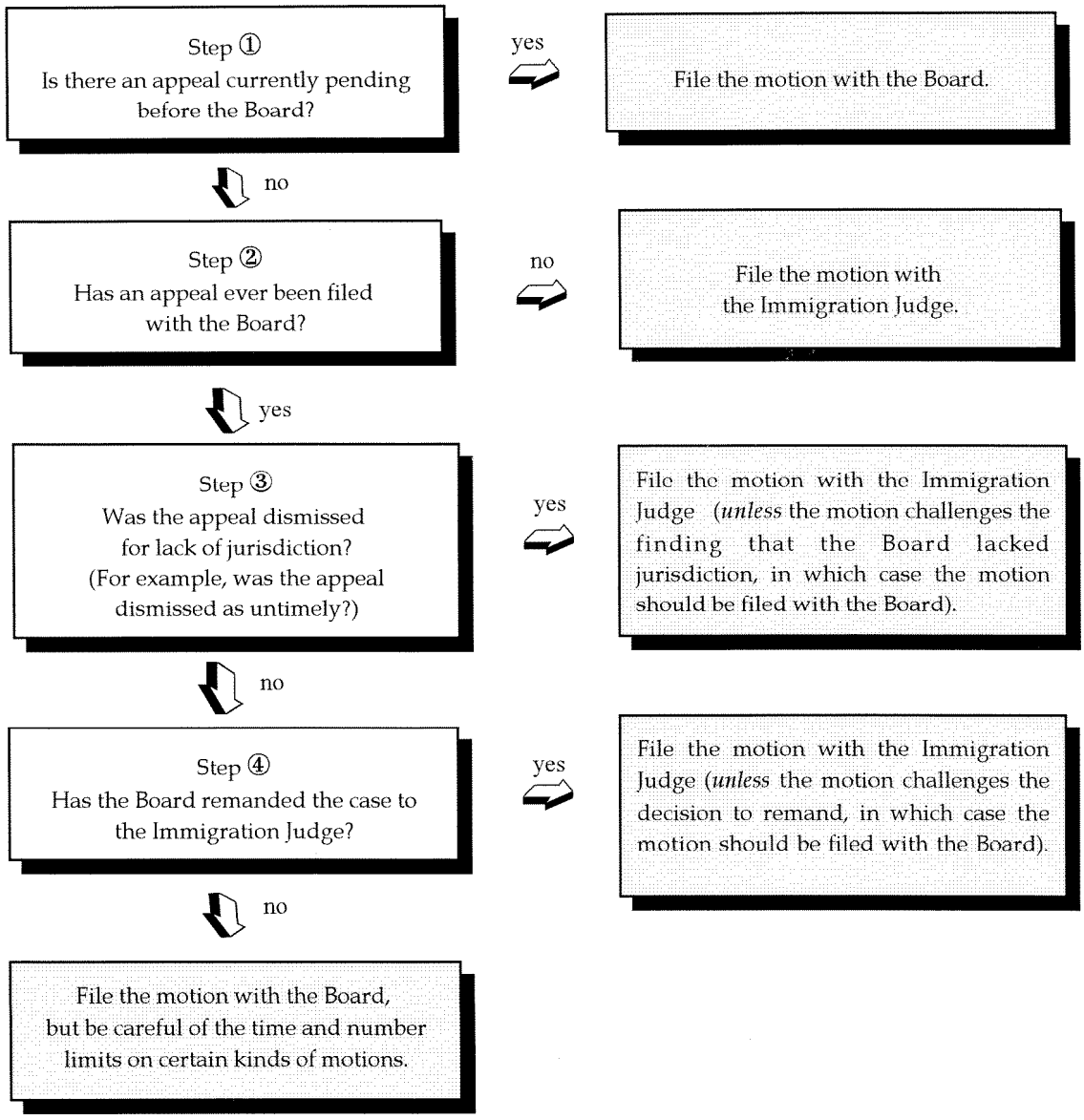
short: 2A *Sutherland* § 47.11, at 144

□ □ □ □ □

APPENDIX K

Where to File a Motion

This Appendix provides guidance on where to file a motion in removal proceedings. Parties should still review the pertinent regulations and must be careful to observe the rules regarding motions, especially time and number limits. See Chapters 5.2(a) (Jurisdiction), 5.3 (Motion Limits).



WORD INDEX

A separate Citation Index -- containing cases, statutes, and regulations -- follows this Index.

A

A number (alien registration number)
- briefs 53
- consolidated appeals 53, 57
- inquiries 12
- motions 69, 71
- multiple 49, 53, 71
- Notice of Appeal 50
- required for inquiries 12

AAO ..... *see* Dep't of Homeland Security (DHS)
AAU ..... *see* Dep't of Homeland Security (DHS)
accredited representatives
- accreditation 22, 23
- appearances 22
- attorneys, same rules as 23
- discipline ..... *see* discipline
- fees 22
- immigration specialists, compared to 23
- list of 5
- misconduct 23
- Notice of Appearance 22
- qualifications 22
- recognized organizations 22
- removal from list of 23
- signatures 23, 35
- verification 5, 23

address obligations
- alien (represented) 20
- alien (unrepresented) 16
- attorney ..... *see* representative *below*
- change of address form .. 16, 17, 20, 21, 121
- compound changes of address 20
- detained alien 17
- representative 20

adjustment of status 6, 43, 73, 80
Administrative Appeals Off. *see* Dep't of Homeland
administrative closure ... *see* motion to recalendar
administrative notice 62
advance parole 7
advisory opinions 9
affirmed without opinion . *see* summary affirmance
Airborne Express ..... *see* couriers
alien I.D. number ..... *see* A number
alien registration number ..... *see* A number
amicus curiae
- appeals 48
- appearance by 27, 95
- briefs 27, 59
- motions 69
- oral argument 27, 95, 96, 100
- request to appear as 27

anti-discrimination complaints 2
Appeal Fee Waiver (Form EOIR-26A) ... *see* fees
appeal waiver ..... *see* appeals
appeals
- affirmed w/o decision *see* summary affirmance
- appeal waiver ... *see* waiver of appeal *below*
- bond appeals ..... *see* bond appeals
- briefing 45, 52
- circuit court 51
- concurrent consideration of 63
- consolidated .. *see* consolidated proceedings
- cross-appeals 59
- deadlines ..... 51, 52, App. D
- decision served on parties 47
- departure while appeal pending 65, 87
- detained aliens 52
- DHS appeals 65
- evidence 62
- extensions ..... *see* extensions
- facts, assertions of 54
- failure to oppose 64
- fine appeals ..... *see* fine appeals
- form ..... *see* Notice of Appeal
- frivolous appeals 68
- grounds for appeal 50
- how to file 45, 49

appeals (cont.)
Immigration Judge decisions 44
intention to file a brief 50
interlocutory appeals 46, 65
motion to reconsider, as opposed to 44
new authority / new law after appeal 62
non-opposition to appeal 64
Notices of Appeal ..... *see* Notice of Appeal
order of documents ..... *see* documents
parties 47
process 44
rejected 45
remand, after 79
representatives 48
right to appeal ... *see* waiver of appeal *below*
severed appeals 63
stays ..... *see* stays
summary dismissal .. *see* summary dismissal
third parties 48
types of 44
unrelated appeals 50, 53
untimely 30, 31, 51, 70
visa petition ..... *see* visa petition appeals
visa revalidation *see* visa revalidation appeals
visa revocation . *see* visa revocation appeals
waived ..... *see* waiver of appeal *below*
waiver of appeal 48, 65, 67, 107
withdrawal of appeal .. 63, 80, 105, 106, 109
withdrawal of opposition 64
appearance ..... *see* Notice of Appearance
applicants for temporary admission 103
applications for relief ..... *see* relief
asesarios ..... *see* immigration specialists
ASQ ..... 12, 60, App. B, App. I
asylum 5, 12, 40, 41, 76, 94
attorney complaints ..... *see* discipline
attorney discipline ..... *see* discipline
Attorney General 2, 8, 10, 56, 105, 109
attorneys (*see also* representation, discipline)
attorney of record ..... *see* representation
bar admissions 18
change of address .. *see* address obligations
disbarred ..... *see* discipline
discipline ..... *see* discipline
dismissal of counsel 21
expulsion ..... *see* discipline
fees excessive ..... *see* discipline
attorneys (cont.)
filing on behalf of another . *see* representation
free legal services ..... *see* pro bono *below*
ineffective assistance of counsel *see* discipline
law firms 19, 20, 35
misconduct ..... *see* discipline
multiple representation ... *see* representation
new counsel 20
new law office 19
Notice of Appearance 17, 18
pro bono 6, 17
Pro Bono Program 16
qualifications 17
referrals to practicing attorneys 17
release of counsel 21
right to counsel 17
sanctions ..... *see* discipline
service of papers 20
signatures 18, 19
state bar numbers 18
substitution of counsel 20, 96
suspension ..... *see* discipline
withdrawal of counsel 21, 96
automated status query system ..... *see* ASQ

B

battered spouses 103
BIA ..... *see* Board of Immigration Appeals
BIA TIPS ..... 13, App. B, App. I
binding ..... *see* documents
Board of Immigration Appeals (BIA)
Board Members 3, 4
case management system 3
case screening 3
Chairman 4
Clerk's Office ..... *see* Clerk's Office
decisions, types of 8
Department of Justice, relation to .. 2, App. C
en banc decisions 4
function 1
mailing address ..... *see* mail
panel decisions 4
panel system 3
role 1
single Board Member decisions 3
Vice Chairmen 4

bond appeals
briefing ... 89
deadlines ... 88, App. D
fee ... 40, 41, 88
how to file ... 88
interlocutory appeals, different from ... 65
jurisdiction ... 6, 86
procedure ... 88
stays ... 82, 87, 88
transcripts ... 46, 89
Border and Transportation *see* Dep't of Homeland
briefing schedule
bond appeals ... 89
deportation appeals ... *see* removal *below*
fine appeals ... 108, 109
interlocutory appeals ... 66
motions ... 74
oral argument ... 93, 97
removal appeals ... 45
visa petition appeals ... 104
briefs (*see also* documents)
A number ... 53
amicus curiae ... 59
bond appeals ... 89
briefing notice ... 52
briefing schedules ... *see* briefing schedule
briefing waiver ... 61
captions ... 53
chronologies ... 55
citations ... *see* citations
citing text in ... 57
conformed copies ... 32
consolidated appeal ... 53, 57
contents, recommended ... 53
cover page ... 37, 53, App. F
deadlines ... 45, 59, App. D
decision not to file ... 61
deportation appeals ... *see* removal *below*
evidence ... 62
extensions ... *see* extensions
failure to file ... 50, 61, 67
fee not required ... 52
filing receipts ... 32, 51, 60
fine appeals ... 107, 108
format ... 52
how to file ... 52
improperly filed ... 31
briefs (cont.)
interlocutory appeals ... 66
late-filed brief, motion to accept ... 31, 61
length ... 37, 52
motion briefs ... 74
multiple briefs ... 55
new argument ... 58
new authorities ... 58
oral argument ... 93, 97
pagination ... 37, 52
rejection of ... 31, 59
removal appeals ... 50, 52
reply briefs ... 58, App. D
response briefs ... 57, App. D
signatures ... 53
source of factual information ... 40
source of law ... 39
statement of facts ... 53, 54
summary dismissal ... *see* summary dismissal
supplemental briefs ... 36, 37, 58, 100
unrelated appeals ... 53
untimely ... *see* late-filed brief *above*
visa petition appeals ... 103
waive briefing ... *see* briefing waiver *above*
where filed ... 52
writing guidelines ... 52
BTS ... *see* Dep't of Homeland Security (DHS)

C

cables ... *see* citations
calls ... *see* inquiries
captions ... *see* documents
case management ... *see* Board
cases, specific ... *see* citations, Matter of
CAT ... *see* United Nations
Certificate of Service ... *see* service
Certificate of Translation ... *see* language certification
Board, by Immigration Judge to ... 68
review by ... 6
signer's ... 34
translator's ... 34, App. H
CFR ... *see* citations
change of address ... *see* address obligations
changed circum. ... *see* motion to reopen; remand
CIS ... *see* Dep't of Homeland Security (DHS)

Citation Guidelines ..... App. J
citations
Attorney General decisions 56
bills ..... App. J
Board decisions ..... 55, 56, App. J
cables ..... App. J
CFR ..... App. J
concurring opinions ..... 56, App. J
Congressional hearings ..... App. J
Congressional reports ..... App. J
Country Reports ..... App. J
DHS decisions 56
dissenting opinions ..... 56, App. J
exhibits 57
federal court cases ..... 56, App. J
Federal Register ..... App. J
Foreign Affairs Manual (FAM) ..... App. J
forms ..... App. J
governmental memoranda ..... 39, App. J
guidelines ..... App. J
hard-to-find source of law 39
how to cite, generally ..... App. J
I&N Decisions ..... 55, App. J
Immigration and Nationality Act (INA) . App. J
Immigration Judge decision ..... 57, App. J
In re, use of ..... 55, App. J
INA . . . *see* Immigration and Nationality *above*
indexed decisions ..... App. J
INS decisions ..... App. J
Interim Decisions (Int. Dec.) 9
international materials ..... App. J
law ..... 55, App. J
legislative history ..... App. J
Matter of, use of ..... 55, App. J
memoranda ..... 39, App. J
Practice Manual ..... App. J
precise page numbers 56
record of proceedings 54
regulations ..... 56, App. J
state court cases 56
statutes ..... 56, App. J
transcript 57
treaties ..... App. J
UNHCR Handbook ..... App. J
unpublished Board decisions ..... 56, App. J
US Code ..... App. J
Visa Bulletin ..... App. J
Citizenship and Immigration *see* Dep't of Homeland
classified information 11, 12
Clerk's Office
conformed copies 32
FOIA 123
inquiries 13, 32, 60, 85, 104, 109
records of proceedings 11, 123
role ..... 4, App. C
collect calls ..... *see* inquiries
compelling circumstances 29, 85
complaints about attorneys ..... *see* discipline
compound motions ..... *see* motion
concurrence ..... *see* citations
concurrent consideration of appeals . *see* appeals
concurring opinions ..... *see* citations
confidentiality 12, 117
conformed copies ..... *see* filing receipts
consolidated proceedings
A numbers 53
briefs 53, 57
consolidation, meaning of 62
fees 42
Notices of Appeal, number of 49
number of filings 37
requests for consolidation 63
Convention Against Torture . . *see* United Nations
copies *see* number of copies; record of proceeding
Country Reports *see* Department of State; citations
couriers 28, 29, 30
courts ..... *see* Immigration Courts
cover page ..... 53, 72, App. F
credibility findings 7
credible fear determinations 7
criminal convictions 40, 72, 77, 80
custody ..... *see* bond appeals

D

day, meaning of 30
de novo review 8
de novo review ..... *see* review
deadlines (*see also* extensions)
appeals 31, 52, 88, 103, 106, 108
bond appeals 88
briefs 31, 45, 57, 58, 59, 60, 61
computing 30
couriers 30

deadlines (cont.)
cross-appeals ... 59
day, meaning of ... 30
delivery delays ... 30
deportation appeals ... *see* removal *below*
detained aliens ... 52
extension requests ... 31, 60
failure to meet ... 30, 31
fine appeals ... 108
legal holidays ... 30
motions ... 31
overnight delivery ... 29, 30
rejection, effect of ... 31
removal appeals ... 51
reply briefs ... 58, 59
response briefs ... 57
timely, meaning of ... 30
transcription request, effect on ... 46
visa petition appeals ... 103
visa revalidation appeals ... 106
visa revocation appeals ... 106
weekends ... 30
decisions (*see also* citations)
I&N Decisions ... 8, 10, 55
Interim Decisions (Int. Dec.) ... 9, 55
judicial review ... 3, 10
precedent ... 8, 9, 10
published ... 8
sent by regular mail ... 47
service on parties ... 8, 44, 81, 90, 105, 109
slip opinions ... 55
unpublished ... 9
defective filings ... 31
defective payment ... *see* fees
defective transcripts ... *see* transcripts
delay, duty to avoid ... 60
delivery ... *see* mail
Department of Homeland Security (DHS)
AAO ... *see* Administrative Appeals *below*
AAU ... *see* Administrative Appeals *below*
Administrative Appeals Office ... 2, App. C
appeal, right to ... 47
application fees ... 43
Board, relationship to ... 1, 2
bond decisions ... 87, 88
Border and Transportation Security ... App. C
briefing ... 102, 103, 104, 107, 108, 109
Department of Homeland Security (cont.)
BTS ... *see* Border *below*
CIS ... *see* Citizenship *below*
Citizenship and Immigration Services . App. C
duties of ... 9
filing fees, DHS exempt from ... 41
filing fees, when pay to DHS ... 103
fines and penalties ... 107
ICE ... *see* Immigration and Customs *below*
Immigration and Customs Enforcement App. C
Immigration and Naturalization Service, relationship to ... 2
Immigration Court, relationship to ... 2, 54
motion limits ... 76, 78
party, deemed a ... 47
references to ... 54
remands to ... 79
stays ... 82
USCIS ... *see* Citizenship *above*
visa petitions ... 9, 102
Department of State
Country Reports ... 40, 62, App. J
Foreign Affairs Manual (FAM) ... 57, App. J
Visa Bulletin ... 73, App. J
departure
effect on appeal ... 65, 87
effect on motion ... 75, 78, 81
voluntary departure .. *see* voluntary departure
detained aliens
address obligations ... 16, 17
appeal deadline ... 52
briefing deadlines ... 59
cover page ... 72, App. F
legal representation by ... 26
motions ... 72
oral argument ... 93, 96
DHL ... *see* couriers
disbarment ... *see* discipline
discipline
accredited representatives ... 111
appeals ... 116
asesarios ... *see* immigration specialists
authority to discipline ... 111
bribery ... 112
censure ... 116
coercion ... 112
complaint form ... 113

discipline (cont.)
complaint, how to file 114
confidentiality 117
contempt of court 112
criminal convictions 112, 114
default orders 115
DHS attorneys 111
DHS Office 113, 114, 115, 118
disbarment 17, 18, 112, 114
duty to advise clients 117
duty to report 17, 114
excessive fees 112
expulsion 18, 116
failing to appear for scheduled hearings . 112
failure to answer notice 115
failure to report 18
false certifications 112
false statements 112
fees ..... *see* excessive fees *above*
filing deadlines, effect on 117
filings after discipline 22
frivolous appeal 68
frivolous behavior 68, 111, 112
guilty of crime 114
hearing 115, 116
immigration specialists *see* immigration special
ineffective assistance of counsel. 112, 113, 117
jurisdiction 22, 111
law students 25
list of disciplined practitioners 117
mailings after discipline 22
misconduct 25
motions 116
nolo contendere plea 114
notarios ..... *see* immigration specialists
notary public .... *see* immigration specialists
Notice of Appeal (Form EOIR-45) 116
Notice of Appearance 18
Notice of Intent to Discipline .. 114, 115, 117
Office of General Counsel 5, 113, 114
Office of Professional Responsibility 111
pending cases, effect on 115, 117
petition for immediate suspension 114
practitioner defined 111
procedure 114
public disclosure 117
reinstatement 118
discipline (cont.)
resignation 112, 114
runners, use of 112
sanctions 116
solicitation 112
state bar number 18
suspension 17, 18, 22, 112, 114
unauthorized practice of law 111, 112
unethical conduct 111
unprofessional conduct 111
visa consultants .. *see* immigration specialists
dissent ..... *see* citations
dissenting opinions ..... *see* citations
document fraud 2
documents
ACCO fasteners 38
binding 38
captions 37, 53, 71
certified copies 39
cover pages ..... 36, 37, 53, 121, App. E
criminal convictions 40, 72
fonts 38
footnotes 38, 55
handwritten filings 35
headings 55
highlighting 40, 72
hole-punching 38
line spacing 38
number of copies 37
one-sided 39
order of documents 35
originals 39
page limits 37, 52
paper size and quality 37
photocopies 39, 40
photographs 38, 39
source of fact 40
source of law 39
stapling 38
supporting documents 35, 36, 39, 71
tabs 37
translations ..... *see* language
draft orders 73
duty to report discipline ..... *see* discipline

E

e-filing 14, 30, 121
e-mail . . . . . *see* mail
employer sanctions 2, 7
employment-based petition *see* visa petition appeal
English language . . . . . *see* language
envelopes . . . . . *see* mail
EOIR .*see* Executive Office for Immigration Review
EOIR ID numbers . . . . . *see* representation
EOIR-26 . . . . . *see* Notice of Appeal
EOIR-27 . . . . . *see* Notice of Appearance
EOIR-28 . . . . . *see* Notice of Appearance
EOIR-29 . . . . . *see* Notice of Appeal
EOIR-45 . . . . . *see* discipline
evidence
  administrative notice 62
  admitted into the record 62
  affidavits 31, 72
  criminal conviction 40, 72
  declarations 31, 72
  language 72
  motion to accept late filing 31
  motion to reconsider 77
  motion to remand 62, 79
  motion to reopen 75, 76
  motion to stay 84
  new evidence on appeal 62, 104, 108
  newly available . . . . . *see* motions
  statements made in brief 62
  statements made in motion 62, 72
  supplemental evidence 72
  unavailability of 79, 104
  visa petitions 73
excessive fees . . . . . *see* discipline
Executive Office for Immigration Review (EOIR)
  Board of Immigration Appeals (BIA) . . . . . *see* Board
  Clerk's Office . . . . . *see* Clerk's Office
  forms . . . . . 120, App. E
  Office of General Counsel (OGC) . . . . . 5, 22, 123, App. C
  Office of the Chief Admin. Hearing Officer (OCAHO) . . . . . 2, App. C
  Office of the Chief Immigration Judge (OCIJ) . . . . . 1, 2, App. C
  Public Affairs Office 5, 91, 95
exhibits
  citation to 57
  oral argument 98
  tabbing 37
expedite requests 14, 38, 43, 85
extensions
  appeals 51
  briefing 45, 60
  caption on request 60
  defective filings 31
  extension request pending, effect of 31
  failure to file brief after extension 61
  rejected filings 45
  request, contents of 60
  request, effect of pending 31
  substitution of counsel, based on 21
  timely filed, must be 60
  unopposed requests 31

F

false statements . . . . . *see* discipline
FAM . . . . . *see* Department of State
families
  children . . *see* petitions *below*; representation
  consolidated proceedings 42, 62, 69
  filings, including every name on 47, 69
  guardians . . . . . *see* representation
  motions 69
  non-party family members 48, 69
  Notice of Appeal 47
  parents . . . . . *see* representation
  petitions, family-based 102
  represented by family . . . . *see* representation
  signatures . . . . . *see* representation
faxes 14, 29
federal courts 10, 51
Federal Express . . . . . *see* couriers
Federal Register . . . . . 126, App. J
Fedex . . . . . *see* couriers
fee waiver . . . . . *see* fees
fee waiver form . . . . . *see* fees
fees
  amount of payment 42
  Appeal Fee Waiver . . . . *see* fee waiver *below*
  appeal of decision 40, 42, 51
  application for relief, amount 43

fees (cont.)
application for relief, paid to DHS 43
application for relief, when filed with motion 73
application for relief, when paid 43, 73
attaching 43
attorney fees ..... *see* attorneys
bond appeal 41, 88
bounced check 42
briefs ..... *see* briefs
cash 42
checks 42
credit cards 42
currency ..... *see* payable *below*
defective payment 31, 42, 45
DHS filings 41
difference between filing and application 41, 43
excessive 112
failure to pay .. *see* defective payment *above*
fee required 40, 41
fee waiver 36, 41, 42, 51, 72
fee waiver form 42, 51, 72, 121
fine appeal 108
FOIA 124
forgot to pay ... *see* defective payment *above*
form of payment 42
joint motion 41
missing ..... *see* defective payment *above*
money orders 42
motion to reconsider 40, 41
motion to reopen 40, 41
motion to stay deportation 41, 84
motion to stay removal 41, 84
motion while appeal pending 41
motions generally 42, 72
number of payments 42
payable in U.S. dollars only 42
reimbursement 42
relief ..... *see* applications for relief *above*
stays 41, 84
visa petition appeals 103
visa petition filing fee 73
visa revalidation ..... *see* visa petition *above*
visa revocation ..... *see* visa petition *above*
waived fees ..... *see* fee waiver *above*
when filing fee is not required 41
when filing fee is required 40
wrong amount, rejected for 42
fiancees 7
filed, meaning of 31
filing on behalf of ..... *see* representation
filing receipts
briefs 51, 60
conformed copies 32, 60
motions generally 73
motions to reconsider 13, 73
motions to reopen 13, 73
Notices of Appeal 51
supplemental filings 51
timeliness, adjudication of 31
when issued 31, 45
when not issued 32
fine appeals
adjudication 109
assessment of fines 107
briefing 107, 108, 109
deadline ..... 108, App. D
evidence 108
fee 108
form 107
how to file 107
invalidation of fine 110
jurisdiction 6, 107
motions 109
personal interviews 110
processing 107, 108
remands 108, 110
representation 108
standing 107
status inquiries 109
waiver of appeal 107
withdrawal of appeal 109
FOIA ..... *see* Freedom of Information Act
fonts ..... *see* documents
footnotes 38, 55
foreign student advisors 26
forms
appeals ..... *see* Notice of Appeal
blank forms ..... 120, App. E
Certificate of Service 32, 33
colors 121
completed forms 122
computer-generated 121
DHS forms ..... App. E
e-filing ..... *see* e-filing

forms (cont.)
EOIR forms ..... 120, App. E
fee waiver ..... *see* fees
FOIA ..... *see* Freedom of Information Act
motions ..... *see* motion
non-form filings 121
originals 122
photocopied 121
requesting ..... 120, App. E
signatures 122
free legal services ..... *see* representation
Freedom of Information Act (FOIA)
A number 124
classified material 124
Clerk's Office 123
costs ..... *see* fees *below*
denials 125
fee 124
filing deadlines, effect on 124
form 123
how to file a request 123
information required 124
limitations 124
non-parties 11, 123
Office of General Counsel 5, 123
parties 123
privacy 125
processing time 124
purpose of 123
requests 11, 123
statutory exemptions 124
who may file a request 123
frivolous appeal ..... *see* discipline
frivolous behavior ..... *see* discipline

G

Government Printing Office (GPO) ... 8, 121, 127
guardian ..... *see* representation

H

H nonimmigrant visas 7
hand delivery ..... *see* mail
Handbook ..... *see* United Nations
handwritten filings ..... *see* documents
harmless error 66
headings ..... *see* documents
highlighting ..... *see* documents
hole-punching ..... *see* documents
holidays ..... *see* deadlines
Homeland Security *see* Dep't of Homeland Security

I

I&N Decisions ..... *see* decisions
ICE ..... *see* Dep't of Homeland Security (DHS)
ID numbers
aliens ..... *see* A number
attorneys ..... *see* representation
representatives ..... *see* representation
immigrant petitions
appeals ..... *see* visa petition appeals
employment-based 3, 7, 102
family-based 6, 102, 106
Immigration and Nationality Act (INA).. *see* citations
Immigration and Naturalization Service (INS)
Board, relationship to 2
Dep't of Homeland Security, relationship to 2
Immigration Courts 1, 2, 54
Immigration Judges 2, 9, 44, 54
immigration specialists 15, 23, 25, 26, 111
in absentia proceedings 5, 7, 46, 76, 82
In re, use of 55
INA ..... *see* citations
inadmissibility ..... *see* waivers of inadmissibility
indexed decisions 9, 56
ineffective assistance of counsel ... *see* discipline
inquiries
automated status query system .... *see* ASQ
calls ..... 12, App. B
collect calls 12
filings tips ..... *see* BIA TIPS
identity of assigned Board Member(s) 4
legal advice 13
necessary information for making 12
oral argument 91
projected processing times 13
specific staff members, directed to 13
status inquiry.. 12, 13, 104, 109, App. B, App. I
visa petition appeals 104
INS .. *see* Immigration and Naturalization Service
Int. Dec. ..... *see* decisions

Interim Decisions ..... *see* decisions
interlocutory appeals ..... *see* appeals
Internet ..... 14, 120, 126, App. B

J

joint motion ..... *see* fee; motion; service
judicial review 10
jurisdiction
- advance parole 7
- appeals vs. motions to reconsider 44, 48
- appeals, types of 5, 6
- applications for new relief 43
- attorney discipline ..... *see* discipline *below*
- bond appeals 6, 86
- departed aliens 75
- deportation proceedings 5, 44
- employer sanctions 7
- exclusion proceedings 5, 44
- fines and penalties 6, 7, 107
- immigrant petitions (employment-based) .. 7
- immigrant petitions (family-based) 6, 102
- Immigration Judge decisions 44, 45
- Immigration Judge vs. Board 44
- in absentia proceedings 5, 7
- motions 5, 70, 76, 78, 79
- orphan petitions 7
- removal proceedings 5, 44
- stays 83
- visa petition appeals 6, 102
- visa revalidation appeals 6, 106
- visa revocation appeals 6, 105
- voluntary departure 5, 6
- waivers of inadmissibility 6

L

L nonimmigrant visas 7
language
- Certificate of Translation ..... App. H
- certified translations 34, 72
- English requirement 34, 72
- motions 34, 72
- Notice of Appeal 34
- Spanish, information in 12
- supporting documents 34, 72
- translations ..... *see* certified *above*
- translators 34

late-filed briefs ..... *see* briefs
law firms ..... *see* attorneys
law graduates 24
law library ..... *see* library
law students 24
legal advice ..... *see* inquiries
legal services ..... *see* attorneys
legislative history ..... *see* citations
library 5, 8, 10, 11, 126
limited appearances ..... *see* representation
LLIRC ..... *see* library

M

mail
- Airborne Express ..... *see* couriers
- attention ("attn.") line ..... 14, 28, App. A
- attorney misconduct 22
- Board's mailing address ..... App. A
- changes of address . *see* address obligations
- couriers ..... *see* couriers
- delivery delays 30
- DHL ..... *see* couriers
- e-filing ..... *see* e-filing
- e-mail 14
- envelopes 14, 28, 29, 32
- express mail ..... 28, App. A
- faxes ..... *see* faxes
- Federal Express ..... *see* couriers
- first class mail ..... 30, App. A
- hand delivery ..... 28, 32, App. A
- mailbox rule ..... *see* mailbox rule
- overnight delivery ..... 28, 30, App. A
- postage 28
- priority mail ..... App. A
- return receipt requested ..... App. A
- separate envelopes 29
- special delivery ..... App. A
- United Parcel Service ..... *see* couriers
- unrelated cases 29

mailbox rule 28, 51
Matter of
- use of 55
- [case name] ..... App. J

motion (*see also* motion to ...)
- appeal affirmed without opinion 71
- appeal form, do not use 120

motion (cont.)
appeal outside Board's jurisdiction ... 70, 71
appeal pending, filed while ... 105
applications for relief, underlying ... 43, 72, 73
automatic stays ... 82
briefs ... 58, 74
caption ... 71
cases already decided by the Board ... 70
cases never before the Board ... 70
cases pending before the Board ... 70
changed circumstance..*see* new circum. *below*
compound motions ... 74
construed by content, not title ... 71
copy of Immigration Judge order ... 72
cover page ... 37, App. F
departure of alien ... 75, 81
detained alien ... 72
draft orders ... 73
evidence ... 62, 72, 77
fee ... 41, 43, 72
fee waivers ... 42
filed, when deemed ... 28
filing receipts ... 32, 73
fine appeal ... 109
form ... 71
format ... 71
grounds for motion ... 72
how to file ... 70
joint motion ... 41, 76
jurisdiction ... 70
language ... 34, 72
leaving United States ... *see* departure *above*
new circumstances ... 76
new eligibility for relief ... 79
new evidence ... 79
new facts ... 75, 76, 77
new law ... 77
newly available evidence ... 75
non-opposition ... 81
Notice of Appeal improper ... 39, 50, 71
Notice of Appearance ... 69
number limits ... 74
number of copies ... 37
number of pages ... 37
opposition to a motion ... 74
oral argument ... 73, 92

motion (cont.)
order of documents ... *see* documents
parties ... 69
proof of service ... 33, 72
reinstatement ... 81, 118
reply briefs ... *see* briefs *above*
representation ... 69
response briefs ... *see* briefs *above*
return to practice ... 118
signature ... 34
stays ... 82
subsequent to remand ... 70
summary affirmance *see* summary affirmance
time limits ... 74
timely, when deemed ... 30
transcripts ... 74
untimely ... 31
visa petition appeal ... 105
visa revalidation appeal ... 106
visa revocation appeal ... 106
where to file ... App. K
motion to accept late-filed brief ... 61
motion to accept supplemental brief ... 58
motion to accept untimely filing ... 31, 61
motion to amend ... 80
motion to consolidate ... 80
motion to expedite ... 85
motion to hold in abeyance ... 80
motion to join ... 80
motion to recalendar ... 17, 77, 80
motion to reconsider
appeal form, do not use ... 120
appeal, decision to ... 44
automatic stays ... 78
compound motions ... 74
denial of late-filed brief motion ... 61
denial of prior motion ... 77
DHS motions ... 78
fee ... 40, 41, 72
filing receipts ... 13, 31, 73
form ... 71
how to file ... *see* motion
identification of error ... 78
jurisdiction ... 70
new law ... 77, 78
number limits ... 77, 78

motion to reconsider (cont.)
persons outside the United States 78
pre-7/1/96 decisions 77
pre-7/31/96 motions 77
purpose 77
summary affirmance order 66, 71, 78
time limits 77, 78
transcripts 46
visa petitions 105
motion to remand
appeal form, do not use 120
changed circumstances *see* new evid. *below*
DHS, remand to 79
fine appeal 108
form 71
how to file ..... *see* motion
motion to reopen, treated as 77, 78
motion to withdraw appeal, difference from 64
new eligibility for relief 79
new evidence 62, 79, 104
purpose 79
requirements 79
time and number limits 79
where to file ..... App. K
motion to reopen
administratively closed cases 77
appeal form, do not use 120
appeal pending, filed while 76, 78
automatic stays 77, 82
changed circumstances 76
compound motions 74
criminal convictions 77
deadline ..... *see* time limits *below*
DHS motions 76
evidence 76
fee 40, 41, 72
filing receipts 13, 31, 73
form 71
how to file ..... *see* motion
in absentia ..... *see* in absentia proceedings
joint motions 41, 75, 76
jurisdiction 70, 76, 78
motion to recalendar, difference from . 77, 80
motion to remand, when treated as ... 77, 78
new circumstances, based on 76
new evidence 75
new facts 75, 76
motion to reopen (cont.)
Notice of Appearance 69
number limits 75
persons outside the United States 75
pre-9/30/96 76
purpose 75
stays 77, 82
time limits 75
transcripts 46
unrepresented aliens 17
visa petitions 105
where to file ..... App. K
motion to sever appeals ..... *see* appeals
motion to stay 41, 83, 84
motion to withdraw appeal 63
motion to withdraw as counsel 20, 21, 96
motions ..... *see* motion; motion to ...
multiple representation ..... *see* representation

N

new authority ..... *see* new law
new evidence ..... *see* evidence
new facts ..... *see* motions; motion to reopen
new law
after appeal has been decided 77
oral argument 98
while appeal is pending 58, 62
new law office ..... *see* attorneys
news media ..... *see* press
nonprofit organizations 17, 22, 24
notarios ..... *see* immigration specialists
notary public ..... *see* immigration specialists
Notice of Appeal (Form EOIR-26)
additional copies 49
additional sheets 50
address obligations 16
appeal package, part of 35
bond appeal 88
brief accompanying 50
brief in support of 50
Certificate of Service 33, 51
color 121
completion of 49
consolidated appeals 49
deadline 51
families 47, 49

Notice of Appeal (EOIR-26) (cont.)
filing receipt 45, 51
grounds for appeal 50, 67
how to file ..... *see* appeals
important data 49
instructions 49
language 34
motion, form not used for ..... 50, 71, App. E
oral argument 91
original 39, 49
required for appeal 49
signature 39
summary dismissal .. *see* summary dismissal
Notice of Appeal (Form EOIR-29)
bond appeals 88
color 121
fine appeals 107
visa petition appeals 103
Notice of Appearance (Form EOIR-27)
accredited officials 26
accredited representatives 22
alien's signature 18
attorneys 17, 19
change in law firm, used for 19
change of address, not used for alien 20
change of address, used for attorney 20
color 121
difference from EOIR-28 ..... 15, 18
discipline information 18
fine appeals 108
law graduates 24
law students 24
motions generally 69
motions to reconsider 69
motions to reopen 69
multiple clients 20
new counsel 20
oral argument 95
pro se aliens 15
representation ..... *see* representation
reputable individuals 26
required of all representatives 15
service upon other party 15, 18
state bar number 18
unrepresented persons 15
visa petition appeals 103
Notice of Appearance (Form EOIR-28) 18
Notice of Entry ..... *see* Notice of Appearance
number of copies 37

O

OCAHO ..... *see* Executive Office
OCIJ ..... *see* Executive Office
Office of General Counsel .. *see* Executive Office
Office of Immigration Litigation (OIL) ... 3, App. C
Office of Information and Privacy 125
Office of Professional Responsibility *see* discipline
Office of the Chief Imm. Judge *see* Executive Office
Office of the Clerk ..... *see* Clerk's Office
OGC ..... *see* Executive Office
OIL ..... *see* Office of Immigration Litigation
oral argument
amicus curiae 96, 100
argument and rebuttal 99, 100
closed argument 94, 95
location 93
motions 73, 92
new law 98
news media 95
notification 92
open argument 93, 94
Oral Argument Coordinator ..... 91, App. B
public access 10, 93
Q&As 93
recording 95
representation 95, 96
responding parties 92
seating 95
selection criteria 92
selection of cases 91
supplemental briefs 97, 100
weather, delays due to 97
order of documents ..... *see* documents
orders ..... *see* decisions; draft orders
original
applications for relief 72
documents 39
forms 39, 122
motion 39
Notice of Appeal 39, 49
signatures 18, 34, 39
supporting documents 39

orphan petitions 7, 102
overnight delivery ..... *see* mail

P

page limits ..... *see* documents
pagination ..... *see* briefs
paper size ..... *see* documents
Paralegals 25, 35
parent ..... *see* visa petitions; representation
parties
  generally ..... *see* appeals
  omitted ..... *see* motion to amend
petitions ..... *see* visa petition appeals
photocopies ..... *see* documents; forms
photographs 38, 39
post-conviction relief .... *see* criminal convictions
Practice Manual
  authority 1
  citation to ..... App. J
  copies 126
  Internet 126
  photocopying 126
  public input 126
  purpose 1
  Q&As ..... *see* Questions and Answers
  reproduction 126
  revisions 1
  updates 126
precedent decisions ..... *see* decisions
press 5, 91, 93, 95
pro bono ..... *see* attorneys
Pro Bono Program ..... *see* attorneys
pro se ..... *see* representation
processing times 13
Proof of Service ..... *see* service
Public Affairs Office ..... *see* Executive Office
published decisions ..... *see* decisions

Q

Questions and Answers 14, 126

R

receipt rule 28
receipts ..... *see* filing receipts
reconsideration ..... *see* motion to reconsider
record of proceedings
  briefs, addition of 59
  citation to 54, 57
  confidentiality 12
  contents 11, 47, 104, 109
  copies 11, 123
  defects in recorded record 46
  federal courts 10
  FOIA ..... *see* Freedom of Information Act
  inspection by non-parties 11
  inspection by parties 11
  management 5
  oral argument 94, 98
  removal of 11
  stipulations ..... *see* stipulations
  tape recording 46, 74
references
  cases ..... *see* citations
  Department of Homeland Security 54
  Immigration Judges 54
  parties 54
  record of proceedings ..... *see* citations
  third parties 54
regulations ..... *see* citations
rejected
  filing 31, 33, 42, 45, 59, 70
  meaning of 31
  no fee 42
  wrong fee 42
relatives ..... *see* families
release of counsel ..... *see* attorneys
relief
  application 72
  application fee, amount of 43
  application fee, different from filing fee ... 43
  application fee, when paid 43, 73
  forms ..... 121, App. E
  Immigration Courts 2, 9
  imminent ineligibility for 85
  jurisdiction 43
  newly available eligibility for 43, 79, 80
  prima facie eligibility 73
remand
  circuit court ..... *see* circuit court remand
  motion ..... *see* motion to remand

reopening . . . . . *see* motion to reopen
reply briefs . . . . . *see* briefs
representation
accredited officials of foreign governments 26
appearance . . . . . *see* Notice of Appearance
asesarios . . . . . *see* immigration specialists
attorney discipline . . . . . *see* discipline
attorney of record . . *see* representative *below*
child 25
clergy 26
communications 16
discipline . . . . . *see* discipline
entering an appearance 15
EOIR ID numbers 18
family member 25, 35
fellow inmates 26
filing on behalf of 20
filings, representative should submit 16
fine appeals 108
former employees of the Dep't of Justice . 26
free legal services . . . . . *see* attorneys
guardian 25
ID numbers . . . *see* EOIR ID numbers *above*
immigration specialists *see* immigration special
law firms . . . . . *see* attorneys
law graduates 24
law students 24
limited appearances 19
motions 15
multiple representation 19, 35, 95
notarios . . . . . *see* immigration specialists
notary public . . . . *see* immigration specialists
notice to opposing party 15
on behalf of . . . . *see* filing on behalf of *above*
oral argument 95
parent 25
Pro Bono Program . . . . . *see* attorneys
pro bono . . . . . *see* attorneys
pro se 16
representative of record . . . 19, 23, 69, 95, 96
reputable individual 25, 26
signatures . . . . . *see* signatures
state bar numbers . . . . . *see* attorneys
types of representatives 15
visa consultants . . *see* immigration specialists
visa petition denials 103
reputable individuals 25
reputable individuals . . . . . *see* representation
response briefs . . . . . *see* briefs
review
de novo 7
scope of review 7
review . . . . . *see* scope of review; de novo review
right to counsel 17

S

sanctions . . . . . *see* discipline
scope of review . . . . . *see* review
self-petitioners . . . . . *see* visa petition appeals
separate envelopes . . . . . *see* mail
service
Certificate of Service . . . . . 51, App. G
delivery, method of 32
Immigration Service (INS) *see* Immigration and
joint motion 33
motions 34, 72, 84
Notice of Appeal 33, 51
Notice of Appearance 34
proof of service 32, 33, 34, 45, 51, 72, App. G
representation, notice of 15
representative, service of papers on . . 20, 33
required of all filings 32
stays 84
timing 33
severance of appeals . . . . . *see* appeals
signatures
accredited representatives 23, 35
aliens 18
appeals 34
attorneys 18, 19
briefs 34, 53
Certificates of Service 33
computer-generated signatures 34
faxes 35
forms 39, 122
law firms 19, 35
motions 34
Notices of Appeal 39
original 34, 39
paralegals 35
proof of service . . . . . *see* Certificates *above*
signature stamps 34
simulated 34

single Board Member ..... *see* Board
slip opinions ..... *see* decisions
Spanish ..... *see* language
state bar numbers ..... *see* attorneys
State Department ..... *see* Department of State
status inquiries ..... *see* inquiries
statutes ..... *see* citations
stays
adjudication 83
appeal (direct appeal) 82
appeal (in absentia order) 82
appeal (removal decision) 82
automatic stays 82
bond appeal 88
discretionary stays 83
duration 83
emergency stays 84
fee 41, 84
how to request 83
motion required 83
motion to reconsider 78
motion to reopen 77
motions to reopen 77
non-emergency stays 84
notice 83
pending motions 83
procedure for requesting 83
written order 83
stipulations 47, 104, 108
sua sponte ... *see* certification; motion to reopen
substitution of counsel ..... *see* attorneys
summary affirmance 66, 71, 78
summary dismissal
appeal ..... *see* failure to specify *below*
attorney sanctions 68
concessions of fact or law 67
failure to file brief 50, 61, 67
failure to file brief after extension request . 61
failure to meet appeal requirements 67
failure to specify grounds for appeal .. 50, 67
improper purpose 67
jurisdiction, appeal outside Board's 67
meaning of 67
relief granted 67
sanctions ..... *see* discipline
supplemental authorities ..... *see* new law
supplemental briefs 36, 58, 97, 100
suspension from practice ..... *see* discipline

T

tabs ..... *see* documents
telephone calls ..... *see* inquiries
telephone inquiries ..... *see* ASQ; inquiries
Temporary Protected Status 5
third parties 16, 48, 54, 69, 102, 105, 106
time, how to compute 30
timely, meaning of 30
TIPS ..... *see* BIA TIPS
Torture Convention ..... *see* United Nations
transcripts
bond appeals 46, 89
briefing deadlines, effect on 46
briefing schedule, sent with 45
citation to 57
correction requests 46
defects in 46
Immigration Judge decisions 46
interlocutory appeals 46
motions generally 74
motions to reconsider 46
oral argument 101
requests for transcription 46, 74
stipulations ..... *see* stipulations
tape recordings 74
when prepared 46
translation ..... *see* language
translators ..... *see* language

U

unauthorized practice of law 25, 111
United Nations
Convention Against Torture . 5, 41, 76, App. J
Convention on Refugees ..... App. J
Protocol on Refugees ..... App. J
UNHCR Handbook ..... App. J
United Parcel Service (UPS) ..... *see* couriers
unpublished cases ..... *see* citations; decisions
unrelated appeals ..... *see* appeals
unrepresented ("pro se") ..... *see* representation
untimeliness ..... *see* deadlines
untimely appeals ..... *see* appeals

untimely briefs . . . . . *see* briefs
US Code . . . . . *see* citations
USCIS . . . . *see* Dep't of Homeland Security (DHS)

V

Virtual Law Library . . . . . *see* library
Visa Bulletin . . . . . *see* Department of State
visa consultants . . . . . *see* immigration specialists
visa petition appeals
adjudication 105
briefing 103, 104
deadline . . . . . 103, App. D
employment-based petitions 3, 7, 102
evidence 104
family-based petitions 6
fee 103
how to file 103
jurisdiction 102
motion to remand 104
motions 105
processing 104
record on appeal 104
representation 103
self-petitioners 102
standing 102
status inquiries 104
visa revalidation appeals
briefing 106
deadline . . . . . 106, App. D
fee . . . . . *see* how to file *below*
how to file 106
jurisdiction 106
motions 106
processing 106
standing 106
visa revocation appeals
briefing 105
deadline . . . . . 106, App. D
fee . . . . . *see* how to file *below*
how to file 105
jurisdiction 105
motions 106
processing 106
self-petitioners 105
standing 105
voluntary departure
effect on appeal . . . . . *see* departure
effect on motion . . . . . *see* departure
jurisdiction . . . . . *see* jurisdiction
length of 6

W

waived appeals . . . . . *see* appeals
waived fees . . . . . *see* fees
waiver of appeal . . . . . *see* appeals
waivers of inadmissibility 6, 7, 103
web site . . . . . *see* Internet; App. B
widows/widowers 103
withdrawal of appeal . . . . . *see* appeals
withdrawal of counsel . . . . . *see* attorneys
withholding of removal 5, 40, 41, 76, 94

CITATION INDEX

A separate Word Index precedes this Index.

Statutes

Immigration and Nationality Act
(8 U.S.C. 1101 et seq.)

204(a)(1) 103
212(d)(3) 6
240(b) 7
240(b)(5) 82
240B 6
242B 7, 82
244(e) 6
273 107

Freedom of Information Act
(5 U.S.C. et seq.)

552 ..... 18, 123
552(b) 124
552a(a)(2) 18

Cases

Matter of
Air India "Flight No. 101", 21 I&N Dec. 890 (BIA 1997) 110
Beechcraft B-95, #N21JC, 17 I&N Dec. 147 (BIA 1979) 110
Chirinos, 16 I&N Dec. 276 (BIA 1977) 89
Coelho, 20 I&N Dec. 464 (BIA 1992) 79
Crammond, 23 I&N Dec. 179 (BIA 2001) 81
Fedorenko, 19 I&N Dec. 57 (BIA 1984) 54, 62
Gadda, 23 I&N Dec. 645 (BIA 2003) 111, 116
Guzman, 22 I&N Dec.722 (BIA 1999) 76
H-A-, 22 I&N Dec. 728 (BIA 1999) 73
Joseph, 22 I&N Dec. 660 (BIA 1999) 89
K-, 20 I&N Dec. 418 (BIA 1991) 65
Lopez, 22 I&N Dec. 16 (BIA 1998) 71
Mladineo, 14 I&N Dec. 591 (BIA 1974) 70
Patino, 23 I&N Dec. 74 (BIA 2001) 48
Rosales, 19 I&N Dec. 655 (BIA 1988) 22
Sano, 19 I&N Dec. 299 (BIA 1985) 102, 105, 106
Shih, 20 I&N Dec. 697 (BIA 1993) 48
Soriano, 19 I&N Dec. 764 (BIA 1988) 104, 108
Velarde, 23 I&N Dec. 253 (BIA 2002) 73
Zaidan, 19 I&N Dec. 297 (BIA 1985) 105

Regulations

8 C.F.R. Executive Office for Immigration Review

1001.1(f) 17, 111, 118
1001.1(j) 111, 118

1003.0(a) 2

1003.1(a)(1) 4
1003.1(a)(4) 4
1003.1(a)(5) 4
1003.1(a)(6) 4
1003.1(a)(7) 66

1003.1(b) 6, 9
1003.1(b)(2) 5
1003.1(b)(3) 5
1003.1(b)(4) 9
1003.1(b)(5) 9, 102, 105, 106
1003.1(b)(7) 87

1003.1(c) 6

1003.1(d)(1) 1
1003.1(d)(1)(i) 10
1003.1(d)(2) 50
1003.1(d)(2)(i) 67
1003.1(d)(2)(i)(A) 67
1003.1(d)(2)(i)(D) 62, 68
1003.1(d)(2)(i)(E) 67
1003.1(d)(2)(i)(G) 31, 48
1003.1(d)(2)(iii) 68, 111, 112
1003.1(d)(3) 1, 7, 8
1003.1(d)(4) 1
1003.1(d)(5) 111

1003.1(e) 3
1003.1(e)(4) 66
1003.1(e)(4)(ii) 66
1003.1(e)(7) 91, 93

1003.1(f) 8

1003.1(g) 8

8 C.F.R. Executive Office for Immigration Review

1003.1(h) 10

1003.2(a) 76, 78

1003.2(b)(2) 31, 77, 78
1003.2(b)(3) 66, 78

1003.2(c) 76
1003.2(c)(1) 72, 75
1003.2(c)(2) 31, 75, 76
1003.2(c)(3) 75, 76
1003.2(c)(3)(i) 76
1003.2(c)(3)(ii) 76
1003.2(c)(3)(iii) 76
1003.2(c)(3)(iv) 76
1003.2(c)(4) 77, 78

1003.2(d) 75, 78, 81

1003.2(f) 82

1003.2(g)(1) 18, 32, 33, 34, 72
1003.2(g)(2)(i) 40, 41
1003.2(g)(2)(ii) 105, 109
1003.2(g)(3) 74, 81, 92

1003.2(h) 92

1003.3 ..... 40, 41

1003.3(a) 45
1003.3(a)(1) 32, 33, 47, 48, 49, 51
1003.3(a)(2) 103, 107
1003.3(a)(3) 18, 34

1003.3(b) 67

1003.3(c) 32, 33
1003.3(c)(1) 52, 59
1003.3(c)(2) 103, 108

8 C.F.R. Executive Office for Immigration Review

1003.3(d) 68

1003.3(e) 65

1003.4 . . . . . 64, 65

1003.6 82

1003.7 68

1003.8 . . . . . 40, 41, 51
1003.8(a) 42
1003.8(b) 103, 108

1003.19 86
1003.19(f) 87
1003.19(g) 17
1003.19(h)(2)(i) 87
1003.19(h)(4)(i) 87
1003.19(i)(1) 89
1003.19(i)(2) 89

1003.23(b)(1)(v) 82
1003.23(b)(4)(ii) 76, 82
1003.23(b)(4)(iii) 76
1003.23(b)(4)(iii)(C) 82

1003.27 94
1003.27(a) 93
1003.27(b) 94, 95

1003.28 95

1003.32(b) 37

1003.33 . . . . . 34, 72

1003.37 44

1003.38 87
1003.38(b) 31, 51
1003.38(e) 16, 20

1003.39 48

8 C.F.R. Executive Office for Immigration Review

1003.41 . . . . . 40, 72

1003.101 . . . . . 23, 25, 111, 114
1003.101(a) 111, 116

1003.102 . . . . . 111, 113
1003.102(h) 114
1003.102(j) 112
1003.102(j)(1) 34
1003.102(k) 112, 113
1003.102(m) 111

1003.103(a)(1) 114, 115
1003.103(a)(2) 115
1003.103(c) 114

1003.104(a)(1) 113
1003.104(a)(2) 113
1003.104(b) 113

1003.105(a) 114
1003.105(c)(1) 115
1003.105(c)(2) 115
1003.105(c)(3) 115
1003.105(d) 115
1003.105(d)(2) 115, 116

1003.106 . . . . . 115, 116
1003.106(a)(1)(i) 116
1003.106(c) 116

1003.107(a) 118
1003.107(b)(1) 118
1003.107(b)(2) 118

1003.108 117
1003.108(c) 117

1003.109 111

1103.3(c) 8

1103.7 . . . . . 40, 41, 43, 103

8 C.F.R. Executive Office for Immigration Review

1205.1 105
1205.2(d) 102, 105, 106

1208.6 94

1236 6
1236.1 86
1236.1(d)(3) 87, 88
1236.1(d)(3)(i) 87
1236.1(d)(4) 88

1240.10(b) 94
1240.11(c)(3)(i) 94
1240.32 94
1240.33(c)(1) 94

1246 6

1280 . . . . . 6, 7, 107
1280.1 107
1280.12 110
1280.13(a) 107
1280.13(b) 107, 108, 110

1292.1 15
1292.1(a)(1) 17
1292.1(a)(2) 24
1292.1(a)(3) 25
1292.1(a)(4) 22
1292.1(a)(5) 26
1292.1(c) 26
1292.1(d) 27

1292.2(a) 22
1292.2(b) 22
1292.2(d) 22, 23

1292.3 . . . . . 6, 111, 114
1292.3(c)(4) 114
1292.3(d) 113

1292.4(a) 103, 108

1292.5(a) 20, 33

8 C.F.R. Executive Office for Immigration Review

1293.2(a) 111

1299 120
1299.1 121

8 C.F.R. Department of Homeland Security

103.2 . . . . . 3, 102
103.3 . . . . . 3, 7, 102
103.3(c) 8
103.5a(b) 108

204.2 103

214.2(k)(5) 106

299 120
299.2 . . . . . App. E
299.3 . . . . . App. E
299.4(a) 121

28 C.F.R. Department of Justice

16.1 123
16.3(c) 124
16.9 125
68.53(a) 7
68.55 7