



OPTIONS AFTER RECEIVING A USCIS DENIAL

Response to Denial	Timing ¹	Requirement/Standard	Legal Authority	Fee	Note
Letter to request USCIS <i>revisit and/or correct</i> action	Not specified. ASAP when issue discovered.	USCIS error or other demonstrable error not caused by the person seeking the benefit.		N/A	This option relies on USCIS' authority to revisit its own action rather than any specific provision in the statute, regulations, or policy manual.
Refile the application/petition/request	Not specified.	Denial was without prejudice and client is still eligible for the relief.	8 CFR § 103.2 (b)(15)	Application filing fee (can file fee waiver if available)	If denial was for discretion or ineligibility, new/different information will need to be included. USCIS will consider the facts and circumstances surrounding a previously withdrawn/abandoned/denied prior benefit material to the new benefit request.
Motion to Reconsider	Within 30 days of the decision (33 if decision served by mail)	A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy . Must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.	8 CFR § 103.5 (a)(3)	\$675 ²	Filed on Form I-290B Brief must be included with initial filing
Motion to Reopen	Within 30 days of the decision (33 if decision	Must state new facts to be provided in the reopened proceeding and be	8 CFR § 103.5 (a)(2)	\$675	Filed on Form I-290B

¹ When computing the period of time for filing an appeal or motion USCIS counts every calendar day (including Saturdays, Sundays, and legal holidays) starting the first calendar day after the date USCIS mailed the unfavorable decision. If the last day of the filing period falls on a Saturday, Sunday, or a legal holiday, the period to file an appeal runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. 8 C.F.R. § 1.2 (defining "day").

² USCIS may waive the fee for Form I-290B under 8 CFR 103.7(c) if you can show an inability to pay and: The appeal or motion is from a denial of an immigration benefit request for which you were not required to pay a fee; or the fee for the underlying application or petition could have been waived.



	served by mail) *may be excused in the discretion of the Service where the delay was reasonable and was beyond the control of the applicant or petitioner.	supported by affidavits or other documentary evidence . A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because: (i) The requested evidence was not material to the issue of eligibility; (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or (iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.			Brief must be included with initial filing
Appeal	Within 30 days of the decision (33 if decision served by mail) *brief may be filed after the I-290B within 30 days	Must allege USCIS made erroneous conclusion of law or statement of fact. Will consider new evidence. Will evaluate benefit eligibility de novo.	8 CFR § 103.3 (a)(1)(ii) & (ii)	\$675	Filed on Form I-290B Cannot appeal discretionary denials or denials for abandonment.
Federal litigation	6 years. There a general six-year statute of limitations for civil actions brought against the United States.	Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. 5 U.S.C. § 704 A court can “hold unlawful and set aside agency actions, findings and conclusions” that meet one or more of six standards:	5 U.S.C. § 706(2)(A)-(F)	Check local federal court civil action filing fees	A demand letter previewing a plan to file federal litigation may spur action. An appeal may not be necessary for a USCIS denial to be reviewable “final agency action.”



		<ol style="list-style-type: none">1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;2) Contrary to constitutional right, power, privilege or immunity;3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or4) Without observance of procedures required by law5) Unsupported by substantial evidence in a case subject to [5 U.S.C. §§ 556 and 557] or otherwise reviewed on the record of an agency hearing provided by statute or rule; or6) Unwarranted by the facts to the extent that facts are subject to trial de novo by the reviewing court.			
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Remember: You are not limited to one action, you can try multiple actions, combine motions, and try additional or other methods of advocacy.

Key Resources:

[AAO Practice Manual](#)

[CIS Ombudsman Case Assistance](#)

[USCIS Policy Manual](#)

This is not legal advice. KIND prepared this resource for informational purposes only and it should not be used as a substitute for individual case analysis, legal research, or expert assistance.