

TIPS FOR APPEALING
TO THE
BOARD OF IMMIGRATION APPEALS
(BIA)



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(BIA)**



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TIPS FOR APPEALING TO THE BOARD OF IMMIGRATION APPEALS (BIA)

HOW DOES THE APPEAL PROCESS WORK?

The Judge's Decision

From the moment the Immigration Judge gives his or her decision, you should be thinking about your appeal.

In an oral opinion, the Judge will usually say whether your petition has been granted or denied near the beginning of the opinion. If it is denied, start **taking notes** on the decision, so you can be clear about what needs to be appealed.



What Should You Listen For in the Decision?

1. You should listen for the **reason (or reasons) the Judge gives for not granting your case.**

For example, in an asylum case, the Judge may say that he did not grant asylum because he did not believe your story. This is called an “adverse credibility finding.” If this happens in your case, you will need to focus on showing why you *are* credible in your appeal.

2. Your appeal should also focus on any **mistakes you think that the Judge made** in his or her decision.

For example, in a cancellation of removal case, the Judge may say that you are ineligible for relief because you committed an aggravated felony. If you think the Judge is wrong, your appeal should explain the reasons why.

“Reserving” the Right to Appeal

When the Judge finishes explaining the decision, he or she will turn to you and ask if you would like to **reserve the right to appeal**. This is another way of asking, **do you think you want to appeal the decision?**

If there is *any* chance that you will want to appeal, you should say “**I reserve the right to appeal.**” At this point, the Judge may give you some information and some papers related to filing an appeal. This guide also provides you with information on filing an appeal, and forms you can use are included at the back of the guide.

If you are going to appeal, **ask the (DHS) government lawyer for his or her mailing address (or his or her business card).** You will need this information to mail documents later.

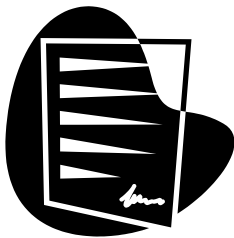
Filing a Notice of Appeal

Submitting the Notice of Appeal is a very important stage in the appeals process. You **MUST** submit a form called a “**Notice of Appeal**” to the BIA within 30 days from the time that the Immigration Judge makes his or her decision. This Form is **ATTACHMENT 1**.

Things to Remember

There are several important things to remember about a Notice of Appeal:

- ✓ The Notice of Appeal must be **received by the BIA no later than 30 days** after the Judge made his or her decision. Mailing it within 30 days is not enough; it has to arrive in Virginia by the 30th day. It is a good idea to keep proof of mailing that you receive from the post office, like a receipt for sending something certified mail.



- ✓ The Notice of Appeal must be accompanied **EITHER** by a check or money order for \$110 made out to the United States Department of Justice **OR** a Fee Waiver Request. (**ATTACHMENT 2** is a Fee Waiver Request.) If you are detained and filing *pro se* (without a lawyer) and cannot afford the fee, file a Fee Waiver Request. If you are appealing a bond decision, you do not need to pay the fee. Make sure to write your A-Number on your check or money order.
- ✓ Make **two copies** of your Notice of Appeal (and any supporting documents that you submit). **Send the original to the BIA, send one copy to the DHS government lawyer** who was at your hearing, and **keep one copy** for yourself.

Filling out the Notice of Appeal Form

The Notice of Appeal form is clear, and has many instructions. The comments below are here to give you additional clarity and guidance. You should read the instructions on the form very carefully, and look at this section when you are filling out the form.

Remember that this **form must be completed in English**, or your appeal will be dismissed. For all non-English attachments, you should provide a certified English translation (**SEE ATTACHMENT 3** for an example). You should attach a copy of the Immigration Judge’s decision you are appealing to your Notice of Appeal.

QUESTION 1

This is the space for writing your name and your A-number (the 9-digit “Alien Registration Number” that the government uses to identify you, usually in the format A 012-345-678). To be clear for the BIA, it is a good idea to write your family name or surname in capital letters, and if you have two surnames, put them *both* in capital letters.

For example:

MULENGA John

John MULENGA

Juan Rafael HERNANDEZ

José FIGUEROA GUTIERREZ

This is also the place where you can staple your check or money order to the document.

QUESTION 2

You are the Respondent. Check the “respondent” box.

QUESTION 3

If you are detained, check the box to the left of “DETAINED.”

QUESTION 4

Write the name of the facility and the city and state where your hearing took place.

- If you are detained, and you appeared by video camera, write in the place where the Immigration Judge was.
- If the Judge came to your detention facility, write in the name of your facility.

QUESTION 5

This question tells the BIA what you want to appeal. Be sure to check only one box. If you are *not* appealing a bond decision, and you are *not* appealing about a motion to reopen or a motion to reconsider, then mark the first box.

QUESTION 6

This is the most important part of the Notice of Appeal. It is a good idea to attach additional information on separate pages to the Notice of Appeal, instead of trying to put all of your reasons into this box. If you are going to attach extra pages, just write “See Attached Pages” in this box.

1. Explaining Your Reasons

In this section, you need to explain why you think the Immigration Judge made the wrong decision. You need to make arguments that focus on the reasons the Judge gave in his decision: Why did he or she deny your case?

- Did the Judge misunderstand something important?
- Did the Judge not take something important into consideration?
- Did the Judge disbelieve you?
- Do you think there was something fundamentally unfair about the hearing? Were you not allowed to tell your whole story? Did your lawyer make mistakes that hurt your case? Did the Judge refuse to accept evidence that supported your case?
- Did the Judge make a mistake in applying or interpreting the law?



2. Explaining Why Three Judges Should Hear Your Case Instead of One

The BIA receives many appeals, and recently the U.S. Government decided to try to make the appeals process faster. This is called **BIA Streamlining**. Under “streamlining,” it is likely that only one appeals judge (instead of three) will look at your appeal. It is also possible that this

appeals judge will not write an opinion if he or she agrees with the Immigration Judge—he or she will simply affirm what the Immigration Judge decided without explanation (this is called a “**summary affirmance**” or “**affirmance without opinion**”). The Notice of Appeal, and your legal brief, is your chance to tell the BIA why three judges should decide your case instead of one, and why a “summary affirmance” is not appropriate. Only the following reasons, if they apply to your situation, can be used to justify this request:

1. Immigration Judges have ruled differently from each other on the issue(s) in your case; “inconsistencies need to be settled”
2. A written, binding decision is needed to interpret the meaning of laws, regulations, or procedures that are at issue in your case; “precedent must be established”
3. The decision by the Immigration Judge or DHS does not follow the law or “applicable precedents”
4. The issue(s) in your case must be resolved because they are of major national importance
5. The Immigration Judge’s determination of the facts was clearly incorrect or “erroneous”
6. The decision of the Immigration Judge or DHS must be reversed, other than because of a change in the law

QUESTION 7

The BIA sometimes permits “oral arguments.” This means that you could have an opportunity to appear in person, in front of the appeals judges to make your arguments. Most cases do not have oral arguments, but if you want the chance to argue your case in person, you can mark the “Yes” box. NOTE: checking “yes” does not mean that the BIA will definitely agree to hear oral arguments in your case, but at least you keep open the possibility of having oral arguments if you would like them.

QUESTION 8

In addition to the Notice of Appeal, most people also file another document called a “brief” (a legal document explaining your arguments) that is more detailed. If you answer “yes” to Question 8, you are telling the BIA that you intend to file a more detailed brief later on. If you answer “yes,” then you *must* submit a brief later on, when the BIA tells you to. This is explained in more detail below, in the section “Filing an Appeal Brief.”

QUESTION 9

Sign your name here, and write in the date.

QUESTION 10 & 11

Put your name and address in Box 10 on the left. If you do not have a lawyer, you can leave Box 11 blank.

NOTE: You **must** notify the BIA any time you are transferred to another facility (if you are detained), or if you change your address (if you are not detained). **If you do not tell the BIA that you have moved or you have been transferred, then you may miss important deadlines, and you risk having your appeal dismissed and being removed.**

QUESTION 12

This is where you tell the BIA that you made a copy of your Notice of Appeal, and that you sent a copy to the DHS government lawyer. The “Opposing Party” is the government lawyer.

If you do not know the address of the government lawyer (“ICE Trial Counsel”), ask an ICE (Immigration & Customs Enforcement) officer or another officer at your facility, if you are detained. **Do not leave this section blank.**

FINDING LEGAL ASSISTANCE

Even if you could not find a lawyer to help you with your case before the Immigration Judge, you may be able to find someone who can help you with your appeal. The Immigration Judge should give you a list of free or low-cost legal service providers who may be able to assist you.

Other resources include legal service organizations, and law schools that have special programs called clinics, where students, who are supervised by lawyers, help people who do not have a lawyer. For a list of low-cost or free legal service providers in your area, please contact the **American Bar Association Commission on Immigration:**

American Bar Association Commission on Immigration
1050 Connecticut Avenue, NW, Suite 400
Washington, DC 20036

Telephone: (202) 442-3363
e-mail: immcenter@americanbar.org
www.americanbar.org/immigration

Finally, the **Immigrant and Refugee Appellate Center** ("IRAC") provides assistance to many immigrants at the appellate level. To contact IRAC, write to:

Immigrant and Refugee Appellate Center, LLC
3602 Forest Drive
Alexandria, Virginia 22302

Telephone: (703) 916-7689
Facsimile: (703) 916-7690
e-mail: infocenter@irac.net
www.irac.net

FILING YOUR APPEAL BRIEF

When Do I Need to File my Appeal Brief?

After you submit your Notice of Appeal, the next thing you do is wait until the BIA contacts you. Unfortunately, this may take several months or longer.

► **If you move or are transferred during this period, notify the BIA IMMEDIATELY, so they will know where to contact you.** A Change of Address form is **ATTACHMENT 4.**

- This must be done **every time** you move or you are transferred.

If you are getting anxious, and wonder if you missed a communication from the BIA, you can call a **toll-free number to find out the status of your appeal**. This free number is **1-800-898-7180**. You will need to have your A-Number ready when making this call. If you are detained, you have the right to make this call for free. **ATTACHMENT 5** is a Notice containing additional information.

You can do legal research while you wait, to try to find cases similar to yours that were granted, or to try to distinguish your case from others that were denied. This research will help you when you write your legal brief.

Deadlines and Extensions

After several months, the BIA will send you a notice in the mail telling you the date your brief is due. In general, you will have 21 days to file your brief. You may write to the BIA and ask for more time if you show there is a good reason (“good cause”). If you would like more time you should request it immediately and explain why you need it.

If you are detained: You will generally only be allowed an additional 21 days if your extension is granted. Only one extension will be granted in the case, whether or not it is requested by you or the government lawyer. However, the extension will apply to both sides, regardless of who makes the request.

If you haven’t received a response to your request for an extension, you must still file your brief within the deadline. Therefore, you should prepare your brief as soon as possible and not depend on being granted an extension.

Transcript

The BIA will also send you a **written transcript** of your hearing. The transcript will have the entire hearing written down—the judge’s questions, the lawyer’s questions, your answers, etc. Read the transcript carefully. Look for more reasons to support your argument, in case the Judge got something wrong, missed something important, or misapplied the law. You can and should quote the transcript in your brief.

Writing Your Brief

In addition to the information below, your brief can argue why your case should be heard by three appeals judges and should have a full-written decision. Please see page 4 above for more details.

These are guidelines proposed by the BIA itself, in its *Practice Manual*.¹

“A brief advises the Board (BIA) 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



¹ The Board of Immigration Appeals PRACTICE MANUAL is available at:
<http://www.usdoj.gov/eoir/vll/qapracmanual/apptmtn4.htm>.

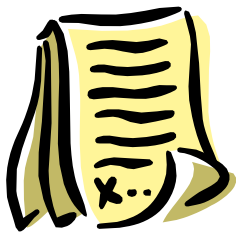
brief should be clear, concise, well-organized, and should cite the record and legal authorities fully, fairly, and accurately.”

The *BIA Practice Manual* continues by saying that “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...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.”²

The following things should be in a legal brief:

(1) A **short statement of the facts**. The BIA manual makes the following points about your statement of facts:³

- o If facts **are not** in dispute, the brief should simply and clearly adopt the facts as set forth in the decision of the Immigration Judge.
- o If facts **are** in dispute, the party’s brief should set the facts out clearly and expressly identify the points of contention.
- o Facts, like case law, require citations. Parties should support factual assertions by citation to the record. Sweeping assertions of fact that are made without citation to their location in the record are not helpful. (Passages in the transcript of proceedings should be cited according to page number, e.g., “Tr. at ____.” 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 ____.”)
- o 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.



(2) A short statement of the “**procedural history**” of the case—when was your first hearing? Where was it? Who was the Judge? What was his or her decision? If the case has been appealed before, remanded, or reopened, you should mention these things also.

(3) A statement of the **issues** that you want the BIA to review

(4) The **standard for review**

- o If you are asking the BIA to review the Immigration Judge’s findings of fact, then the standard of review is “**Clearly Erroneous**.” This is a high standard. In other words, the

² Board of Immigration Appeals, PRACTICE MANUAL, Chapter 4, p. 52.

³ Board of Immigration Appeals, PRACTICE MANUAL, Chapter 4, p. 54.

BIA will not overturn the Judge's finding unless it was so clearly wrong that it *has* to be overturned.

- o If you are asking the BIA to review the Immigration Judge's conclusions, then the standard of review is "**De Novo**," which means that the BIA can look at the case with fresh eyes.

- (5) A **summary of the argument** (in a few sentences)
- (6) The **argument** itself—this is the main part of your brief (see "Making Your Argument" below).
- (7) A short **conclusion** stating precisely what you are asking for (for example, reversal of the Judge's decision, an opportunity to remand the case for more fact-finding, etc.)

Making Your Argument

It is important to organize your argument. Do you have more than one argument? If you do, address each argument separately.

An effective way to write an argument is to

- 1) state the issue
- 2) say what the law is about that issue
- 3) apply the law to your situation
- 4) write a concluding sentence that restates why your argument is correct

For example:

Perhaps you are an asylum-seeker. You fled your country without time to gather any of your identification documents, and in court, you could only show the Judge a photocopy of your student ID card. The Judge denies your asylum case, and in her opinion she points out your lack of documents. You know (from research, or from talking to a lawyer at some point) that the Judge cannot deny your case for this reason. You could write something like this:

The Immigration Judge also denied my asylum application because I had so few identity documents. Lack of documentation is not a valid reason to deny an asylum claim, since many people are forced to flee for their lives before they have time to gather their belongings together. I, too, fled in a hurry, and did not believe it was safe for me to go back to my house to get my documents or other belongings. Because I am an asylum-seeker who fled in a hurry, the Immigration Judge was wrong to hold my lack of documents against me.

Notice how in this example, one paragraph covered all four parts of the argument:

- **Statement of the issue:** *The Immigration Judge also denied my asylum application because I had so few identity documents.*
- **Statement of the law:** *Lack of documentation is not a valid reason to deny an asylum claim, since many people are forced to flee for their lives before they have time to gather their belongings together.*

- Application of the law to the facts of your case: *I, too, fled in a hurry, and did not believe it was safe for me to go back to my house to get my documents or other belongings.*
- Conclusion: *Because I am an asylum-seeker who fled in a hurry, the Immigration Judge was wrong to hold my lack of documents against me.*

Practical Issues

Length: A brief can be any length, but the BIA suggests limiting your brief to roughly 25 pages. **Make sure each page is numbered.**

Format:

- Standard size paper (8 ½" x 11")
- Black (or dark) ink
- Readable font (Times Roman 12 Point is recommended) or print neatly (if you do not have access to a computer and/or typewriter)
- Text should be double-spaced
- Footnotes should be single-spaced

Cover Page (See Attachment 5 for an example)

The cover page should include:

- Your name followed by either "Respondent" (for removal, bond, and deportation proceedings) or "Applicant" (for exclusion proceedings)
- Your address
- Your A-Number
- Title (for example "Respondent's Brief on Appeal" or "Respondent's Motion to Reopen")
- The type of proceeding (Removal, Deportation, Exclusion, Bond, Visa Petition, etc)

Signature: If you wrote your own brief, you should sign it (at the end of the document).

A-Number: Your a-number should appear on the cover page of the brief and on the bottom right corner of every additional page.

<h3>How to File Your Brief</h3>
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When you have completed your brief, you need to send it to the BIA. You also need to send a copy to the DHS government lawyer (the same one you sent a copy of your Notice of Appeal). Make sure that the brief arrives in Virginia **on the due date**. It is *not* enough for the brief to be postmarked by the due date—it actually needs to arrive on or before that date. Try to send the brief in a way that proves you sent it, for example, by certified mail. Keep a receipt of the mailing.

Checklist for Submitting Your Brief

1. Send the BIA:
 - ✓ An original copy of your brief (including a cover sheet, and your signature)

- ✓ Proof of Service (proof that you sent a copy to the DHS lawyer). There is a sample “Certificate of Service” included as **ATTACHMENT 6**. In the form, fill in your name, the name of the lawyer, their address, and the date you mailed or delivered the brief. Be sure to sign the form.

Mail these to:

Board of Immigration Appeals
Office of the Chief Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 20530-0001

2. Send the DHS government Lawyer:
 - ✓ A copy of your brief

Mail this to the DHS government Lawyer at the same address you used for your Notice of Appeal.

3. And keep a copy for yourself!

GOOD LUCK WITH YOUR APPEAL!



Attachments

- ATTACHMENT 1: NOTICE OF APPEAL (EOIR-26) (Revised October 2013)
- ATTACHMENT 2: FEE WAIVER REQUEST (EOIR-26A) (Revised October 2013)
- ATTACHMENT 3: SAMPLE CERTIFICATE OF TRANSLATION (Revised October 2013)
- ATTACHMENT 4: CHANGE OF ADDRESS FORM (EOIR-33/BIA) (Revised October 2013)
- ATTACHMENT 5: NOTICE REGARDING CASE STATUS HOTLINE (Revised October 2013)
- ATTACHMENT 6: SAMPLE CERTIFICATE OF SERVICE (Revised October 2013)
- ATTACHMENT 7: SAMPLE COVER PAGE (Revised October 2013)
- ATTACHMENT 8: ADDRESSES (Revised October 2013)
- ATTACHMENT 9: PHONE NUMBERS & TELEPHONE INFORMATION (Revised October 2013)

Attachment 1

Notice of Appeal (EOIR-26) (Revised October 2013)

GENERAL INSTRUCTIONS

(Please read carefully before completing and filing Form EOIR-26)

A. When to Appeal:

- Use this form (Form EOIR-26) only to appeal a decision by an **Immigration Judge**. If you wish to appeal a decision of the U.S. Citizenship and Immigration Services (USCIS), you must use a different form (Form EOIR-29).
- You must send the Notice of Appeal so that it is **received** by the Board within thirty (30) calendar days after the Immigration Judge's oral decision, or within thirty (30) calendar days after the date the Immigration Judge's written decision was mailed (if no oral decision was rendered).
- Simply mailing your Notice of Appeal in thirty (30) days or less is not enough. Your Notice of Appeal must **arrive** at the Board in thirty (30) days or less. If your Notice of Appeal arrives late, your appeal will be dismissed.

B. Where to Appeal:

<i>To send by courier or overnight delivery service, or to deliver in person, use this address:</i>	Board of Immigration Appeals Clerk's Office 5107 Leesburg Pike, Suite 2000 Falls Church, VA 20530	<i>To send by regular first-class mail use this address:</i>	Board of Immigration Appeals Clerk's Office 5107 Leesburg Pike, Suite 2000 Falls Church, VA 20530
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C. How to Appeal:

- Read all of these instructions. **Note:** If you are the person in proceedings, you are the "Respondent" or "Applicant." You are also the "Appellant" if you are filing an appeal of a decision by an Immigration Judge.
- Fill out all three pages of the Notice of Appeal completely, answering items # 1 - 12 **in English only**.
- List in item # 1 the name(s) and Alien Number(s) ("A" numbers) of **all** Respondents/Applicants who are appealing the decision of the Immigration Judge.
- Sign item # 9.
- List the mailing address of the Respondent(s)/Applicant(s) in item # 10.
- Translate all documents that you attach to the Notice of Appeal into English. All translations must include the translator's statement stating that the translator is competent and that the translation is true and accurate.
- Write your name(s) and "A" Number(s) on all documents attached to the Notice of Appeal.
- Mail or give a copy of the completed Notice of Appeal and any attached documents to the opposing party. Complete and sign the "Proof of Service" to show you did this (item # 12). **Note:** If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of the U.S. Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS).
- Your appeal may be rejected or dismissed if you fail to properly complete the "Proof of Service" (item # 12).

D. Paying for the Appeal:

- Attach a check or money order to the Notice of Appeal for exactly one hundred and ten dollars (U.S. \$110) made payable to "United States Department of Justice." All checks must be drawn on a bank located in the United States. If there are not sufficient funds in your account, your appeal may be dismissed.

- Write the name(s) and “A” Number(s) of all Respondent(s)/Applicant(s) on the check or money order.
- If you cannot pay for the appeal, complete a Fee Waiver Request (Form EOIR-26A) and attach it to the Notice of Appeal. The Board will review your request and decide whether to allow the appeal without payment of the fee.
- Your appeal may be rejected or dismissed if you fail to submit a fee or a properly completed Fee Waiver Request (Form EOIR-26A).

E. Lawyer or Representative Allowed:

- You may be represented by an attorney or representative who is authorized to appear before the Board. The Government will not pay for your attorney or representative, and an attorney or representative will not be provided to you.
- If you are represented by an attorney or authorized representative, he or she **must** file, **with** the Notice of Appeal, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

F. Specify Reasons for the Appeal:

- Give specific details why you disagree with the Immigration Judge’s decision.
- Most appeals are reviewed by a single Board Member. If you assert that your appeal warrants review by a three-Board Member panel, you may identify the specific factual or legal basis for your contention.

Cases will be reviewed by a three-member panel only if the case presents one of these circumstances:

- 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 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; or
 - The need to reverse the decision of an Immigration Judge other than a reversal under 8 C.F.R. § 1003.1(e)(5) (i.e., permitting a single Board Member to reverse a decision that has been affected by changes in statutes, regulations or case law.)
- Specify the finding(s) of fact, the conclusion(s) of law, or both, that you are challenging. If a question of law is presented, cite supporting legal authority. If the dispute is over the findings of fact, identify the specific facts you are challenging.
 - Where the appeal concerns discretionary relief, state whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion. Identify the specific factual and legal findings you are challenging.
 - If you do not give specific reasons, with details, in item # 6, or in attachments to your Notice of Appeal, the Board may dismiss your appeal on that basis alone.

G. Briefs:

- Indicate in item # 8 whether you intend to file an additional written brief or statement at a later date. The Board will send you a briefing schedule and, when appropriate, a transcript of the testimony.
- Even if you intend to file an additional brief or statement at a later date, you still must give detailed reasons for your appeal on the Notice of Appeal in item # 6 and attachments.

H. Oral Argument:

- If you ask for oral argument in item # 7, the Board will notify you if your request is granted.
- Even if you ask for oral argument, you still must give detailed reasons for your appeal on the Notice of Appeal in item # 6 and attachments.

- The Board ordinarily will not grant a request for oral argument unless you also file a brief.
- If you request oral argument, you should also state in item # 6 why you believe your case warrants review by a three-member panel.

I. Change of Address:

- If you move after sending your Notice of Appeal to the Board, you must give your new address **to the Board** within five (5) working days after you move. Use an alien's Change of Address Form (Form EOIR-33/BIA).
- Attorneys or representatives must also let the Board know if they change addresses or phone numbers, using Form EOIR-27. An attorney's or representative's change of address notification is only effective for the case in which it is submitted.

J. Further Information:

- For further guidance please see the Board of Immigration Appeals *Practice Manual*, which is available on the EOIR website at www.justice.gov/eoir.

K. Paperwork Reduction Act:

- Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is thirty (30) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 20530.

L. Privacy Act Notice:

- The information on this form is authorized by 8 C.F.R. §§ 1003.3, 1003.38 in order to appeal a decision of an Immigration Judge to the Board of Immigration Appeals. The information you provide is required to appeal the decision and failure to provide the requested information may result in denial of your request. EOIR may share this information with others in accordance with approved routine uses described in EOIR systems of records notices.

Departure From the United States:

If you leave the United States after an Immigration Judge's decision in removal or deportation proceedings, but before you appeal the decision to the Board, you may have waived your right to appeal. If you leave the United States after filing an appeal with the Board, but before the Board decides your appeal, your appeal may be withdrawn and the Immigration Judge's decision put into effect as if you had never filed an appeal.

Summary Dismissal of Appeal:

The Board may summarily dismiss any appeal or portion of any appeal in which: (1) The appellant fails to specify the reasons for the appeal (see Part F); (2) The only reason specified by the appellant for his/her appeal involves a finding of fact or conclusion of law that was conceded by him/her at a prior proceeding; (3) The appeal is from an order that granted the appellant the relief that had been requested; (4) The appeal is filed for an improper purpose, such as unnecessary delay, or lacks an arguable basis in fact or law, unless the Board determines that it is supported by a good faith argument for extension, modification, or reversal of existing law; (5) The appellant indicates on Form EOIR-26 that he/she will file a separate brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his/her failure to do so, within the time set for filing (see Part G); (6) The appeal does not fall within the Board's jurisdiction or jurisdiction lies with the Immigration Judge rather than the Board; (7) The appeal is untimely or barred by an affirmative waiver of the right to appeal that is clear on the record; or (8) The appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

WARNING! You must:

- Sign the Notice of Appeal (item # 9).
- Include the fee or Fee Waiver Request (Form EOIR-26A).
- Complete and sign the Proof of Service.
- Make sure your appeal is **received** at the Board on or before the filing due date.

Notice of Appeal from a Decision of an
Immigration Judge

Staple Check or Money Order Here. Include Name(s) and
"A" Number(s) on the face of the check or money order.

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

For Official Use Only



WARNING: Names and "A" Numbers of **everyone** appealing the Immigration Judge's decision must be written in item #1. The names and "A" numbers listed will be the only ones considered to be the subjects of the appeal.

2. I am ☐ the Respondent/Applicant ☐ DHS-ICE (Mark only one box.)

3. I am ☐ DETAINED ☐ NOT DETAINED (Mark only one box.)

4. My last hearing was at _____ (Location, City, State)

5. What decision are you appealing?

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

☐ I am filing an appeal from the Immigration Judge's decision in **merits proceedings** (example: removal, deportation, exclusion, asylum, etc.) dated _____.

☐ I am filing an appeal from the Immigration Judge's decision in **bond proceedings** dated _____ . (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? ☐ Yes. ☐ No.)

☐ I am filing an appeal from the Immigration Judge's decision **denying a motion to reopen or a motion to reconsider** dated _____ .

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

6. State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.

(Attach additional sheets if necessary)



WARNING: You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? ☐ Yes ☐ No
8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? ☐ Yes ☐ No



WARNING: If you mark "Yes" in item #7, you should also include in your statement above why you believe your case warrants review by a three-member panel. The Board ordinarily will not grant a request for oral argument unless you also file a brief.

If you mark "Yes" in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule..

9.



X

Signature of Person Appealing
(or attorney or representative)

Date

10.

Mailing Address of Respondent(s)/Applicant(s)

(Name)

(Street Address)

(Apartment or Room Number)

(City, State, Zip Code)

(Telephone Number)

11.

Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s)

(Name)

(Street Address)

(Suite or Room Number)

(City, State, Zip Code)

(Telephone Number)

NOTE: You must notify the Board within five (5) working days if you move to a new address or change your telephone number. You must use the Change of Address Form/Board of Immigration Appeals (Form EOIR-33/BIA).

NOTE: If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

12.

PROOF OF SERVICE (You Must Complete This)

I _____ mailed or delivered a copy of this Notice of Appeal
(Name)

on _____ to _____
(Date) (Opposing Party)

at _____
(Number and Street, City, State, Zip Code)



X

Signature

NOTE: If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS - ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed.

WARNING: If you do not attach the fee or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.

HAVE YOU?

- ☐ Read all of the General Instructions
- ☐ Provided all of the requested information
- ☐ Completed this form in English
- ☐ Provided a certified English translation for all non-English attachments
- ☐ Signed the form

- ☐ Served a copy of this form and all attachments on the opposing party
- ☐ Completed and signed the Proof of Service
- ☐ Attached the required fee or Fee Waiver Request
- ☐ If represented by attorney or representative, attach a completed and signed EOIR-27

Attachment 2

Fee Waiver Request (EOIR-26A)

(Revised October 2013)

Fee Waiver Request

Name: _____

Alien Number ("A" Number): _____

If more than one alien is included in your appeal or motion, only the lead alien need file this form. This form is to be signed by the alien, not the alien's attorney or representative of record.

I, _____, declare under penalty of perjury, pursuant to 28 U.S.C. section 1746, that I am the person above and that I am unable to pay the fee. I believe that my appeal/motion is valid, and I declare that the following information is true and correct to the best of my knowledge:

Assets

Wages, Salary \$ _____ /month

Other Income _____ /month
(business, professional services,
self-employed/independent contracting,
rental payments, etc.)

Cash _____

Checking and/or Savings _____

Property _____
(real estate, automobile(s),
stocks, bonds, etc.)

Other Financial Support _____ /month
(public assistance, alimony,
child support, gift, parent,
spouse, other family members, etc.)

Expenses (including dependents)

Housing \$ _____ /month
(rent, mortgage, etc.)

Food _____ /month

Medical/Health _____ /month

Utilities _____ /month
(phone, electric, gas,
water, etc.)

Transportation _____ /month

Debts, Liabilities _____ /month

Other _____ \$ _____ /month
(specify)

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is one (1) hour. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 20530.

Signature of Alien

Date

Privacy Act Notice

The information on this form is requested to determine if you have established eligibility for the fee waiver you are seeking. The legal right to ask for this information is located at 8 C.F.R. § 1003.8(a)(3). EOIR may provide this information to other Government agencies. Failure to provide this information may result in denial of your request.

Attachment 3

Sample Certificate of Translation

(Revised October 2013)

APPENDIX H

Sample Certification 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)

Attachment 4

Change of Address Form (EOIR-33/BIA)

(Revised October 2013)

**Alien's Change of Address Form/
Board of Immigration Appeals**

Who should use this form: Use this form for a change of address if you have filed an appeal or motion with the Board of Immigration Appeals. *Note:* If you are an attorney representing a person before the Board, do not use this form to indicate your own change of address; use Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative Before the Board).

When to use this form: If you move, the law requires you to file this Change of Address Form with the Clerk's Office of the Board of Immigration Appeals. You must file this form within five (5) working days of a change in your address. Even if you have an attorney or representative, you should file this form with the Board every time you change your address. You should also file this form if you get a new telephone number.

How to use this form:

1. Complete the Change of Address Form below.
2. Send a copy of this form to the Office of the Chief Counsel for the Department of Homeland Security (DHS) (Immigration and Customs Enforcement-ICE), and complete and sign the "Proof of Service" below to show you did this.
3. Send this form to the Board of Immigration Appeals. Follow the mailing instructions on the back of this form.
4. If you prefer to file this form in person, you may bring it to the Board of Immigration Appeals, Clerk's Office, 5107 Leesburg Pike, Suite 2000, Falls Church, Virginia, 20530.

Name: _____ Alien Number: A _____

My OLD address was:

("In care of" other person, if any)

(Number, Street, Apartment)

(City, State and ZIP Code)

(Country, if other than U.S.)

My NEW address is:

("In care of" other person, if any)

(Number, Street, Apartment)

(City, State and ZIP Code)

(Country, if other than U.S.)

(New Telephone Number)



SIGN HERE →

X

Signature

Date

PROOF OF SERVICE (You Must Complete This)

I _____ mailed or delivered a copy of this Change of Address Form on _____ to the
(Name) (Date)

Office of the Chief Counsel for the DHS (U.S. Immigration and Customs Enforcement-ICE) at _____
(Number and Street, City, State, Zip Code)



SIGN HERE →

X

Signature

MAILING INSTRUCTIONS

- 1) *Fold the page at the dotted lines marked "Fold Here" so that the address is visible.
(IMPORTANT: Make sure the address section is visible after folds are made.)*
- 2) *Secure the folded form by stapling along the open end marked "Fasten Here."*
- 3) *Place appropriate postage stamp in the area marked "Place Stamp Here."*
- 4) *Write in your return address in the area marked "PUT YOUR ADDRESS HERE."*
- 5) *Mail the form.*

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is three (3) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 20530.

Fold Here First

PUT YOUR ADDRESS HERE

Place
Stamp
Here

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Clerk's Office

5107 Leesburg Pike, Suite 2000

Falls Church, Virginia 20530

Fold Here Second

Fasten Here

Attachment 5

Notice Regarding Case Status Hotline

(Revised October 2013)

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
(240) 314-1500

The Automated Status Query System contains information regarding your case, including your next hearing date, asylum proceeding, 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.

Attachment 6

Sample Certificate of Service

(Revised October 2013)

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 each alien)

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)

Attachment 7

Sample Cover Page (Revised October 2013)

APPENDIX F

Sample Cover Page

<p>A. Torney, Esquire 1234 Center Street Anytown, ST 99999</p>	<p style="text-align: right;">DETAINED</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <i>Detention Status. If the alien is detained, the word "DETAINED" should appear prominently in the top right corner, preferably highlighted.</i> </div>
<p>UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW BOARD OF IMMIGRATION APPEALS</p>	
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>In the Matter of:</p> <p>Jane Smith</p> <p>John Smith</p> <p>Jill Smith</p> <p>In removal proceedings</p> <hr style="border: 0; border-top: 1px solid black; margin-top: 5px;"/>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <i>Court. The Board prefers that filings be addressed in this way.</i> </div> <div style="display: flex; align-items: center; justify-content: space-between;"> <div style="width: 40%;"> <p>File Nos.:</p> </div> <div style="width: 60%;"> <p>A012 345 678</p> <p>A012 345 679</p> <p>A012 345 680</p> </div> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <i>A numbers. The alien registration number of <u>every</u> person included in the appeal or motion should be listed.</i> </div>
<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <i>Names and type of proceeding. The full name of <u>every</u> alien included in the appeal or motion should be listed.</i> </div> <p style="text-align: center;">RESPONDENTS' MOTION TO REOPEN</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <i>Filing title. The Board prefers that the title of the brief or motion be placed in the middle and bottom of the page.</i> </div>	

Attachment 8

Addresses

(Revised October 2013)

APPENDIX A

Board of Immigration Appeals Mailing Address

The Board uses a single address for delivery regardless of the means of delivery. Parties should use the following street address:

Board of Immigration Appeals
Clerk's Office
5107 Leesburg Pike, Suite 2000
Falls Church, VA 20530

Reminders:

- 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.
- Use caution when there is a filing deadline.
- Deadlines are determined by when the mailing is received by the Clerk's Office.

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."

Attachment 9

Phone Numbers and Telephone Information (Revised October 2013)

APPENDIX B

Directory

Automated Status Query System (ASQ).....(800) 898-7180 or (240) 314-1500
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. (Eastern Time), Monday – Friday, except holidays

Emergency Stay Coordinator.....(703) 306-0093
9:00 a.m. to 5:30 p.m. (Eastern Time), Monday – Friday, except holidays

Emergency Stay Telephonic 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. (Eastern Time), Monday – Friday, except holidays

Recognition & Accreditation Program Coordinator.....703) 305-9029
8:00 a.m. to 4:30 p.m. (Eastern Time), Monday – Friday, except holidays

Law Library and Immigration Research Center (LLIRC).....(703) 605-1103
9:00 a.m. to 4:00 p.m. (Eastern Time), Monday – Friday, except holidays

Office of the General Counsel, EOIR.....(703) 305-0470
9:00 a.m. to 5:00 p.m. (Eastern Time), Monday – Friday, except holidays

Office of Legislative and Public Affairs, EOIR.....(703) 305-0289
9:00 a.m. to 5:00 p.m. (Eastern Time), Monday – Friday, except holidays

Internet Address.....www.justice.gov/eoir



American Bar Association Commission on Immigration
1050 Connecticut Avenue, NW, Suite 400
Washington, DC 20036

Telephone: (202) 442-3363
e-mail: immcenter@americanbar.org
www.americanbar.org/immigration