

Board of Immigration Appeals Review of Immigration Judge Removal Orders: Procedures, Standards, and Remedies

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FINDINGS

BOARD OF IMMIGRATION APPEALS REVIEW OF IMMIGRATION JUDGE REMOVAL ORDERS: PROCEDURES, STANDARDS, AND REMEDIES

Executive Summary

When an immigration judge issues a removal order denying relief or ordering deportation, a respondent (or the Department of Homeland Security) may appeal to the Board of Immigration Appeals, the highest administrative body in immigration law[12][33]. This report addresses the complete procedural and substantive framework governing Board of Immigration Appeals appeals from immigration judge decisions, with particular emphasis on cases involving Asylum Cooperative Agreements (ACAs), which have become a major feature of contemporary removal proceedings. The core question-"Can the removal order be appealed?"-has a straightforward answer: yes, through a Notice of Appeal filed within 30 calendar days of the immigration judge's decision. However, the practical execution of a successful appeal involves understanding the precise regulatory requirements, the applicable standards of review, the automatic stay of removal that protects a respondent during the appeal, the types of relief the Board can grant, and the strategic positioning for potential federal court review. This report synthesizes binding legal authorities, current Board precedent, and procedural guidance to provide a comprehensive roadmap for practitioners and immigrants navigating the appellate process in the Executive Office for Immigration Review.

The Board of Immigration Appeals: Jurisdiction, Authority, and Structure

Understanding the Board of Immigration Appeals and Its Role in Immigration Proceedings

The Board of Immigration Appeals sits at the apex of administrative immigration review, positioned as the Attorney General's appellate body within the Executive Office for Immigration Review[12][33]. Unlike immigration judges, who conduct hearings and make initial factual and legal determinations in removal, asylum, bond, and related proceedings, the Board functions almost exclusively through written review of the administrative record[33]. The Board does not typically conduct courtroom proceedings or hear live testimony; instead, it evaluates whether the immigration judge applied the law correctly to the facts in the case[33]. The Board's jurisdiction encompasses decisions rendered by immigration judges in a broad array of proceedings, including removal proceedings, deportation proceedings, exclusion proceedings, asylum-only proceedings, bond and custody determinations, and motions to reopen or reconsider prior decisions[12]. The Board's authority extends nationwide, and Board decisions are binding on all immigration judges and Department of Homeland Security officers unless reversed by a federal court or the Attorney General[12][33].

The distinction between the Board's authority and its limitations matters significantly for appellants. The Board does not have jurisdiction over certain determinations, such as the length of voluntary departure granted by an immigration judge, credible fear determinations made by asylum officers or immigration judges, reasonable fear determinations, applications for advance parole, or employment-based immigrant visa petitions[12]. For respondents in removal proceedings where relief has been denied, the Board's appellate authority is broad and covers the vast majority of issues that might arise at the immigration court level, making the Board appeal the critical next step after an unfavorable immigration judge decision[12].

Scope of Review: The Standards That Govern Board Examination

The Board does not conduct a de novo review of the entire administrative record[1][9][12][41]. Rather, the Board applies distinct standards depending on the nature of the issue raised on appeal[9][41]. When an immigration judge makes findings of fact-determinations about what events occurred, what a witness said, whether the respondent's testimony was truthful-the Board applies the "clearly erroneous" standard[1][12][41]. This standard is highly deferential to the immigration judge. The Board will not reverse a factual finding merely because it would have weighed the evidence differently or reached a different conclusion had it been the factfinder[37]. Instead, the factual finding is clearly erroneous only if the Board is "left with the definite and firm conviction that a mistake has been committed"[37]. This demanding standard means that many factual determinations, even those the Board might view skeptically, will be upheld on appeal[37][41].

In contrast, when questions of law are at issue-meaning the proper interpretation of a statute, regulation, or legal principle-the Board applies a de novo standard of review[1][12][41]. The Board reviews legal conclusions and questions of law anew, without deference to the immigration judge's legal reasoning[9][41]. This includes the Board's independent assessment of whether the immigration judge applied the correct legal standard and whether legal conclusions flowed from the established facts[9][41]. Discretionary determinations-such as whether a respondent merits asylum or cancellation of removal-are also reviewed de novo[1][41]. The Board may make its own assessment of whether discretionary relief was properly denied[1][41]. Mixed questions of law and fact, which involve applying a legal standard to established facts, are often subject to a bifurcated review: the Board defers to factual findings but reviews independently the application of law to those facts[9][41].

Procedural Requirements: Filing a Notice of Appeal with the Board

Initiating the Appeal: Form EOIR-26 and Essential Content

The mechanism for appealing an immigration judge's decision is straightforward: the respondent (or DHS, if appealing a decision favorable to the respondent) must file a completed and executed Notice of Appeal (Form EOIR-26)[1][4][19][22]. This form is the exclusive vehicle for initiating a Board appeal from an immigration judge's decision; a party cannot file an appeal with the Department of Homeland Security or the immigration court itself, as those entities lack appellate authority over immigration judge decisions[1][4]. The Notice of Appeal must be filed directly with the Board of Immigration Appeals[1].

Form EOIR-26 requires respondents to provide specific information to ensure the appeal is properly processed[1][4][19][22]. The form demands the alien registration number (A number) of every person included in the appeal; this information is critical and must be accurate, as the names and A numbers listed will be the only parties considered as subjects of the appeal[1][4][19][22]. The respondent must clearly specify the type of proceeding being appealed-whether removal, deportation, exclusion, asylum, bond, denial of a motion to reopen, or denial of a motion to reconsider[1][4][19][22]. The respondent must also indicate the date of the immigration judge's decision, either the oral decision date or the date of the written order[1][4][19][22].

The Notice of Appeal must include a concise but specific statement of the grounds for appeal[1][4][19][22]. Generic recitations of law or vague assertions of immigration judge error will not suffice; the Board has made clear 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"[1]. The respondent must identify which specific

findings of fact or conclusions of law are being challenged[1][4][19][22]. If the appeal concerns discretionary relief, the respondent should specify whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion[1]. If questions of law are involved, the respondent should cite supporting legal authority[1][19][22]. The space provided on the form for grounds of appeal is not a rigid limit; additional pages may be attached if necessary, provided they are clearly labeled with the respondent's name and A number[1].

The Board has emphasized that failure to specify reasons for appeal with adequate detail constitutes grounds for summary dismissal of the appeal[1][3][19][22][51]. A party indicating on the Notice of Appeal that a brief will be filed but then failing to file that brief within the Board's timeline risks summary dismissal as well[1][19][22]. Thus, the initial Notice of Appeal filing must contain sufficient information to permit the Board to understand the basis for the appeal, even if a more detailed brief is to follow[1].

Filing Location, Method, and Fee Payment

The Notice of Appeal must be filed directly with the Board of Immigration Appeals, not with the immigration court, DHS, or any other entity[1][4]. The form must be signed by the respondent, by the respondent's attorney or accredited representative if one is retained[1][4][19][22]. If represented, the respondent must also file a completed Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27)[1][19][22]. The original Notice of Appeal should be filed, and additional copies are not required, though a copy should be served on the Department of Homeland Security and the respondent should retain a copy for personal records[4].

As of the current regulatory framework, the filing fee for a Notice of Appeal from an immigration judge decision in merits proceedings (removal, asylum, withholding, etc.) is \$1,030.00[43][46]. This fee must accompany the Notice of Appeal, or the respondent must submit a completed and signed Fee Waiver Request (Form EOIR-26A) if unable to pay[1][4][19][22][43]. The respondent's appeal may be rejected or dismissed if the fee or proper fee waiver request is not included[1][19][22][43]. For respondents granted a fee waiver, if the waiver request is later denied and found insufficient to establish inability to pay, the Board provides a 15-day cure period to resubmit the appeal with the fee or a new fee waiver request[13].

Proof of Service and Address Updates

The respondent must complete and sign a proof of service, certifying that a copy of the Notice of Appeal has been served on the Department of Homeland Security[4][19][22]. This service requirement ensures that the government is notified of the appeal and has an opportunity to file its own brief in response. The respondent must maintain a current address with the Board and must notify the Board within five working days of any change of address or telephone number using Form EOIR-33/BIA[1][4][19][22].

Temporal Requirements: The Critical 30-Day Deadline

The 30-Calendar-Day Filing Deadline and Its Calculation

The single most important procedural deadline in immigration appeals is the requirement that a Notice of Appeal be filed no later than 30 calendar days after the immigration judge renders an oral decision or mails a written decision[1][4][13]. This deadline is not a suggestion or a guideline; it is jurisdictional and mandatory[13][31]. If the Notice of Appeal is not received by the Board's Clerk's Office within this 30-day window, the appeal is barred as untimely, and the Board loses jurisdiction to review the immigration judge's

decision[1][3][13][19][22][51]. When the deadline passes without a timely appeal, the immigration judge's decision becomes final, the removal order becomes executory, and the respondent may be detained and removed immediately[13][14][37].

The computation of the 30-day period follows regulatory guidelines outlined in the Board's procedural regulations[13]. The day the immigration judge renders the oral decision or the day the written decision is mailed is not counted as the first day; the 30-day period begins on the following day[13]. The Board does not follow the "mailbox rule" used in some federal litigation contexts; instead, it calculates deadlines according to the time of actual receipt at the Board's Clerk's Office[13]. Therefore, depositing the Notice of Appeal in the mail on the 30th day, even if it will arrive at the Board's office within a few days, does not satisfy the filing deadline[13]. The Notice of Appeal must actually be received by the Board on or before the 30th calendar day[1][4][13]. This timing requirement applies equally to all parties, including persons detained by DHS or other federal or state authorities[13].

Automatic Stay of Removal During the Appeal Period

A critical protection exists during the appeal period: the removal order is automatically stayed during the 30-day period for filing an appeal, and this stay continues during the Board's adjudication of the appeal if an appeal is timely filed[23][27]. During this automatic stay period, DHS cannot deport the respondent[23][27]. This protection operates without the need for a written stay order; the stay is automatic by operation of regulation[23][27]. However, the stay does not apply if the respondent waived the right to appeal by stipulating to the removal order or by expressly declining to appeal when the immigration judge offered the opportunity[23][27].

If the respondent timely files an appeal, the stay of removal continues during the entire time the Board is considering the appeal[23][27]. The removal order becomes final and the stay is lifted only when the Board issues a final decision in the case[23][27]. This means that a respondent with a pending Board appeal cannot be removed from the United States, even if the immigration judge's removal order would otherwise be immediately executable[4][14][23][27]. This stay is exceptionally valuable, particularly for respondents who may have work authorization tied to their immigration status or who are working to gather additional evidence for the appeal.

Limited Extensions and Equitable Tolling

The Board has determined that, as a general rule, it does not have authority to extend the 30-day deadline for filing an appeal[13]. The deadline is fixed and mandatory. However, there are limited exceptions. If the Board determines that an unplanned outage of its electronic case filing system (ECAS) has occurred on the last day for filing, the deadline is extended until the first day of system availability that is not a Saturday, Sunday, or legal holiday[13]. Planned system outages do not extend the deadline, as parties can plan around those dates[13]. Additionally, if a party submits a fee waiver request that is later found insufficient to establish inability to pay, the Board will reject the appeal and issue a rejection notice; the filer then has 15 days to resubmit the appeal with the fee or a new fee waiver request, and the filing deadline is tolled (suspended and extended) during this 15-day cure period[13].

More significantly, the Board has recognized that the principles of equitable tolling apply as an exception to the 30-day deadline[13]. Equitable tolling allows a late appeal to be accepted in extraordinary circumstances where a party has exercised diligence in attempting to file but an extraordinary circumstance prevented timely filing[13]. This exception is narrow and is not routinely granted. To invoke equitable tolling, the party must establish two elements: (1) diligence in the filing of the Notice of Appeal, and (2) that an extraordinary

circumstance prevented the timely filing[13]. A party seeking equitable tolling must file the Notice of Appeal accompanied by a written motion entitled "MOTION TO ACCEPT LATE APPEAL," which must clearly establish both diligence and the extraordinary circumstance[13]. The motion should be supported by affidavits, declarations, and other evidence demonstrating why the timely filing was impossible despite the party's good-faith efforts[13].

Examples of circumstances that might support equitable tolling are limited and high-bar: severe and unexpected illness of counsel or the respondent rendering them unable to file; natural disasters or other events beyond the party's control that prevented access to the document; or extraordinary circumstances such as incarceration or institutionalization that prevented communication. Lack of diligence, inadequate legal representation without more, failure to properly monitor deadlines, or simple negligence in missing the deadline do not qualify[13]. The Board will determine whether equitable tolling is appropriate after reviewing the motion and evidence submitted.

Asylum Cooperative Agreements: Understanding the ACA Context

Definition and Operation of Asylum Cooperative Agreements

The term "ACA" in the context of EOIR proceedings refers to Asylum Cooperative Agreements[2][8][11][25][28]. These are bilateral or multilateral agreements between the United States and countries including El Salvador, Guatemala, and Honduras-collectively referred to as the Northern Triangle nations[2][8][11]. Under an ACA, the United States may remove certain asylum seekers who arrive at the U.S.-Mexico border to one of the agreement countries to pursue asylum there rather than in the United States[2][8][10][11]. The ACA framework represents a significant development in removal proceedings, as it creates a legal bar-the "safe third country bar"-that can preclude asylum applications before the merits of a respondent's claim are even considered[8][11][25][28].

The safe third country bar derives from section 208(a)(2)(A) of the Immigration and Nationality Act[8][25]. Under this provision, an alien may be deemed ineligible to apply for asylum if the Attorney General determines that the alien may be removed to a country (other than the respondent's country of origin) where the alien has access to a "full and fair procedure" for determining asylum claims and where the alien's "life or freedom" would not be threatened[8][25]. For ACAs to apply, the alien must not be a national of the country to which removal is contemplated, must have access to a full and fair asylum procedure there, and the country must be "safe" in the statutory sense[2][8].

Immigration judges are required by regulation to determine whether the safe third country bar applies under an ACA prior to and separate from considering the respondent's eligibility for asylum[8][11][25][28]. If DHS claims that an ACA bars the respondent, the immigration judge must conduct a threshold determination of whether the bar actually applies[8][25][28]. This threshold analysis is distinct from and precedes the substantive asylum hearing[8][11][25][28]. The respondent has the burden of demonstrating that the safe third country bar does not apply to them[8][25][28]. If the respondent meets this burden, the immigration judge proceeds to the merits of the asylum application[8][25][28]. If the respondent does not meet the burden, the bar applies, and the immigration judge orders removal to the relevant third country without further consideration of the asylum claim[8][25][28].

Pretermission and Abbreviated Hearings in ACA Cases

A significant procedural development in ACA cases involves the concept of "pretermission," which was

clarified in recent Board precedent. In [Matter of C-I-G-M- & L-V-S-G-, 29 I&N Dec. 291 (BIA 2025)][8][25][28], the Board addressed whether immigration judges must conduct full evidentiary hearings before determining whether the safe third country bar applies. The Board held that a full evidentiary hearing is not always required; instead, an abbreviated hearing, typically in a master calendar setting and including consideration of documentary evidence submitted by the respondent, is generally appropriate[8][25][28]. This abbreviated approach facilitates the "threshold screening" function that the ACA rule was designed to serve[8][25][28]. The Board noted that evaluating a respondent's claim of future persecution or torture in a third country is "more straightforward" than undertaking the "complex assessment" required in a full asylum claim, because the respondent typically has no substantial connection to the third country[8].

The prepermission rules are important for appellants challenging ACA-based removals. The Board has held that if the respondent's factual allegations do not establish that it is more likely than not they will be persecuted or tortured in the relevant ACA country, the immigration judge may prepermit the applications for asylum, withholding of removal, and Convention Against Torture protection without a full evidentiary hearing[8][11][25][28]. However, the respondent must have an opportunity to present evidence and be heard regarding the applicability of the safe third country bar[8]. If the respondent meets the burden of demonstrating that the bar does not apply—for example, by establishing that they will more likely than not face persecution in the proposed country of removal—the immigration judge must proceed to consider the merits of the asylum application[8][25][28].

Recent Board Precedent on ACAs and Standards of Review

The Board's decisions in ACA cases have significant implications for appellants seeking to challenge removal orders based on the safe third country bar. In [Matter of C-I-G-M- & L-V-S-G-, 29 I&N Dec. 291 (BIA 2025)][8], the Board clarified that immigration judges lack substantive authority to determine whether a country designated as an ACA country is truly "safe" in the statutory sense. Instead, the immigration judge's role is limited to applying the regulatory framework set forth in [8 C.F.R. § 1240.11(h)][8][25][28]. The Board sustained the government's appeal in that case and remanded because the immigration judge had found that the safe third country bar did not apply based solely on counsel's representations that the respondent feared being harmed in Honduras and on generalized evidence of country conditions there, without making a finding that it was more likely than not the respondent would be persecuted[8][25][28].

Appellants challenging ACA-based removals on Board appeal should be aware that the Board requires individualized, specific evidence of future persecution or torture in the proposed removal country[8][11][28]. Country condition evidence alone, without specific application to the respondent's circumstances, is insufficient[8][28]. The respondent's testimony regarding fear of return to an ACA country, without more, does not establish the requisite burden[8][28]. Instead, the respondent must present evidence showing that, based on their particular circumstances and the conditions in the ACA country, it is more likely than not that they will face persecution or torture if removed there[8][11][28].

Briefing and Appellate Procedures Before the Board

Initial Briefing Schedule and Timing Requirements

After a Notice of Appeal is timely filed and received by the Board, the Board will issue a briefing schedule informing the parties of deadlines for submitting written briefs[1][4][26]. The briefing notice typically includes a deadline for the respondent to file a brief (if the respondent indicated intention to do so on the

Notice of Appeal), the date by which the government must file its brief, and the date by which the respondent may file a reply brief if desired[1][4][26]. The Board will also provide the respondent with the transcript of the immigration court hearing(s), the immigration judge's decision, and any exhibits from the record[1][4][26].

An appeal brief is not mandatory; a respondent may proceed on the Notice of Appeal alone if the grounds stated on that form are sufficiently detailed[1][4][26]. However, most appellants file a brief to develop legal arguments more fully and to address the government's contentions[1][26]. If a respondent indicates on the Notice of Appeal that a brief will be filed, the respondent is bound to file it by the Board's deadline, or the appeal may be summarily dismissed[1][19][22]. If the respondent fails to provide reasons for appeal that are sufficiently specific, the Board may summarily dismiss the appeal on that ground alone[1][3].

Requirements for Appeal Briefs

When a brief is filed, it must comply with the general filing requirements applicable to Board submissions[26]. The brief must be filed directly with the Board, not with DHS or the immigration court[26]. The brief should have a cover page, with the briefing notice stapled on top of the cover page or otherwise attached[26]. The brief must be served on the opposing party (the Department of Homeland Security), and proof of service must be provided[26].

The content and format of the brief are governed by Board regulations and practice[26]. The brief should include a concise statement of facts and procedural history; a statement of the issues presented for review; identification of the standard of review applicable to each issue; a summary of the argument; the argument itself; and a short conclusion stating the precise relief or remedy sought[26]. The brief should recite facts germane to the adjudication of the appeal and cite proper legal authority[26]. The brief should not belabor facts or law that are not in dispute; if the respondent agrees with the immigration judge's recitation of facts or law on certain points, the brief may expressly state that agreement[26].

Briefs must always be paginated and must limit the body of the brief to 30 pages unless otherwise directed by the Board[26]. In computing the page limit, headings, footnotes, and quotations count toward the limit; the statement of facts, procedural history, issues presented, standard of review, summary of argument, argument, and conclusion all count toward the 30-page limit[26]. Items that do not count toward the page limit include the cover page, table of contents, table of citations, signature block, certificate of service, addendum containing statutes or case law, and supporting documentation[26].

Briefs should be signed by the person who prepared the brief; if prepared by a registered attorney or accredited representative, the EOIR ID number should be provided[26]. Captions and cover pages should be used in all filings[26]. When citing text from a brief, the respondent's brief should be cited as "Respondent's brief at [page number]" while the government's brief should be cited as "DHS brief at [page number]"[26]. Exhibits designated during the hearing should be cited as they were designated by the immigration judge[26].

Reply Briefs and Discretionary Acceptance

The Board may, in its discretion, consider a reply brief filed by the respondent in response to the government's brief if specific conditions are met[26]. The reply brief must be accompanied by a "MOTION TO ACCEPT REPLY BRIEF," the motion must assert surprise at assertions made by the government, and the brief must identify and challenge the government's assertions[26]. The motion and reply brief must be filed with the Board within 21 days of the government's brief filing date[26]. This discretionary nature of reply briefs means that practitioners cannot assume the Board will accept them; the request must be made explicitly and must demonstrate genuine surprise or new arguments not previously anticipated[26].

Grounds for Seeking Board Review: Common Categories of Error

Factual Errors and the Clearly Erroneous Standard

Appellants frequently challenge factual findings made by the immigration judge[37][38]. These challenges might involve allegations that the immigration judge misapprehended evidence, made determinations unsupported by the record, or drew inferences from facts that reasonable factfinders would not draw[37][38]. When appealing factual findings, the respondent must remember that the clear error standard is highly deferential[37][38]. The Board will not reverse simply because it would have weighed the evidence differently; the finding must constitute such a clear mistake that the Board is left with a definite and firm conviction that an error was committed[37][38].

Credibility determinations-findings about whether the respondent's testimony was truthful-are particularly difficult to overturn[37][38]. The immigration judge is in the best position to assess witness credibility, having heard testimony in person and observed demeanor[37]. To challenge an adverse credibility finding on appeal, the respondent must make a compelling showing that the finding was fundamentally flawed[37][38]. The Board employs a three-pronged test when assessing credibility findings: it will defer to the immigration judge if (1) the discrepancies or omissions described by the immigration judge are actually present in the record; (2) those discrepancies provide specific and cogent reasons to doubt credibility; and (3) the respondent failed to provide a convincing explanation[38]. If any prong of this test is not satisfied-for example, if the supposed inconsistency does not actually appear in the record, or if the immigration judge failed to give the respondent an opportunity to explain-the credibility finding may be clearly erroneous[38].

When identifying factual errors, appellants should point to specific portions of the record that contradict the immigration judge's finding, explain why the immigration judge's characterization of the evidence was mistaken, and demonstrate how the correct factual finding would support the respondent's legal claim[37]. General assertions that the immigration judge disbelieved or misunderstood testimony are insufficient; the appellant must identify precisely where the error occurred and what the correct finding should be[37][38].

Legal Errors and De Novo Review

Legal errors are reviewed de novo, meaning the Board will apply its independent judgment without deference to the immigration judge's legal reasoning[1][12][41]. Appellants challenging legal errors should identify the specific statute, regulation, or legal principle the immigration judge misapplied or misinterpreted[37][41]. If the immigration judge applied the wrong legal standard-for example, by requiring proof of past persecution when the statute permits proving only a well-founded fear of future persecution-that is a reversible legal error[37][41]. If the immigration judge stated the correct legal standard but failed to apply it, or applied it inconsistently, that too is reviewable[37][41].

Legal errors often involve the interpretation of asylum and withholding of removal standards, the definition of particular social groups, the determination of nexus between harm and protected grounds, and the application of various legal presumptions[37][41]. An appellant challenging a legal error should cite the specific BIA or circuit court precedent supporting the correct legal standard and explain how the immigration judge's decision departed from that standard[37][41].

Mixed Questions of Law and Fact

Many issues in immigration cases involve both factual and legal components, creating "mixed

questions"[9][37][41]. For example, determining whether a respondent qualifies as a member of a "particular social group" for asylum purposes involves first establishing facts (what group the respondent claims membership in, what characteristics define that group, whether the respondent actually shares those characteristics) and then applying law (whether the group is sufficiently particular and socially distinct to qualify as a protected category)[9][37][41]. The Board applies a bifurcated standard to mixed questions: the Board defers to factual findings under the clearly erroneous standard but reviews de novo the legal conclusion and the application of law to fact[9][41].

Procedural and Due Process Errors

Immigration judges must afford respondents fundamental procedural protections guaranteed by law and regulation[37]. Errors in procedure or failure to observe due process can constitute reversible error on appeal[37]. Examples include failing to provide a respondent adequate notice of charges of removability; denying the respondent a reasonable opportunity to be heard; excluding relevant evidence without proper legal basis; failing to provide an interpreter or providing an inadequate interpreter; or making decisions based on information the respondent was not given an opportunity to address[37]. Procedural errors are reviewed de novo by the Board and may result in reversal if the error was material and affected the outcome[37].

Available Remedies: What Relief the Board Can Grant

Affirmance of the Immigration Judge's Decision

The Board may affirm the immigration judge's decision, meaning it upholds the removal order or the denial of relief[3][26]. Affirmances may be issued with a written opinion explaining the Board's reasoning, or, in certain circumstances, as an "affirmance without opinion" (AWO)[3][49][51]. When the Board affirms without opinion, it is affirming the result reached by the immigration judge, but it does not necessarily mean the Board agrees with all of the immigration judge's reasoning; rather, an affirmance without opinion indicates that the Board determined the outcome was correct, any errors were harmless or immaterial, and that either existing precedent squarely controlled the issues or the issues were not substantial enough to warrant a written opinion[3][49]. An affirmance without opinion carries the presumption that the Board considered all issues and arguments raised on appeal, though the Board's rationale for affirming is not detailed[49].

Reversal and Grant of Relief

The Board may reverse the immigration judge's decision and grant the relief the respondent sought[3][26]. This occurs when the Board determines that the immigration judge committed error—whether factual, legal, or procedural—and that the correct application of law to fact would result in approval of the respondent's claim[26]. A reversal with grant of relief is a final Board decision that is immediately favorable to the respondent[26].

Remand for Further Proceedings

The Board frequently remands cases to the immigration judge for further proceedings[3][26][32][50][53]. A remand returns jurisdiction of the case to the immigration judge to conduct additional proceedings in light of the Board's decision[53]. The Board may remand to address factual issues the Board cannot itself resolve, to conduct further evidentiary proceedings, or to apply the correct legal standard to facts in the record[3][26][32][53]. The scope of a remand is important; if the Board specifies a limited purpose for remand (e.g., "remand for further consideration of the respondent's CAT claim"), the immigration judge should focus

on that purpose but may also consider other appropriate matters unless the Board expressly narrows the scope[32][50][53].

When a case is remanded, the Board generally divests itself of jurisdiction over the matter, meaning the immigration judge takes the lead again on remand proceedings, unless the Board expressly retains jurisdiction[32][50][53]. If the Board has reserved jurisdiction, it remains involved and will review the immigration judge's decision on remand when it is returned to the Board[32][53]. On remand, the immigration judge may consider new evidence if it is material, was not previously available, and could not have been discovered or presented at the former hearing[32][50][53].

Summary Dismissal

The Board may also summarily dismiss an appeal if it determines that the appeal is subject to dismissal on specified grounds[3][51]. The grounds for summary dismissal include failure to specify reasons for the appeal; appeals based solely on findings or conclusions that were conceded at prior proceedings; appeals from orders that granted the relief requested; appeals filed for an improper purpose such as causing unnecessary delay; appeals lacking an arguable basis in fact or law unless supported by good faith argument for extension or reversal of existing law; failure to file a promised brief; jurisdiction being outside the Board; untimely appeals; and appeals failing to meet essential statutory or regulatory requirements[3][51]. A summary dismissal constitutes a final Board decision[3][51].

The Automatic Stay of Removal During Pending Appeals

Continuance of the Stay Through Board Adjudication

As discussed earlier, removal orders are automatically stayed during the 30-day period for filing an appeal with the Board[23][27]. This protection continues if an appeal is timely filed; the stay persists during the entire time the Board is adjudicating the appeal[23][27]. This automatic stay operates by regulation and does not require a separate motion or order[23][27]. The stay prevents DHS from physically removing the respondent while the Board is reviewing the case[23][27].

This automatic stay is critical for respondents, particularly those with employment authorization related to their immigration status. If a respondent is authorized to work (for example, based on pending asylum application status), the stay allows continued employment and income while the appeal is pending[4][14]. The stay also allows time to gather additional evidence, consult with legal representatives, and prepare appellate arguments without the pressure of imminent removal[4][14][17][30].

However, the automatic stay does not prevent DHS from detaining the respondent[4][14]. A respondent may remain detained during the appeal process, and the fact that an appeal is pending does not grant bond or release; the respondent would need to file a separate motion for bond redetermination or a motion for stay of removal to address detention issues[4][14][17]. The stay merely prevents physical removal from occurring while the appeal is under review[4][14][23][27].

When the Stay Is Lost

The automatic stay is lost if the respondent waives the right to appeal by stipulating to a removal order or by expressly declining to appeal when given the opportunity[23][27]. If a respondent declines to appeal within the 30-day period, the removal order becomes final and the stay is lifted; DHS may then begin removal proceedings[4][14][23][27]. If the respondent allows the 30-day appeal period to pass without filing, the

appeal right is waived and removal may proceed[4][14][23][27].

Once the Board issues a final decision in the appeal, the automatic stay ends[23][27]. If the Board affirms the removal order, the removal order is final, and the stay is lifted; DHS may then remove the respondent[23][27]. If the Board reverses and grants relief, no removal is contemplated[23][27]. If the Board remands to the immigration judge, the stay generally continues during remand proceedings, as the case remains before an EOIR tribunal[23][27].

Federal Court Review: The Petition for Review

When Federal Review Becomes Available

If the Board issues a final decision denying relief and affirming a removal order, the respondent may seek review in a United States Court of Appeals by filing a Petition for Review[15][20][36]. This is the exclusive remedy for judicial review of a BIA removal order; district court habeas corpus petitions are not available in first instance for removal orders, though they may be available in limited circumstances after circuit court review has been sought[15][20][36]. The Petition for Review asks the federal court to examine whether the Board correctly applied the law, whether the Board violated the respondent's constitutional rights, and whether the removal order is otherwise legally sound[15][20][36].

Jurisdictional Requirements and Filing Deadline

The Petition for Review must be filed no later than 30 days after the date of the final BIA decision[15][20][36]. This deadline is strictly construed and is generally not subject to extension; it is considered jurisdictional, meaning that a federal court lacks authority to review a Petition for Review filed after the 30-day window has closed[15][20][36]. The only narrow exceptions are cases where the BIA rescind and reissues its decision, thereby restarting the 30-day period, or in circumstances of ineffective assistance of counsel that might support a motion to reopen before the BIA filed within 90 days of the decision[15][20][36].

The Petition for Review must include a copy of the final BIA administrative order and state whether any court has upheld the validity of the order and, if so, which court, the date of the ruling, and the type of proceeding[15][20][36]. The Petition must be served on the Attorney General (represented by the Department of Justice) and on DHS[15][20][36]. The specific procedural requirements for filing vary by circuit; some circuits have additional requirements regarding format, content, or filing procedures[15][20][36].

Jurisdictional Bars to Judicial Review

Not all decisions of the Board are reviewable in federal court; the Immigration and Nationality Act contains several jurisdictional bars that preclude or limit review in certain circumstances[15][20][24][36]. Importantly, the statute bars judicial review of decisions to grant discretionary relief; this means that if an immigration judge or the Board grants asylum, cancellation of removal, or other discretionary relief, the government may not appeal that decision to federal court, as courts lack jurisdiction to review favorable discretionary determinations[15][20][24]. However, courts do have jurisdiction to review denials of discretionary relief[15][20][24].

The statute also contains limitations on review of certain issues and for certain individuals. For example, the statute limits review of factual findings in cases involving certain aggravated felonies or crimes of violence[15][20][21][24]. However, the statute preserves the right to judicial review of constitutional claims and questions of law, even where discretionary relief has been denied[15][21][24].

Standards of Review in Federal Court

When the federal court reviews a BIA decision, it applies certain standards depending on the nature of the issue[20][36]. The court applies the "clearly erroneous" standard to factual findings unless the case falls within a bar to review[20][36]. The court reviews legal and constitutional questions de novo[20][36]. The court examines whether the BIA applied the correct standard of review itself; errors in the standard of review are reviewed de novo and may constitute reversible error[9][20][36].

The court cannot order the BIA to take additional evidence unless extraordinary circumstances warrant [24]. In most cases, the court's review is limited to the administrative record that was before the Board; new evidence cannot be presented for the first time on federal court review[20][24][36].

Motions for Stay During Petition for Review

Unlike the automatic stay that exists during a BIA appeal, a Petition for Review does not automatically stay removal[20]. Filing a Petition for Review does not prevent the government from removing the respondent[20][36]. To prevent removal while the federal court proceeding is pending, the respondent must separately file a Motion for Stay of Removal with the federal court[20][36]. The court applies traditional equitable standards in deciding whether to grant a stay: the court considers whether the respondent has made a strong showing of likelihood of success on the merits; whether the respondent would be irreparably injured without a stay; whether issuance of the stay would substantially injure the other parties; and where the public interest lies[20][36]. This is a high bar, and stays are not granted automatically[20][36].

Northern California and Ninth Circuit Context

Ninth Circuit Precedent on Removal Orders and Appellate Standards

As a legal matter, cases arising in Northern California immigration courts fall under the jurisdiction of the Ninth Circuit Court of Appeals[55]. The Ninth Circuit has issued significant precedent on the scope of judicial review of removal orders, the standards applicable to BIA review, and the procedural requirements for petitions for review[55]. Key Ninth Circuit principles include the holding that the carefully crafted congressional scheme governing review limits the court's jurisdiction to the review of "final orders of removal"[55]. The court has jurisdiction to review BIA decisions denying asylum, withholding of removal, and CAT protection if a removal order has been entered or if the BIA's decision ordering removal follows an initial removal determination by the immigration judge[55].

The Ninth Circuit has also established that the BIA is restricted to affirming orders of removal and may not issue removal orders in the first instance[55]. Where the BIA reverses an immigration judge's grant of relief, the court retains jurisdiction because an order of removal has already been properly entered by the immigration judge and is being reinstated by the BIA[55]. The court's review of BIA legal determinations is de novo, and the court will reverse if the BIA misapplied the law or used an incorrect standard of review[55][58].

San Francisco Immigration Court Context

The San Francisco Immigration Court operates at three locations: the main courthouse at 100 Montgomery Street, Suite 800, San Francisco; a location at 630 Sansome Street, 4th Floor, Room 475, San Francisco; and a hearing location in Concord at 1855 Gateway Blvd., Suite 850[1][4][12]. The San Francisco Court has a high volume of asylum cases and cases involving respondents from Central America, Mexico, and other nations in

the Americas[1][4]. Immigration judges in this court preside over removal proceedings involving asylum applications, gang-based persecution claims, domestic violence claims, and other humanitarian grounds for relief.

Practitioners filing appeals from San Francisco Immigration Court decisions should be aware that the procedural practices and preferences of individual judges may affect case outcomes. Judges in the San Francisco court have varying approaches to evidentiary hearings, credibility determinations, and the application of asylum law precedent. Practitioners should research the specific judge's prior decisions when possible, as published and unpublished decisions may reveal patterns in how a judge approaches particular issues.

San Francisco Asylum Office Interview Patterns

For respondents whose cases have involved initial asylum interviews at the San Francisco Asylum Office, appellants should be aware that asylum officer decisions may have implications for the immigration court proceeding. If an asylum officer conducted an interview and made credibility determinations or factual findings that were adopted by the immigration judge, those findings are subject to the same clearly erroneous standard on appeal as other immigration judge findings[1][12][41]. Asylum officers' notes and assessments should be carefully reviewed during brief preparation to ensure the immigration judge's credibility determinations are accurately grounded in the record.

Strategic Considerations and Practical Recommendations

Identifying Issues for Appeal and Prioritization

Not every aspect of an immigration judge's decision is appealable or worth appealing[37][41]. Effective appellate practice begins with careful analysis of the immigration judge's decision to identify which findings and conclusions are actually erroneous under the applicable standards of review. Issues should be prioritized based on likelihood of success and potential impact on the case outcome[37][41]. A strong legal error affecting a core issue (such as the judge's failure to apply the correct asylum standard) is a priority; a weak factual dispute that the judge resolved against the respondent but that does not independently determine the outcome is less compelling[37][41].

Practitioners should also consider whether winning a particular issue on appeal would actually result in relief or would merely require remand for further proceedings[37][41]. If the immigration judge denied asylum based on both a credibility finding and a lack of nexus to a protected ground, winning the credibility appeal might not be outcome-determinative if the nexus problem remains[37][41]. In such cases, the practitioner should identify whether remand would permit the immigration judge to reconsider the nexus issue in light of the respondent's testimony being accepted as credible[32][37][41][53].

Record Development at the Immigration Court Level

Appellate practitioners often find that the critical moment for building a record for appeal is at the immigration court hearing itself[37][41]. Issues not raised at the immigration court level cannot be raised for the first time on appeal[37][41]. If the respondent intends to challenge the immigration judge's application of a particular legal standard, counsel should ensure that the issue is explicitly raised and developed during the hearing. If the respondent intends to contest a factual finding, the respondent's testimony and documentary evidence should be clear and specific so that the Board can evaluate whether the immigration judge's adverse

findings are clearly erroneous[37][38].

The immigration court record, including the hearing transcript, exhibits, and the immigration judge's decision, constitutes the complete record on appeal[1][4][26]. The Board does not consider evidence or arguments that were not part of that record, except through motions to remand or reopen[1][26][32][53]. Practitioners must ensure that all evidence supporting the respondent's claim is in the immigration court record before the appeal is filed[26][37][41].

Framing the Notice of Appeal and Brief Strategy

The Notice of Appeal should identify the specific errors in concise but comprehensive language[1][4][19][22]. Rather than making blanket assertions of "legal error" or "factual error," the Notice of Appeal should state precisely which finding the respondent challenges and on what ground[1][19][22]. For example, rather than "the immigration judge erred in denying asylum," a more effective Notice of Appeal might state: "The immigration judge failed to apply the burden-shifting framework required by Matter of X-Y-Z for mixed-motive persecution claims, instead imposing a heightened burden of proof without legal support."

The appellate brief, if filed, should develop the legal arguments in detail, cite controlling and persuasive authority, and explain how the immigration judge's decision departed from applicable law[26][37][41]. The brief should address the government's likely counter-arguments and explain why those arguments are unavailing[26][37][41]. The brief should be clear and professional, avoiding hyperbole or emotional appeals; courts respond better to logical legal argument grounded in evidence[26][37][41].

Detention and Bond During Appeal

Respondents in detention at the time of appeal may pursue bond redetermination while the appeal is pending[14][44][47]. Recent BIA decisions have significantly limited bond eligibility for certain classes of respondents, particularly those who entered without inspection and have not since obtained lawful status[44][47]. Practitioners should carefully analyze whether their client has bond eligibility under current BIA precedent. If not, the client may need to consider habeas corpus remedies in federal district court[44][47].

Motions to Reopen and Reconsider: Alternative Paths

Timing and Requirements for Motions to Reopen

If new evidence becomes available after the BIA's decision, a respondent may file a Motion to Reopen with the BIA[34][53]. A Motion to Reopen is subject to strict requirements: the motion must include new evidence that is material, was not previously available, and could not have been discovered or presented at the former hearing[34][53]. The motion must be filed within 90 days of the Board's final administrative decision, and the respondent may file only one Motion to Reopen[34][53]. There is an exception to the 90-day deadline for motions to reopen based on changed country conditions; such motions are not subject to the temporal limitation[34][37][56].

Motions to Reopen are subject to the same substantive requirements as full motions to reopen initial decisions: they must include the new evidence, an explanation of why the evidence was not previously available, and an explanation of how the evidence is material to the respondent's claim[34][53]. The Board will deny a Motion to Reopen if the evidence was discoverable earlier and the respondent failed to diligently seek it[34][53]. Motions to Reopen are not limited in number if they are filed during the pendency of an appeal, but once a decision is final, only one Motion to Reopen may be filed[34][53].

Motions to Reconsider

A Motion to Reconsider may be filed if the Board made a factual or legal error or if a change in law has occurred since the Board's decision[34][40]. Unlike a Motion to Reopen, a Motion to Reconsider cannot include new evidence or new facts; it challenges the Board's legal reasoning or factual analysis based on what was already before the Board[34][40]. A Motion to Reconsider must be filed within 30 days of the Board's mailing of the decision, and only one Motion to Reconsider may be filed[34][40]. There are no exceptions to these time and numerical limits[34][40].

Conclusion: The Path Forward After an Immigration Judge's Decision

When an immigration judge denies relief or orders removal, the respondent's options do not end with that decision. The Board of Immigration Appeals provides a critical appellate forum where the respondent can challenge legal errors, clearly erroneous factual findings, and procedural defects[1][3][12][26]. The appellate process is bounded by strict procedural requirements-particularly the non-negotiable 30-calendar-day deadline for filing-but offers meaningful opportunities for review by an appellate body insulated from the day-to-day pressures of immigration court[33].

For respondents facing removal based on an Asylum Cooperative Agreement, the Board appeal is especially important, as it is the vehicle for challenging whether the safe third country bar was correctly applied and whether the respondent adequately established that removal to the designated country would result in persecution[8][25][28]. Recent Board precedent has clarified the legal framework for ACA cases, and practitioners armed with knowledge of that framework can effectively advocate for respondents[8][25][28].

The automatic stay of removal that attaches to a timely appeal provides breathing room-time to consult with counsel, gather evidence, prepare arguments, and position the case for success[4][14][23][27]. The stay also allows continued work and family life during the appellate process, which can be months-long or longer[4][14]. For many respondents, the Board appeal represents the last opportunity for administrative relief before the matter moves to federal court, where the standards of review narrow and the burden of proof typically shifts[15][20][24].

Success on Board appeal is not guaranteed; the Board affirms immigration judge decisions in a significant proportion of cases[1][3]. However, when clear legal error has occurred, when factual findings are unsupported by the record, or when procedural protections have been violated, the Board appeal is the appropriate vehicle for raising those issues and seeking reversal or remand[3][26][37][41]. Practitioners should carefully evaluate the immigration judge's decision, identify appealable issues, develop persuasive legal arguments, and file a Notice of Appeal that clearly and specifically states the grounds for appellate review. With careful preparation and strategic briefing, many respondents achieve success on Board appeal, either through reversal and grant of relief or through remand for further consideration on a legal basis the immigration judge initially misapplied[3][26][32].

The journey through the immigration appellate process is challenging, but for immigrants facing removal, it remains a crucial protection against unjust or erroneous decisions. Understanding the procedural requirements, the applicable standards of review, and the scope of available remedies is the first step toward effective advocacy at the Board of Immigration Appeals level.

Definitions of Key Legal Terms

Affidavit: A written statement made under oath or under penalty of perjury, used to provide evidence or testimony without the need for in-person court appearance.

Asylum Cooperative Agreement (ACA): A bilateral or multilateral agreement between the United States and another country (typically El Salvador, Guatemala, or Honduras) that allows the United States to remove asylum seekers to the agreement country to pursue asylum protection there instead of in the United States.

Board of Immigration Appeals (BIA): The highest administrative court in immigration law, serving as the appellate body that reviews decisions of immigration judges and certain DHS officer decisions.

Clearly Erroneous Standard: A highly deferential standard of appellate review applicable to factual findings, under which a finding is reversed only if the reviewing body is left with a definite and firm conviction that a mistake was committed.

Convention Against Torture (CAT): International treaty and corresponding immigration law protection that prevents removal of individuals to countries where they are more likely than not to be tortured by government officials or with government acquiescence.

De Novo Review: Appellate review conducted without deference to the lower decision-maker; the reviewing body independently evaluates the issue anew.

Deportation Order: An order issued by an immigration judge removing an individual from the United States (though technically, modern orders are termed "removal orders").

DHS/Department of Homeland Security: The federal agency responsible for immigration enforcement, including U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

EOIR/Executive Office for Immigration Review: The component of the Department of Justice that administers immigration courts and the Board of Immigration Appeals.

Equitable Tolling: An exception to a filing deadline based on extraordinary circumstances beyond a party's control that prevented timely filing, applied when the party has exercised diligence.

Immigration Judge: A judge employed by the Department of Justice's Executive Office for Immigration Review who presides over immigration court proceedings, including removal, asylum, and bond proceedings.

Nexus: The connection between harm suffered by the respondent and one of the five protected grounds for asylum (race, religion, nationality, political opinion, or membership in a particular social group).

Notice of Appeal (Form EOIR-26): The required form used to initiate an appeal to the Board of Immigration Appeals from an immigration judge's decision.

Persecution: Harm inflicted on account of a protected ground (race, religion, nationality, political opinion, or membership in a particular social group) that is severe enough to constitute persecution under asylum law.

Petition for Review: The document filed with a federal Court of Appeals seeking judicial review of a final Board of Immigration Appeals decision or removal order.

Removal Order: An order issued by an immigration judge or the Board of Immigration Appeals ordering an individual removed (deported) from the United States.

Respondent: The individual in immigration court proceedings against whom a charge of removability or

deportability has been filed; the term used in formal immigration proceedings rather than "defendant" or "appellant."

Safe Third Country: A country where an individual has access to a full and fair procedure for determining asylum claims and where the individual's life or freedom is not threatened based on protected grounds.

Standard of Review: The legal standard by which an appellate body examines the lower decision-maker's determination; standards vary depending on whether the issue involves factual findings, legal conclusions, or discretionary judgments.

Stays of Removal: Temporary orders preventing DHS from removing (deporting) an individual while legal proceedings are pending or while other remedies are being pursued.

Withholding of Removal: A form of protection preventing removal to a country where the individual is more likely than not to be persecuted; a higher burden of proof than asylum's "well-founded fear" standard.

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