

# **The Board of Immigration Appeals: Organizational Structure, Jurisdiction, and Appellate Procedures in the United States Immigration System**

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## **FINDINGS**

### **THE BOARD OF IMMIGRATION APPEALS: ORGANIZATIONAL STRUCTURE, JURISDICTION, AND APPELLATE PROCEDURES IN THE UNITED STATES IMMIGRATION SYSTEM**

This report provides a comprehensive examination of the Board of Immigration Appeals (BIA), the highest administrative body for interpreting and applying United States immigration law. The BIA serves as the appellate arm of the Executive Office for Immigration Review (EOIR), reviewing decisions rendered by Immigration Judges and certain decisions of Department of Homeland Security (DHS) officers. As of February 2026, the BIA operates as a 28-member appellate tribunal composed of experienced immigration law specialists who are empowered to render decisions that are binding on all DHS officers and Immigration Judges unless subsequently modified or overruled by the Attorney General or a federal court. This report addresses the BIA's organizational framework, jurisdictional scope, procedural requirements for appellants, standards of review applicable to different claim types, the mechanisms through which cases are adjudicated, and the procedures available for federal court review of BIA decisions. Understanding BIA operations is essential for immigration practitioners, appellate advocates, and individuals navigating the administrative appeal process within the immigration system, particularly given the substantial caseload managed by the Board and the significant consequences attached to its decisions.

#### **Organizational Structure and Composition of the Board of Immigration Appeals**

The Board of Immigration Appeals operates as an independent appellate adjudicatory body within the Executive Office for Immigration Review, itself a sub-agency of the United States Department of Justice.[1] The BIA maintains its principal office at EOIR headquarters in Falls Church, Virginia, where the vast majority of its administrative functions and case adjudications occur.[2] The Board's organizational structure reflects a hierarchical model designed to manage nationwide appellate jurisdiction while maintaining consistency in immigration law interpretation and application.[3]

The BIA is composed of 28 Board Members, also known as Appellate Immigration Judges, including a Chief Appellate Immigration Judge and up to two Deputy Chief Appellate Immigration Judges.[4] This composition represents a significant expansion from the historical 15-member structure referenced in earlier regulatory frameworks, reflecting the increased caseload and complexity of matters requiring appellate review.[5] Board Members are appointed by the Attorney General to serve as the Attorney General's delegates in cases that come before them, exercising quasi-judicial authority to interpret and apply immigration law.[6] The appointment of Board Members requires high-level legal qualifications and expertise in immigration law administration. The Chief Appellate Immigration Judge directs, supervises, and establishes internal operating procedures and policies for the entire Board, working in coordination with one or two Deputy Chief Appellate Immigration Judge(s) who assist in performing these administrative responsibilities.[7] A vacant position, absence, or unavailability of a Board Member does not impair the right of the remaining members to exercise all powers of the Board; in circumstances where this occurs, Immigration Judges, retired Board Members, retired Immigration Judges, Administrative Law Judges, and senior EOIR attorneys with at least ten years of experience in immigration law may be designated as Temporary Board Members to ensure continuity of operations.[8]

The Board employs a specialized legal staff assigned to support designated panels, Board Members, and various functions within the organization.[9] Additionally, the Office of the Clerk, headed by the Chief Clerk

of the Board, manages appellate records and information for the entire organization.[10] The Clerk's Office operates through several specialized teams: cases involving detained aliens are processed by a dedicated Priority Case Management team, while non-detained cases are divided between two regional teams based on the location of the Immigration Court from which the appeal originates.[11] A separate Docket team processes adjudicated cases and serves decisions on parties, while various other teams provide management and administrative support to all Board operations.[12] This organizational structure ensures that cases are tracked systematically and that decisions are properly disseminated to all affected parties within established timeframes.

## **Jurisdiction and Authority of the Board of Immigration Appeals**

The Board of Immigration Appeals has been granted nationwide jurisdiction to hear appeals from certain decisions rendered by Immigration Judges and from specific decisions of Department of Homeland Security district directors and officers in a wide variety of proceedings.[13] The statutory and regulatory framework defining BIA jurisdiction is comprehensive, encompassing both removal-related matters and family-based immigration benefits determinations. Understanding the scope of BIA jurisdiction is critical because the Board cannot exercise authority over matters outside its delegated jurisdiction, and erroneous assumptions about jurisdictional reach can result in dismissal of improperly filed appeals.

### **Categories of BIA Jurisdiction**

[The BIA generally has authority to review appeals in the following substantive categories:][1] decisions of Immigration Judges in removal, deportation, and exclusion proceedings (subject to certain limitations on decisions involving voluntary departure);[14] decisions of Immigration Judges pertaining to asylum applications, withholding of deportation, withholding of removal, Temporary Protected Status (TPS) determinations, relief under the Convention Against Torture (CAT), and other forms of relief from removal;[15] decisions of Immigration Judges on motions to reopen where the proceedings were conducted in absentia;[16] decisions of Immigration Judges in rescission of adjustment of status cases;[17] certain decisions pertaining to bond, parole, or detention matters;[18] decisions of DHS on family-based immigrant petitions, the revocation of family-based immigrant petitions, and the revalidation of family-based immigrant petitions (excluding orphan petitions);[19] and decisions of DHS regarding waivers of inadmissibility for nonimmigrants under [8 U.S.C. § 1182(d)(3)(A)(ii)][20].[21] Additionally, the Board has authority to review decisions of DHS involving administrative fines and penalties imposed under 8 CFR Part 1280.[22] The Board also exercises disciplinary authority over attorneys, recognized organizations, and accredited representatives who engage in professional misconduct in proceedings before EOIR.[23]

### **Matters Outside BIA Jurisdiction**

The BIA explicitly lacks jurisdiction over certain categories of administrative decisions and determinations, even though these matters may arise within the immigration system or be closely related to matters within its purview.[24] The Board cannot review the length of a grant of voluntary departure awarded by an Immigration Judge under INA § 240B;[25] direct appeals from persons removed or deported in absentia pursuant to INA § 240(b);[26] credible fear determinations, whether made by an Asylum Officer or an Immigration Judge;[27] reasonable fear determinations made by an Immigration Judge;[28] applications for advance parole;[29] applications for adjustment of status that have been denied by DHS;[30] orphan petitions;[31] or employment-based immigrant visa petitions.[32] The absence of jurisdiction over these matters reflects statutory limitations as well as policy determinations that certain decisions are better reviewed through alternative mechanisms. For example, credible fear determinations are subject to review within the removal

proceedings context, while reasonable fear determinations are reviewed as part of the broader removal appeal.

### **Standard Framework for BIA Review Authority**

[8 C.F.R. § 1003.1(b) and (c) establish that the Board may review matters either upon appeal by one of the parties or by certification][33] by an Immigration Judge.[34] The distinction between these two procedural pathways is important: an appeal is initiated by the losing party in the underlying proceeding, while certification occurs when an Immigration Judge, on the judge's own motion, requests that the Board review the judge's decision. Certification is less commonly used than direct appeal but provides a mechanism for Immigration Judges to flag cases involving novel issues, conflicting precedent, or decisions the judge believes may warrant reconsideration.[35]

The Board's authority is vested through delegation from the Attorney General, and this delegated authority is exercised through precedent decisions, policy guidance, and individual adjudications that collectively shape the administration of immigration law.[36] [BIA decisions are binding on all DHS officers and Immigration Judges unless modified or overruled by the Attorney General or a federal court.][37] This binding nature of BIA decisions creates a system of hierarchical authority within the administrative immigration apparatus and ensures consistency in the interpretation and application of immigration law across the vast network of Immigration Courts and DHS field offices nationwide.

### **Scope of Review: Standards Applied by the Board of Immigration Appeals**

The BIA applies differentiated standards of review depending on the nature of the question presented and the source of the decision being reviewed.[38] These standards of review are critical to understanding how appellants should frame their arguments and which types of errors are more likely to result in successful appeals.

#### **Review of Immigration Judge Factual Findings**

When reviewing factual findings made by Immigration Judges, including credibility determinations, [the BIA applies a "clearly erroneous" standard of review, a highly deferential standard that favors affirmance of the Immigration Judge's findings.][39] Under this clearly erroneous standard, a factual finding may not be overturned simply because the Board would have weighed the evidence differently or would have decided the facts differently had it been the initial fact-finder.[40] The factual finding must be reviewed in its entirety by the appellate body, and the Board may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.[41] This deferential standard reflects the principle that Immigration Judges, who preside over hearings and observe witness testimony in person, are in a superior position to assess credibility and judge the weight of evidence presented.

Examples of questions of fact subject to the clearly erroneous standard of review include: credibility determinations regarding the reliability and truthfulness of testimony provided by the respondent or witnesses; determinations regarding dates, places, and manner of entry into the United States; biographical information and personal characteristics (such as birthdates and birthplaces); marital status and family relationships; employment history; persecution or harm history; and other factual determinations requiring assessment of evidence in the record.[42]

#### **Review of Immigration Judge Legal Conclusions and Discretionary Decisions**

[The Board applies a de novo standard of review to questions of law, discretion, judgment, and other issues in appeals from Immigration Judge decisions.][43] Under de novo review, the Board does not defer to the

Immigration Judge's legal conclusions and instead applies the law to the case with fresh eyes, making independent legal determinations about how the governing statutes, regulations, and precedent apply to the facts found by the Immigration Judge.[44] This standard permits the Board to reach a different legal conclusion than the Immigration Judge even where the underlying facts are not disputed. Questions of law include: interpretation of the Immigration and Nationality Act or implementing regulations; application of legal standards to established facts; procedural determinations; and constitutional issues.[45] Discretionary determinations-such as whether the Immigration Judge should exercise discretion to grant or deny relief where the respondent meets the statutory eligibility criteria-are also reviewed de novo, meaning the Board applies its own judgment to the discretionary decision rather than deferring to the Immigration Judge's exercise of discretion.[46]

### **Mixed Questions of Law and Fact**

Many immigration law questions present mixed issues of law and fact-that is, they require both a factual finding and an application of law to that fact. [The BIA applies a bifurcated standard to mixed questions, reviewing the underlying factual determinations for clear error while reviewing the legal conclusions drawn from those facts de novo.][47] This approach ensures that the Board's deference to factual findings does not prevent it from correcting legal errors in how those facts have been applied to the law.[48] For example, in an asylum case, the Immigration Judge must first determine (as a factual matter) what events the applicant experienced in the country of origin. The Board reviews this factual determination for clear error. The Immigration Judge then must determine (as a legal matter) whether those facts, if credited, establish persecution on account of one of the five protected grounds under the asylum statute. The Board reviews this legal determination de novo without deference to the Immigration Judge's legal conclusions.

### **Review of DHS Officer Decisions**

[The Board applies a de novo standard of review to all appeals of DHS officer decisions.][49] This means that when the Board reviews decisions made by DHS officers or district directors-such as decisions on visa petitions, waivers of inadmissibility, or other administrative determinations-the Board conducts a fresh, independent review without deferring to the initial decision-maker's interpretation of law or exercise of discretion.[50] This standard reflects the fact that DHS officers are not fact-finders in the same sense as Immigration Judges presiding over contested hearings; DHS officer decisions typically involve documentary review and legal interpretation rather than credibility assessments based on live testimony.

## **Filing an Appeal with the Board of Immigration Appeals: Procedural Requirements and Deadlines**

### **The Thirty-Day Appeal Deadline**

The most critical procedural requirement for any appeal to the BIA is timely filing. [Appellants must file their Notice of Appeal (Form EOIR-26) within 30 days of the Immigration Judge's decision.][51] This deadline is not discretionary, and the Board strictly enforces it; appeals filed even one day late are subject to dismissal.[52] Moreover, [the BIA follows a "receipt rule" rather than a "mailbox rule," meaning the appeal must actually be received by the BIA before 4:30 p.m. Eastern Standard Time on the 30th day.][53] The BIA uses its Clerk's Office date stamp to determine timeliness, not the date on the postage cancellation mark or courier delivery slip.[54]

Understanding when the appeal deadline begins is essential for practitioners. When an Immigration Judge renders an oral decision, the judge typically issues a dated minute order immediately. [The appeal clock starts

on the date listed on this minute order.][55] When an Immigration Judge issues a written decision, either the decision itself, an accompanying minute order, or a transmittal letter will bear the decision date.[56] The order should be mailed the same day, and the mailing date begins the appeal deadline.[57] An important practical consideration: [when counting calendar days toward an appeal deadline, the day that the decision is rendered-either orally in court or by mailed written decision-counts as "day 0."]][58] The day after counts as "day 1." [The appeal deadline is based on calendar days, and Saturdays, Sundays, and legal holidays are therefore counted, except that if the appeal deadline falls on a weekend or legal holiday, the deadline moves to the next business day.][59]

Practitioners are well-advised to file appeals well before the 30-day deadline to account for mail delivery times. Because the BIA does not accept electronic filings of appeals, practitioners must file the appeal on paper-which means they must account for delivery time to Falls Church, Virginia, within the 30-day period.[60] The most conservative approach is to file by overnight courier or hand deliver the appeal in person to ensure receipt within the deadline. Simply mailing a notice of appeal at the 29-day mark creates substantial risk of untimely filing.

### **Reserving the Right to Appeal**

Before an appeal can be filed with the Board, the respondent or their representative must "reserve" appeal after the Immigration Judge renders the oral decision. This is accomplished by simply stating after the Immigration Judge renders the decision that the respondent wishes to "reserve" the right to appeal, which will start a 30-day appeal period during which the Immigration Judge's decision will be automatically stayed. Usually, the Immigration Judge will ask both parties if they wish to appeal, or will ask whether the parties "waive" or "reserve" appeal after rendering the decision. If the Immigration Judge issues a written decision and serves it in person to the parties, appeal can be "reserved" by the parties orally at the time the decision is served. If the Immigration Judge mails the written decision to the parties, appeal will automatically be marked as reserved by both parties.

Reserving appeal does not obligate a respondent to file an appeal; it means the respondent reserves the right to file an appeal if they decide to do so after reviewing the decision and the record. However, if a respondent affirmatively waives appeal at the hearing or does not reserve appeal within the allowed period, then no further appeal can be taken, and the removal order becomes final and executory. This is a critical procedural step because waiving appeal can have immediate serious consequences: if appeal is waived in cases where the respondent has lost on the merits, the Immigration Judge's removal order becomes final, thus starting the mandatory 90-day period of detention that precedes removal. Declining to reserve appeal means a respondent who has lost their case can be detained and processed for removal immediately upon entry of the removal order. Unless a respondent is absolutely certain they do not wish to appeal, it is generally advisable to reserve the right to appeal to preserve all available options while they evaluate their case.

### **Required Forms and Documentation for Appeal**

[For any appeal of an Immigration Judge decision, a completed and executed Notice of Appeal (Form EOIR-26) must be timely filed with the Board.] The Notice of Appeal is the foundational document initiating any appeal and must contain specific information for the appeal to be properly processed. [A single Notice of Appeal (Form EOIR-26) must be filed for each alien who is appealing the decision of an Immigration Judge, unless the appeal is from proceedings that were consolidated by the Immigration Judge.] Only the original Notice of Appeal must be filed; additional copies need not be submitted, though sending copies to all parties is required.

The Notice of Appeal must contain the alien registration number ("A number") of every person included in the appeal. The form must be completed fully, including parts that request the date of the Immigration Judge's oral decision or written order and the type of proceeding (removal, deportation, exclusion, asylum, bond, denial of a motion to reopen, or denial of a motion to reconsider). Space is provided on the Notice of Appeal for a concise statement to identify the grounds for the appeal; this statement is not limited to the space on the form but may be continued on additional sheets of paper. Any additional sheets, however, should be attached to the Notice of Appeal and labeled with the name and alien registration number of everyone included in the appeal. [Parties are advised that vague generalities, generic recitations of the law, and general assertions of Immigration Judge error are unlikely to apprise the Board of the reasons for appeal.] The Notice of Appeal should clearly explain specific facts and explain why the appellant believes the Immigration Judge made an error.

### **Filing Fees**

The current filing fee for an appeal of an Immigration Judge decision to the BIA is \$1,010.45 (composed of the base fee plus certain additional assessments). However, if an appellant cannot pay this fee, a Fee Waiver Request (Form EOIR-26A) may be submitted in lieu of the fee. [The appeal must be accompanied by either the appropriate filing fee or a completed Fee Waiver Request (Form EOIR-26A).] If the fee waiver is denied and the appellant has not paid the required fee, the appeal may be rejected or dismissed, though the Board provides a cure period within which the appellant may submit the required fee.

### **Proof of Service**

[The Certificate of Service portion of the Notice of Appeal (Form EOIR-26) must be completed.] This requirement means that the appellant must certify that copies of the Notice of Appeal and all supporting documents have been served on the opposing party (typically the DHS representative in removal proceedings) and that proof of this service has been included with the appeal filing. The proof of service can be in the form of a certificate of service signed by the appellant or counsel, or other evidence demonstrating that the required copies were delivered to the DHS representative.

### **Recommended Supporting Documentation**

While not strictly required, appellants are encouraged to include additional documentation with the Notice of Appeal to support timely processing and substantive review. [Parties are encouraged to include a copy of either the memorandum order of the oral decision or the written decision being appealed.] Inclusion of the immigration judge's decision with the appeal helps the Clerk's Office staff quickly identify the decision being appealed and ensures that the Board understands which specific order is at issue. Some appellants also include a preliminary statement explaining their grounds for appeal, though this is separate from the formal brief that will be filed later in the process after transcripts are received.

### **Special Considerations for Representative and Attorney Appearance**

[If an attorney or representative signs the appeal for the respondent, they must file with this appeal a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).] This requirement ensures that the Board has official notice of who is authorized to act on behalf of the respondent and to whom all future communications should be sent.

### **Address Requirements and Change of Address**

Respondents must maintain current contact information with the Board throughout the pendency of their appeal. [If a respondent moves to a new address or changes telephone number, they are required to file a Form

EOIR-33/BIA Change of Address (on pink paper, if possible) with the BIA within 5 days of the change.]] Failure to provide current contact information can result in missed deadlines and potential dismissal of appeals, as the Board may attempt to communicate case updates to outdated addresses.

## **The Briefing Process and Appellate Adjudication Timeline**

### **Issuance of Briefing Schedules**

Once a Notice of Appeal is properly filed, a written receipt is sent to both the respondent and the DHS to acknowledge receipt of the appeal. After receipt is confirmed, the Board arranges for the record of proceedings to be obtained from the Immigration Court, including the hearing transcript (if one exists) and the Immigration Judge's decision. In appropriate cases-that is, in cases not subject to summary dismissal-the Board then issues a briefing schedule setting forth specific deadlines for the filing of appellate briefs by both parties. The issuance of a briefing schedule typically occurs after the complete record of proceedings has been assembled and transmitted to the Board.

### **Briefing Deadlines and Requirements**

[The appealing party is provided 21 calendar days from the date of the briefing schedule notice to file an appeal brief, and the opposing party (typically DHS) will have an additional 21 days (marked from the date the appealing party's brief was due) in which to file a response brief.]] This sequential briefing structure means that the respondent or respondent's counsel submits their opening brief within the first 21-day period, and then DHS files its response brief within a second 21-day period. [When an appeal is filed in the case of a detained alien, the alien and DHS are both given the same 21 calendar days in which to file their initial briefs, rather than the sequential schedule used in non-detained cases.]] This expedited parallel briefing schedule for detained cases reflects the recognition that detained individuals have urgent interests in obtaining prompt appellate resolution.

[If both parties file an appeal (i.e., cross-appeals), then both parties are granted the same 21-day period in which to file an appeal brief.]] The Board may accept reply briefs filed by DHS or by the respondent within 21 days after expiration of the briefing schedule, but the Board will not suspend or delay adjudication of the appeal in anticipation of, or in response to, the filing of a reply brief.

### **Extension of Briefing Deadlines**

The Board has established procedures for extending briefing deadlines when circumstances warrant delay. [Parties may request a single extension of the briefing deadline, provided the request is received by the Board by the brief's original due date.]] However, extension requests filed the same day as a brief is due are particularly disfavored and are granted only in the most compelling of circumstances. [The Board's policy is not to grant second briefing extension requests, with second requests being granted only in extraordinary circumstances not foreseen at the time the first request was made (such as death, serious illness or medical condition, natural or manmade disaster).]] This policy ensures that appellate process deadlines are respected and that cases move forward expeditiously.

### **Processing of Briefs and Untimely Filings**

[If a brief arrives at the Board and is timely, the brief is added to the record of proceedings and considered in the course of the adjudication of the appeal.]] However, [if a brief arrives at the Board and is untimely, the brief is rejected and returned to the sender.]] The Board may reject a brief as untimely at any time prior to the final adjudication of the appeal. [If a party wishes the Board to consider a brief despite its untimeliness, the

brief must be accompanied by a "MOTION TO ACCEPT LATE-FILED BRIEF" and comply generally with the rules and procedures for motions and filings.]] [Parties may file a motion to accept a late-filed brief only once; subsequent late-filed brief motions will not be considered, and motions to reconsider denials of late-filed brief motions will also not be considered.]]

### **Decision Timing and Case Management**

The Board operates under a case management system designed to ensure timely adjudication of pending appeals. [All case appeals are referred to a screening panel for review, and appeals subject to summary dismissal "should be promptly dismissed."]] To ensure prompt initial screening, all cases should be referred to the screening panel within 14 days of the filing of the notice of appeal to determine whether the appeal is subject to summary dismissal. Appeals subject to summary dismissal, particularly appeals subject to summary dismissal for being untimely filed, should be dismissed within 30 days of referral to the screening panel.

For cases not subject to summary dismissal, [the Board "shall arrange for the prompt completion of the record of proceedings and transcript, and the issuance of a briefing schedule."]] The timeframes for adjudication vary depending on whether the respondent is detained. [When a case is assigned to a three-member panel, a decision must be made within 180 days of assignment.]] [If a case is not assigned to a three-member panel, a single Board member shall adjudicate the appeal within 90 days of completion of the record on appeal.]] [The Chairman may grant an extension of the 90 and 180-day deadlines of up to 60 days in exigent circumstances.]] Additionally, no appeal assigned to a single Board member should remain pending for longer than 230 days after filing of the notice of appeal, and no appeal assigned to a three-member panel should remain pending for longer than 335 days after filing of the notice of appeal.

In practice, however, actual processing times vary significantly. [When the alien is not detained, BIA decisions typically take approximately 1.5 years before a final decision is rendered.]] [When an appeal is filed in the case of a detained alien, BIA decisions typically are rendered within 2-3 months.]] These timelines reflect the prioritization given to cases involving detained individuals, who face imminent removal and have urgent interests in obtaining prompt appellate resolution.

### **Adjudication Methods: Single Members, Panels, and En Banc Review**

#### **Single Member Adjudication**

[The majority of cases at the Board are adjudicated by a single Board Member.]] A single Board Member decides the case unless the case falls into one of several categories that require a decision by a panel of three Board Members. Cases are assigned to a single Board Member through the Board's case management system, and the single Board Member retains the ability to later decide that a case should be assigned to a three-member panel if circumstances arise that were unknown at the time of the initial determination that such assignment was not warranted.

#### **Three-Member Panel Adjudication**

Cases are assigned to a panel consisting of three Board Members when the matter falls into one of the following categories: [the need to settle inconsistencies among the rulings of different immigration judges; the need to establish a precedent construing the meaning of laws, regulations, or procedures; the need to review a decision by an Immigration Judge or DHS that is not in conformity with the law or with applicable precedents; the need to resolve a case or controversy of major national import; the need to review a clearly erroneous factual determination by an Immigration Judge; the need to reverse the decision of an Immigration Judge or DHS in a final order, other than nondiscretionary dispositions; or the need to resolve a complex,

novel, unusual, or recurring issue of law or fact.]] [The panel of three Board Members renders decisions by majority vote.]] Cases are assigned to specific panels pursuant to the Chief Appellate Immigration Judge's administrative plan, and the Chief Appellate Immigration Judge may change the composition of the sitting panels and may reassign Board Members from time to time.

### **En Banc Adjudication**

[The Board may, by majority vote or by direction of the Chief Appellate Immigration Judge, assign a case or group of cases for full en banc consideration.]] However, [by regulation, en banc proceedings are not favored.]] En banc review-in which all available Board Members participate-is reserved for matters of exceptional importance or when there is significant disagreement among panels about how a legal question should be resolved. The rarity of en banc proceedings reflects a policy judgment that most cases can be properly resolved through individual adjudication or three-member panel review.

### **Recusal of Board Members**

Board Members, including the Chief Appellate Immigration Judge and the Deputy Chief Appellate Immigration Judge, adjudicate cases coming before the Board, but they may recuse themselves under any circumstances considered sufficient to require such action. [Parties appearing before the Board may not request specific Board Members or a specific panel to adjudicate their case, and the Board does not entertain inquiries regarding the identity of the panel or Board Members assigned to a pending case.]] This policy ensures that Board assignments remain within the control of the administrative structure and are not subject to strategic manipulation by parties.

## **Types of BIA Decisions and Outcomes**

### **Sustaining or Dismissing Appeals**

When the Board adjudicates a merits appeal, the fundamental outcome is that it either sustains the appeal (finding that the Immigration Judge erred) or dismisses the appeal (finding that the Immigration Judge did not err). [If the BIA's decision results in sustaining the appeal (meaning the BIA finds error by the Immigration Judge), the case may be remanded to the immigration judge with instructions for new ruling, or in some cases the Board may reverse the Immigration Judge's determination and issue a new decision itself.]] [If the BIA's decision results in dismissing the appeal (meaning the BIA affirms the Immigration Judge's decision), the Immigration Judge's order becomes final and enforceable, and if the Immigration Judge ordered removal, DHS may proceed with execution of the removal order.]]

The remedy sought by an appellant shapes how the Board will proceed if it sustains the appeal. If the Board determines that the Immigration Judge made a legal error in interpreting or applying the governing law but the underlying facts are not in dispute, the Board may simply correct the legal error and enter its own decision on the merits, reversing the Immigration Judge's order. However, if correcting a legal error requires additional factual development or if the Immigration Judge made a factual error that is clearly erroneous, the Board typically remands the case to the Immigration Judge for further proceedings consistent with the Board's legal interpretation.

### **Decision Publications and Precedent**

[BIA decisions designated for publication are printed in bound volumes entitled "Administrative Decisions Under Immigration and Nationality Laws of the United States" (I&N Dec.).]] Not all BIA decisions are published; [decisions selected for publication meet one or more of several criteria, including but not limited to:

the resolution of an issue of first impression; alteration, modification, or clarification of an existing rule of law; reaffirmation of an existing rule of law; resolution of a conflict of authority; and discussion of an issue of significant public interest.]] Published decisions serve as binding precedent on Immigration Judges and DHS officers within the Ninth Circuit and nationwide. Unpublished decisions do not establish precedent and are used only for the parties in that specific case, though they may be cited for persuasive value.

### **Advisory Opinions**

[The Board does not issue advisory opinions.]] This means that the Board will not opine on hypothetical scenarios or provide guidance on matters not actually presented in a case that comes before it for adjudication. The Board's function is limited to resolving actual disputes between parties, not to providing abstract legal guidance.

## **Motions Before the Board of Immigration Appeals**

### **Motion to Reconsider**

[A motion to reconsider can be filed if the Board made a factual or legal error or if a change in law has occurred since the Board's decision such that it could cause the Board to change its decision.]] Unlike a motion to reopen (discussed below), a party cannot submit new evidence or state new facts with a motion to reconsider; the motion must be based on the existing record and must identify legal or factual errors made by the Board in its decision. A respondent generally has one opportunity to file a motion to reconsider, and the Board may also reconsider proceedings on its own initiative.

### **Motion to Reopen**

[A motion to reopen asks the Board to reopen proceedings in which the Board has already rendered a decision in order to consider new facts or evidence in the case.]] A motion to reopen must state material and previously unavailable facts and must be supported by affidavits or other evidentiary material. [A motion to reopen will not be granted unless it appears to the Board that the evidence offered is material and was not available and could not have been discovered or presented at an earlier stage in the proceedings.]] [As a general rule, a motion to reopen must be filed within 90 days of the Board's final administrative decision.]] [A party is permitted only one motion to reopen.]] However, there are exceptions: when a motion to reopen is based on a request for asylum, withholding of removal, or relief under the Convention Against Torture and is premised on new circumstances, the motion may be filed outside the time and number limits if accompanied by evidence of the changed circumstances alleged.

### **Special Circumstances Exceptions to Motion Limitations**

Motions to reopen based on ineffective assistance of counsel are subject to special procedural requirements. [The procedural requirements under Matter of Lozada are: (1) an affidavit by the respondent attesting to the relevant facts, including a statement of the agreement between the respondent and former counsel or a description of what the former counsel was supposed to do; (2) a statement of the claim of error; and (3) evidence that the allegedly ineffective counsel violated counsel's duty to the respondent.]] To equitably toll the motion to reopen deadline due to ineffective assistance of counsel, the moving party must prove both that they exercised diligence in pursuing reopening and that the delay was due to extraordinary circumstances, most commonly ineffective assistance of prior counsel.

## **Stays of Removal and Emergency Procedures**

## **Automatic Stays During Appeal**

[After an Immigration Judge issues a final decision on the merits of a case, the order is automatically stayed for the 30-day period for filing an appeal with the BIA.] [If a party appeals an Immigration Judge's decision on the merits of the case to the BIA during the appeal period, the order of removal is automatically stayed during the BIA's adjudication of the appeal.] This automatic stay means that the respondent cannot be removed from the United States while the appeal is pending; the Department of Homeland Security cannot execute a removal order while the Board is reviewing the case.

## **Discretionary Stays and Emergency Procedures**

Beyond automatic stays, a respondent may seek a discretionary stay of removal while a motion or other procedural matter is pending before the Board. [A "stay" decision issued by the Board of Immigration Appeals temporarily prevents the Department of Homeland Security from executing an order of removal, deportation, or exclusion.] [An "emergency stay" is a stay that is based on an action that is clearly about to happen.] [The BIA generally will consider a stay request an emergency in one of two situations: (1) the respondent's removal from the United States is imminent, DHS has confirmed a specific removal date and time, the respondent is in the physical custody of DHS, and the respondent requests an emergency stay in writing; or (2) the respondent's release from custody is imminent, and DHS requests in writing an emergency stay of release from detention.]

## **Filing Emergency Stay Requests**

[The BIA will consider a request for an emergency stay if (1) the request is in writing, and (2) one of the following is true: a motion is pending before the BIA; an appeal of an Immigration Judge motion to reopen is pending before the BIA; an appeal of an Immigration Judge bond decision is pending before the BIA; a case is pending before the BIA that has been remanded from a U.S. Circuit Court; or the BIA decides, in its own discretion, to grant a stay.] To file an emergency stay request, parties must contact the BIA's Emergency Stay Unit at a dedicated phone line. [[703-306-0093]] [This number is monitored only during regular business hours, typically 8:30 a.m. to 5:00 p.m. Eastern Time, Monday through Friday.] Only the Emergency Stay Unit can process emergency stay requests; parties should not contact the BIA Clerk's Office or other BIA offices for emergency stay matters.

[The filing of an emergency stay request does not, by itself, stop a respondent from being removed or released; the stay must be granted by the BIA for that to happen.] [If an emergency stay is granted, the stay is in effect while an appeal or motion is pending before the BIA; once that appeal or motion is decided, the stay is lifted.]

## **Summary Dismissal of Appeals**

### **Grounds for Summary Dismissal**

[Under certain circumstances, the Board is authorized to dismiss an appeal without reaching its merits.] An appeal may be summarily dismissed for several reasons, including: when the Notice of Appeal fails to adequately inform the Board of the specific reasons for the appeal; when the Notice of Appeal indicates that a brief or statement will be filed but no brief, statement, or explanation for not filing is provided within the briefing deadline; when the appeal is based on a finding of fact or conclusion of law that has already been conceded by the appealing party; when the appeal is from an order granting the relief requested; when the appeal is filed for an improper purpose; when the appeal does not fall within the Board's jurisdiction; when the appeal is untimely; when the appeal is barred by an affirmative waiver of the right to appeal; when the appeal

fails to meet essential statutory or regulatory requirements; or when the appeal is expressly prohibited by statute or regulation.

### **Specificity Required in Grounds for Appeal**

The Board places significant emphasis on the requirement that grounds for appeal be specific and detailed. [An appeal, or any portion of an appeal, may be summarily dismissed if the Notice of Appeal and any brief or attachment fails to adequately inform the Board of the specific reasons for the appeal.] The BIA's case law makes clear that it is insufficient to merely assert that the Immigration Judge improperly found removability or denied an application for relief; the appellant must identify specific findings of fact, conclusions of law, or both that are being challenged and must explain why each is allegedly erroneous. [Where eligibility for discretionary relief is at issue, it should be stated whether the error relates to grounds of statutory eligibility or to the exercise of discretion.] [[It should be clear whether the alleged impropriety in the decision lies with the immigration judge's interpretation of the facts or facts themselves, or the application of law to those facts, or both.]]

### **Failure to File Brief**

An appeal may be summarily dismissed if the respondent indicates on the Notice of Appeal that a brief will be filed but subsequently fails to file the brief within the briefing deadline without providing a reasonable explanation for the failure. [If a party indicates on a Notice of Appeal that a brief will be filed but later decides not to file a brief, that party should notify the Board in writing.] This notification should explain the decision not to file and provide the Board with information allowing it to proceed with adjudication based on the Notice of Appeal alone.

### **Sanctions for Frivolous Appeals**

[Practitioners are admonished that the filing of an appeal that is summarily dismissed may be deemed frivolous behavior and may result in discipline.] This provision creates incentives for careful case evaluation and proper identification of colorable legal issues before filing appeals.

## **Federal Court Review of BIA Decisions**

### **Petition for Review in Circuit Courts**

[In the immigration context, a petition for review is filed to obtain federal court review of a removal, deportation or exclusion decision issued by the BIA.] [[The courts of appeals have exclusive jurisdiction to review "a final order of removal," except an expedited removal order entered under INA § 235(b)(1).]] [8 U.S.C. § 1252(a)(1)] [provides that judicial review of a final order of removal is governed by 28 U.S.C. § 1658 (the Hobbs Administrative Review Act), which vests the courts of appeals with jurisdiction to review final orders of removal.] [A petition for review filed with an appropriate court of appeals in accordance with INA § 1252 is the sole and exclusive means for judicial review of an order of removal entered or issued under the INA.]]

### **Types of Decisions Subject to Petition for Review**

Examples of decisions that may be reviewed through a petition for review include: a BIA decision to issue a final removal order (including the finding of removability and the denial of any applications for relief); a BIA decision to deny a motion to reconsider or a motion to reopen; or a BIA decision to deny asylum in asylum-only proceedings. An order of removal issued by DHS (not the BIA) can also be reviewed through a petition for review in certain circumstances.

## **Petition for Review Deadlines and Requirements**

[A petition for review must be filed within 30 calendar days after the date of the final order of removal.] This deadline is strict and jurisdictional; failure to file within 30 days bars federal court review of the BIA's decision. [Under INA § 1252(c), a petition for review must and need only: (1) include a copy of the final administrative order; and (2) state whether any court has upheld the validity of the order, and if so, state which court, the date of the court's ruling, and the type of proceeding.] However, circuit court rules may mandate additional requirements for the filing of the petition for review beyond those specified in the statute.

## **Standards of Review in Federal Court**

Federal courts apply different standards of review to different categories of claims raised in petitions for review. [In general, (1) legal claims assert that BIA/ICE erroneously applied or interpreted the law (e.g., the INA or the regulations); (2) constitutional challenges assert that BIA/ICE violated a constitutional right (e.g., due process or equal protection); (3) factual claims assert that certain findings of fact made by BIA/ICE were erroneous; and (4) discretionary claims assert BIA/ICE abused its discretion by the manner in which it reached its conclusion.] Federal courts are not bound by the deferential "clearly erroneous" standard applied by the BIA to factual findings; circuit courts apply their own standards to assess whether BIA factual findings are supported by substantial evidence in the record.

## **Finality Requirement**

[The "finality" requirement is that a removal order issued by the Board or by an immigration judge is "final" before it may be judicially reviewed, as set forth in INA § 1242(a)(1).] Determining whether a BIA decision constitutes a final order of removal for purposes of federal court review requires careful analysis. Where the BIA has remanded a case for further proceedings-such as remanding for an Immigration Judge to determine whether the respondent qualifies for voluntary departure-the BIA decision may not yet constitute a final order of removal because further proceedings remain pending. However, in many circumstances, [a BIA decision is final even if the Board remands for voluntary departure.]

## **Stay of Removal Pending Petition for Review**

When a respondent files a petition for review in federal court, the automatic stay that existed during the BIA appeal is lifted. [[Under the traditional standard for stays, the court shall consider (1) whether the stay applicant has made a strong showing that he/she is likely to succeed on the merits; (2) whether the applicant is likely to suffer irreparable harm absent a stay;]] (3) whether a stay is in the public interest; and (4) whether the government will suffer substantial injury from a stay. The respondent bears the burden of demonstrating entitlement to a stay of removal pending resolution of the petition for review.

## **Current Operational Status and Recent Developments**

As of February 2026, the BIA continues to operate under the case management system established by regulation, with significant ongoing challenges related to caseload management and processing timeframes. The Board's composition has undergone changes, with recent appointments of Temporary Board Members and ongoing adjustment to staffing levels. The acceleration of cases involving detained individuals reflects policy priorities ensuring that individuals held in immigration detention receive prompt appellate resolution.

Recent policy developments have affected how certain types of applications are handled at both the trial and appellate levels. The Board has issued guidance on the completion of asylum applications and the standards for deeming applications incomplete or abandoned. Additionally, the Board has addressed the parameters of

Immigration Judge authority and discretion in various contexts, including decisions regarding unilateral motions to dismiss filed by ICE.

Federal fee increases enacted in 2025 have substantially increased filing fees for appeals and motions before the BIA, effective with applications filed after certain dates in 2025. These fee increases have significant implications for practitioners representing low-income or unrepresented respondents and may increase reliance on fee waiver procedures.

## **Conclusion**

The Board of Immigration Appeals serves as the critical appellate mechanism within the administrative immigration system, handling tens of thousands of appeals annually from Immigration Judge decisions and DHS officer determinations. The BIA's role as the highest administrative body for interpreting immigration law means that its decisions shape how immigration law is applied throughout the nation's immigration courts and DHS field offices. Understanding the Board's organizational structure, jurisdiction, procedural requirements, standards of review, and decision-making processes is essential for immigration practitioners seeking to represent respondents effectively on appeal, for individuals navigating the appellate process, and for researchers studying immigration administration.

The filing deadlines, briefing requirements, and procedural formalities established by regulation reflect a complex administrative apparatus designed to manage a massive caseload while maintaining fairness and consistency in legal interpretation. The differentiated standards of review—deferential review of factual findings under the clearly erroneous standard contrasted with fresh, de novo review of legal conclusions—balance appropriate deference to the trial-level decision-maker with appellate responsibility to correct legal errors. The distinction between single-member adjudication, three-member panels, and en banc review provides flexibility in resource allocation while ensuring that cases of significant complexity or precedential importance receive appropriate institutional attention.

Recent years have brought ongoing operational challenges, significant fee increases, staffing changes, and policy developments affecting how both trial courts and the appellate board handle various categories of cases. Despite these challenges, the BIA remains the final administrative arbiter of immigration disputes, with its decisions binding all lower-level administrative actors and subject to limited federal court review through the petition for review process. For any individual or practitioner engaged with immigration law, the Board of Immigration Appeals and its procedures represent an essential component of the American immigration system's appellate structure.

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## **Referenced Legal Sources and Additional Information**

8 U.S.C. § 1158 (Asylum Procedures)

8 U.S.C. § 1229b (Cancellation of Removal)

8 U.S.C. § 1252 (Judicial Review of Orders of Removal)

8 C.F.R. § 1003.1 (Organization, Jurisdiction, and Powers of the Board of Immigration Appeals)

8 C.F.R. § 1003.3 (Timeliness of Appeals)

Executive Office for Immigration Review Organization Chart

BIA Practice Manual, Chapter 1 - Organization and Jurisdiction

BIA Practice Manual, Chapter 4 - Appeals from Immigration Judge Decisions