

USCIS Form I-290B Notice of Appeal or Motion: Research Guide for Immigration Practitioners and Beneficiaries

Generated by: Legal AI Assistant
Facilitated by: The Law Offices of Fernando Hidalgo, Inc.
February 3, 2026

*(c) 2026 The Law Offices of Fernando Hidalgo, Inc.. Generated by a Legal AI Assistant. Facilitated by The Law
Offices of Fernando Hidalgo, Inc.. All rights reserved.*

FINDINGS

USCIS FORM I-290B NOTICE OF APPEAL OR MOTION: COMPREHENSIVE RESEARCH GUIDE FOR IMMIGRATION PRACTITIONERS AND BENEFICIARIES

Executive Summary

When the United States Citizenship and Immigration Services (USCIS) denies an immigration petition or application, or revokes a previously approved petition, individuals and employers facing such adverse decisions have a critical window of opportunity to challenge that determination through Form I-290B, the Notice of Appeal or Motion[1][9]. This form provides three statutorily distinct mechanisms to contest USCIS decisions, each with different evidentiary burdens, timeline expectations, and likelihood of success. The present research brief provides a comprehensive analysis of the I-290B process, examining the regulatory framework governing appeals, the procedural mechanics of the three filing options, strategic considerations for choosing among them, realistic processing timelines, and the interaction between administrative remedies and potential federal court litigation.

Key Takeaways for Practitioners and Beneficiaries:

The procedural landscape governing I-290B filings presents a binary deadline structure: most denials trigger a 30-calendar-day filing requirement (33 days if mailed), while revocations of previously approved immigrant petitions impose a significantly shorter 15-calendar-day timeline (18 days if mailed)[1][26]. This deadline is jurisdictional and cannot be waived except in narrow circumstances involving late-filed motions to reopen where the delay was reasonable and beyond the applicant's control[1][16][26]. The I-290B filing process unfolds in two stages: an initial field review at the originating USCIS office (with a maximum 45-day window for the officer to reconsider and potentially grant favorable action), followed, if necessary, by Administrative Appeals Office (AAO) review[9][19][22]. The AAO applies de novo review, meaning it examines the case fresh without deference to the original USCIS officer's decision, but this independent review can sometimes identify new grounds for denial that were not articulated in the original decision[9][12][49].

Client Risk Assessment and Strategic Framework:

The choice between filing an appeal, a motion to reconsider, or a motion to reopen fundamentally depends on whether the applicant possesses new evidence and whether the original denial rested on legal error, factual misinterpretation, or procedural deficiency[2][7][9]. An appeal to the AAO succeeds where USCIS made an erroneous conclusion of law or fact without requiring the presentation of evidence that did not exist at the time of the original decision[9][12]. A motion to reconsider argues that USCIS incorrectly applied existing law or policy to the record as it stood at the time of denial, and this motion does not permit introduction of new evidence[5][9][16]. A motion to reopen permits presentation of new facts and documentary evidence that either were not previously available or were not previously submitted, provided the applicant can demonstrate that these new facts would materially alter the outcome[5][9][16][26]. Strategic analysis must also weigh the substantial timeline differential between appealing (12 to 18 months to AAO decision, sometimes longer) and re-filing a new petition (typically 3 to 6 months for initial processing), particularly where the denial grounds are remediable through additional documentation or changed circumstances[2][13][25].

Client Risk Level Assessment:

The qualitative assessment of success likelihood depends heavily on the specific denial grounds. Appeals challenging clear legal errors or misapplication of established USCIS policy to documented facts present medium to medium-high likelihood of reversal, particularly where AAO precedent supports the applicant's position[8][25]. Motions to reconsider based on demonstrable USCIS failure to consider submitted evidence or citation to controlling precedent show medium likelihood of success (approximately 25-35% based on practitioner experience)[13][25]. Conversely, appeals that merely re-argue previously considered legal theories without identifying specific erroneous conclusions face low to medium-low likelihood of success, as the AAO will affirm denials on the merits in the majority of appellate cases[11]. Re-filing the original petition presents a medium-high likelihood of success where the applicant can cure the specific deficiencies identified in the denial, with the advantage that the new petition receives fresh evaluation unencumbered by the prior decision record[2][13]. The timeline risks associated with each strategy-including the potential for the beneficiary's status to lapse during pendency of an AAO appeal, visa number availability in preference categories, or intervening changes in applicable law-must be carefully weighed against the likelihood of appellate success.

Timeline and Deadline Considerations:

The filing deadline for Form I-290B is jurisdictional and non-negotiable. USCIS counts every calendar day, including weekends and federal holidays, commencing with the first day after the date USCIS mailed (or otherwise served) the denial notice[1][7][16]. If the deadline falls on a weekend or holiday, filing is permitted through the end of the next non-holiday weekday[1][7]. Once filed, the appeal enters a two-stage process: the originating field office has 45 days from receipt to determine whether to take favorable action; if favorable action is not forthcoming, the file transfers to the AAO[9][19][22]. AAO review targets completion within 180 days of receiving a complete case record, but actual median processing times range from 6 to 18 months depending on case complexity, with some decisions extending beyond two years in congested circuits[3][6][13][40][47].

Foundational Legal Framework Governing I-290B Filings

Statutory Authority and Regulatory Architecture

Form I-290B derives its authority from the Immigration and Nationality Act (INA) and its implementing regulations in Title 8 of the Code of Federal Regulations (CFR). The foundational statutory framework is located at 8 U.S.C. § 1103, which grants the Secretary of the Department of Homeland Security general authority to establish regulations governing the adjudication of immigration benefits, including procedures for administrative review[19][22]. The specific regulatory provisions governing appeals, motions to reconsider, and motions to reopen are codified at [8 CFR § 103.3 (denials, appeals, and precedent decisions)][19][22] and [8 CFR § 103.5 (appeals and motions on applications and petitions)][9][16][26].

The regulatory structure distinguishes between appealable decisions and non-appealable decisions. Certain USCIS determinations-particularly those involving the exercise of agency discretion in denying a benefit despite technical eligibility-may not be appealed; instead, applicants must file a motion to reconsider with the same office that issued the decision[9][14]. The distinction is critical because attempting to appeal a non-appealable decision will result in rejection of the I-290B, absent circumstances where USCIS determines that the untimely submission should be treated as a motion to reconsider or reopen[1][26].

The regulatory framework provides that when an unfavorable decision is issued, the official making the decision must state the appellate jurisdiction (AAO versus Board of Immigration Appeals, for example) and

furnish the appropriate appeal form[19][22]. The denial notice itself constitutes the primary guidance as to whether an appeal, motion to reconsider, or motion to reopen is available for that particular decision[1][9][26]. The applicant or petitioner should carefully review the denial notice to determine which options are available, as filing the wrong type of motion or appeal can result in summary rejection[1][9].

Regulatory Requirements for Each Filing Category

Appeals. An appeal to the AAO must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision[1][9][19][26]. The appellant bears the burden of proof to establish eligibility for the requested immigration benefit, and this burden includes demonstrating that all eligibility requirements were satisfied from the time of initial filing and continuing through adjudication[7][9][49]. The appeal must be filed on Form I-290B with a statement addressing all grounds of ineligibility identified in the original denial notice; failure to address any ground of ineligibility may result in waiver of that issue for purposes of appeal[1][9][26][34]. A supporting brief may be submitted concurrently with the appeal or within 30 calendar days of filing the form[1][9][34]; the brief is optional but strongly recommended as it provides an opportunity to organize legal arguments, cite controlling authority, and reference specific evidence in the record.

Motions to Reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by citations to appropriate statutes, regulations, precedent decisions, or statements of USCIS policy[5][9][16][26]. The motion must establish that the decision was based on an incorrect application of law or USCIS service policy and that the decision was incorrect based on the evidence that existed in the record of proceedings at the time of the initial decision[5][9][16][26]. Critically, the AAO will not consider new facts or new evidence in reviewing a motion to reconsider[5][16][26]. A motion to reconsider is filed with the USCIS office that issued the original denial, not with the AAO[5][9]. The motion must include a supporting brief, which must be filed concurrently with the motion form itself[9][26][34].

Motions to Reopen. A motion to reopen must state the grounds for reopening and the new facts to be proved in the reopened proceeding[5][9][16][26]. The motion must be supported by affidavits or other documentary evidence demonstrating eligibility for the requested immigration benefit at the time the underlying application or petition was filed[5][9][16][26]. Unlike appeals, which can challenge errors in the original decision, and motions to reconsider, which can identify overlooked evidence or misapplied law, a motion to reopen is premised on the emergence of facts that were not previously available or were not previously submitted to USCIS[5][9]. A motion to reopen is also filed with the originating USCIS office, not the AAO, and the supporting brief and evidence must be submitted concurrently with the form[9][26][34]. Significantly, a motion to reopen for a case denied due to abandonment has additional evidentiary requirements codified at [8 CFR 103.5(a)(2)], requiring the applicant to demonstrate that the denial was in error because the requested evidence was not material to eligibility, the required initial evidence was submitted, or the request for evidence was sent to an incorrect address.

The Initial Field Review Mechanism

The regulatory framework contains a procedural innovation designed to streamline the appeals process: the initial field review[9][19][22]. When an I-290B is filed with the originating USCIS office (whether designated as an appeal, motion to reconsider, or motion to reopen), the official who made the original unfavorable decision must review the submission[19][22]. This reviewing official has 45 days from receipt of the I-290B to determine whether favorable action is warranted[19][22]. If the reviewing official determines that favorable action is indeed warranted, the official may treat the appeal as a motion to reconsider or reopen and grant the benefit, rendering further AAO review unnecessary[19][22][9]. This mechanism allows for efficient resolution of cases where the original officer, upon reconsideration, recognizes an error or becomes convinced by newly

submitted evidence or legal argument.

However, if the reviewing official determines that favorable action is not warranted, the official must promptly forward the appeal and the complete record of proceedings to the AAO[19][22]. This forward transmission does not constitute a denial of any motion; it is merely a procedural routing to the appellate authority[12]. The applicant is entitled to receive notice that the case has been transferred to the AAO, typically in the form of a notice of transfer issued by USCIS[9][47].

The initial field review stage is not optional or discretionary on the part of the applicant. Every I-290B filing undergoes field review before being forwarded to the AAO[9][19][22]. This process can result in unexpected favorable resolutions for applicants whose cases have merit but whose claims were initially overlooked or mishandled by the adjudicating officer. For practitioners, the initial field review period represents an opportunity to monitor case status and, in some instances, request supervisory review or provide additional information that the field office officer might not have considered, though such requests must be carefully calibrated to avoid creating a procedural record that could be used against the applicant.

Current Legal Landscape and Recent Developments

Regulatory and Policy Environment as of February 2026

The I-290B process operates within a significantly altered legal landscape that has developed rapidly over the preceding months. The most consequential development affecting all USCIS benefit applications is the comprehensive adjudicative hold imposed on certain benefit requests by DHS policy as of January 2026. USCIS issued a memorandum effective January 1, 2026, placing a hold on the final adjudication of all pending immigration benefit requests filed by or on behalf of individuals connected to countries designated as "high-risk" under Presidential Proclamations 10949 and 10998[39]. This hold applies to all form types, including I-129, I-140, I-539, I-765, and derivative petitions, regardless of the applicant's date of entry into the United States[39]. Although this hold does not prevent initial processing stages (including field office review and transfer to the AAO), it prevents final adjudication of cases pending for beneficiaries from the designated countries[39]. Affected individuals should anticipate processing delays measured in months to years, and the hold remains in place indefinitely pending further action by USCIS leadership[39].

Additionally, USCIS paused processing of all Form I-589 asylum applications in December 2025, a pause that continues as of February 2026[39][54]. This development is significant because asylum-related denials that would normally be subject to I-290B appeals are now effectively frozen in the initial processing stage, meaning fewer asylum-related I-290Bs are being filed or adjudicated currently, but those already filed face extended timelines.

The AAO's current processing performance shows mixed results. For the fourth quarter of fiscal year 2026 (October through December 2025), AAO processed cases at the following rates: I-129 H-1B appeals were completed at 95.5% within the 180-day target (22 cases); I-129 L-1 appeals achieved 100% within 180 days (18 cases); I-140 EB-2 Advanced Degree appeals achieved 100% within 180 days (8 cases); and I-140 EB-3 Skilled Worker appeals achieved 100% within 180 days (6 cases)[3]. These favorable statistics, however, represent only the small subset of cases completed in the most recent quarter. Historical data and attorney practice experience consistently demonstrate that overall AAO processing extends well beyond the 180-day target, with median timelines of 12 to 18 months and many cases extending to 2 years or longer[3][6][13][25][40].

Circuit Splits and Controlling Ninth Circuit Precedent

While the I-290B process is predominantly regulated by federal statute and USCIS policy rather than circuit court precedent, several circuit decisions address the scope of judicial review of AAO decisions and the availability of federal court remedies when administrative remedies are exhausted. The Ninth Circuit, which exercises appellate jurisdiction over USCIS decisions appealed from the Northern District of California and Central District of California, has not developed extensive precedent specifically addressing I-290B procedural requirements, as such disputes are typically resolved administratively by USCIS rather than reaching federal court.

However, the Ninth Circuit has addressed the scope of judicial review of immigration agency decisions under the Administrative Procedure Act (APA). In circuit split decisions, some circuits (notably the Fourth, Fifth, and Eleventh Circuits) have held that district courts lack jurisdiction to review certain USCIS denials based on nondiscretionary eligibility issues, particularly where the individual is not in removal proceedings[29]. The Ninth Circuit has not adopted this restrictive view as uniformly, and Northern California federal courts have retained jurisdiction in some instances to review USCIS denials of non-discretionary determinations, particularly where the applicant can demonstrate that the denial violates a clear statutory mandate or where the agency failed to follow procedural requirements[29].

For practitioners in Northern California representing clients with I-290B appeals pending before the AAO, the significance lies in the fact that if the AAO sustains (affirms) the USCIS denial, the applicant may retain federal court remedies in certain circumstances. APA challenges to USCIS denials are reviewable under the arbitrary and capricious standard codified at 5 U.S.C. § 706, provided that the applicant can establish jurisdiction and that another statute does not preclude judicial review[29][53]. The INA contains several jurisdictional bars to judicial review, most notably 8 U.S.C. § 1252(g), which bars judicial review of certain discretionary determinations; however, these bars do not apply to all categories of USCIS denials, and litigation has established that APA challenges to agency action not specifically addressed by jurisdictional bars remain available[29][53].

AAO Precedent and Non-Precedent Decision Patterns

The AAO issues both precedent (binding) decisions and non-precedent (persuasive only) decisions. Precedent decisions address legal issues of general applicability and are binding on USCIS officers and the AAO itself in future cases[8][18]. Non-precedent decisions, by contrast, are fact-specific determinations that provide persuasive authority for appellants with similar fact patterns but do not establish binding legal standards[8][18].

Recent AAO decisions on employment-based petitions, particularly EB-1A extraordinary ability cases, illustrate the AAO's increasingly rigorous approach to evidentiary standards. In a series of decisions issued between June 2024 and February 2025, the AAO consistently sustained denials where petitioners failed to demonstrate the requisite extraordinary ability through at least three of the ten regulatory criteria[15][27]. In one February 2025 decision (In Re: 34835263), the AAO dismissed the appeal of an I-140 EB-1A petition, finding that the petitioner did not meet the required criteria to establish extraordinary ability[15][27]. In another November 2025 decision (In Re: 34427770), the AAO similarly dismissed an EB-1A appeal[15][27]. However, in a June 2024 decision (In Re: 31109123), the AAO found that the petitioner met at least three qualifying criteria and demonstrated intent to continue working in the field in the United States, whereupon the AAO withdrew the Director's decision and remanded the case for a final merits determination[15][27]. These decisions demonstrate that the AAO applies rigorous, multi-factor analysis to evidentiary submissions and does not grant substantial deference to the initial USCIS officer's determination of whether evidence

meets regulatory criteria.

Practical Effects of De Novo Review and New Reasoning Doctrine

The AAO's exercise of de novo review—meaning it examines the record anew without deference to the original officer's findings—can produce outcomes that appear paradoxical to appellants. An appellant who identifies and addresses a single specific error in the original USCIS denial may find that the AAO, while agreeing with the error analysis, sustains the denial on entirely different grounds that the USCIS officer did not articulate[12]. This phenomenon, referred to as the "new reasoning doctrine" or the AAO's practice of identifying alternative grounds for affirming a denial, is illustrated in the training materials provided to USCIS officers[7][12]. The AAO's authority to affirm a decision on new grounds flows from its de novo review mandate; however, this practice creates a strategic dilemma for appellants: identifying and correcting a single error does not guarantee reversal if the AAO identifies other deficiencies in the record[12].

To mitigate this risk, experienced practitioners file appeals that comprehensively address all possible grounds of ineligibility identified in the denial notice, even those that seem less significant or those the applicant believes to be in error[1][9]. The goal is to prevent the AAO from identifying new grounds for denial that were not articulated in the original USCIS decision and thus were not defended against by the appellant.

Detailed Analysis of the Three I-290B Filing Options

Option One: Appeal to the Administrative Appeals Office

An appeal to the AAO is the appropriate filing choice when the applicant believes that the USCIS officer made an erroneous conclusion of law or statement of fact, and the applicant does not possess significant new evidence or facts that would materially change the outcome[1][2][9][19]. The appeal mechanism is codified at [8 CFR § 103.3(a)(1)(ii) and (iii)][19][22] and permits the AAO to conduct de novo review of all issues raised.

Requirements for a Successful Appeal. An appeal must specifically identify the erroneous conclusion of law or fact with precision[1][9][26]. A conclusory statement that "USCIS made an error" or "the decision is wrong" will not suffice; the appeal must articulate the specific error, cite the legal authority that USCIS misapplied, and explain how the evidence in the record demonstrates that the error determination was incorrect[1][9][41]. The appeal should address every ground of ineligibility mentioned in the USCIS denial notice; failure to address any ground may result in waiver of that issue for purposes of appellate review[1][9][26]. This requirement flows from the principle that an appellant should not receive a second bite at the apple by raising arguments on appeal that were not preserved in the administrative record or at least fairly implied by the original filing.

Evidence Submission on Appeal. Appeals are unique among the three I-290B options in that appellants may submit evidence that did not exist at the time of the original USCIS decision—that is, evidence created after the denial but before the appeal[1][34][41]. However, the evidence must be submitted either concurrently with the Form I-290B or within 30 calendar days of filing the form[1][34]. If the appellant chooses to submit evidence after filing the form, the evidence must be sent directly to the AAO, not to the originating USCIS office, and must clearly identify the related appeal[1][34]. This permissive approach to evidence submission distinguishes appeals from motions to reconsider, which do not permit new evidence at all.

Timing Considerations. The appellant must file within 30 calendar days of the USCIS decision (33 days if mailed)[1][26]. Once filed, the case undergoes the initial field review stage, where the originating USCIS

office has 45 days to determine whether to take favorable action[19][22]. If favorable action is not forthcoming, the case transfers to the AAO. The AAO then conducts appellate review, targeting completion within 180 days but typically requiring 12 to 18 months or longer in practice[3][6][13][40].

Strategic Advantages and Disadvantages. Appeals are the appropriate mechanism when the applicant believes the USCIS officer misunderstood or misapplied the law, overlooked submitted evidence, or made a factual determination unsupported by the record[2][8][9]. Appeals allow for de novo review, meaning the AAO is not bound by the original officer's factual findings or legal interpretations[9]. This fresh review can identify errors that might otherwise go uncorrected. However, the de novo review also means that the AAO may identify additional grounds for denial not articulated in the original decision, potentially weakening the applicant's position[12]. Additionally, appeals can extend processing timelines substantially—often by one to two years or more—creating risks if the applicant's status is time-sensitive or visa availability is an issue[2][13].

Option Two: Motion to Reconsider

A motion to reconsider is the appropriate filing choice when the applicant believes that USCIS based its decision on an incorrect application of law or service policy and the applicant wishes to establish that the decision was incorrect based on the evidence that already existed in the record at the time of the original decision[5][9][16][26]. Unlike an appeal, which can cite new evidence, a motion to reconsider is strictly confined to legal error and factual re-interpretation of the existing record[5][16][26].

Requirements for Filing. A motion to reconsider must state the reasons for reconsideration and must be supported by citations to appropriate statutes, regulations, precedent decisions, or statements of USCIS policy[9][16][26]. The motion must establish both that the decision was based on an incorrect application of law or policy AND that the decision was incorrect based on the evidence of record at the time of the initial decision[9][16][26]. The supporting brief must be filed concurrently with the motion form itself; unlike appeals, there is no option to submit the brief within 30 days after filing[9][26][34].

What Evidence Cannot Be Submitted. The regulatory framework explicitly provides that the AAO will not consider new facts or evidence when reviewing a motion to reconsider[5][16][26]. This limitation flows from the logical structure of the motion: if the issue is that USCIS misinterpreted or misapplied the law to the existing record, then introduction of new facts would transform the motion into something that should have been filed as a motion to reopen (which requires new facts) rather than as a motion to reconsider[5][16].

Successful Arguments on Motion to Reconsider. Common successful grounds for motions to reconsider include the following: (1) USCIS officer failed to give proper weight to or consideration of evidence that was submitted, despite the fact that it was clearly part of the record; (2) USCIS misinterpreted the applicant's submitted evidence; (3) USCIS misinterpreted a statute, regulation, or precedent case; (4) USCIS did not follow its own stated policy as articulated in the USCIS Policy Manual; (5) subsequent appellate decisions have overruled or clarified the legal standard that USCIS applied, rendering the original decision incorrect under current law; or (6) USCIS made a purely ministerial or computational error (such as calculating fees incorrectly or processing an application past the statutory deadline)[5][9][16].

Timing and Processing. Motions to reconsider are filed with the originating USCIS office, not the AAO[5][9]. The office that issued the original denial will review and adjudicate the motion. Practitioners report that motions to reconsider typically receive decisions within 3 to 6 months, substantially faster than appeals to the AAO[13][25][33]. This faster timeline makes motions to reconsider attractive where the grounds for reconsideration are straightforward and compelling.

Success Rates. Empirical data on motion to reconsider success rates indicates approval in approximately

25-35% of cases where the motion is properly prepared with evidence directly addressing the stated denial reasons[13][25]. This approval rate exceeds the typical AAO appeal success rate (10-15%), likely because motions to reconsider are filed only in cases where a clear legal error or factual misinterpretation is apparent, whereas some appeals are filed in cases where the original denial was legally and factually sound[13][25].

Strategic Positioning. Many practitioners view a motion to reconsider as a lower-risk, faster alternative to an appeal when the grounds for challenge are primarily legal rather than factual[7][16][25]. If the motion to reconsider succeeds, the case is resolved without the extended timeline of an AAO appeal. If the motion to reconsider is denied, the applicant retains the option to file an appeal to the AAO, though the appellate brief would then need to address not only the original USCIS decision but also the denial of the motion to reconsider[5][16].

Option Three: Motion to Reopen

A motion to reopen is the appropriate filing choice when the applicant has new facts and supporting documentary evidence that were not previously available or not previously submitted to USCIS, and the applicant believes that these new facts, if considered, would materially change the outcome of the case[5][9][16][26].

Requirements for Filing and Evidence. A motion to reopen must state the grounds for reopening and the new facts to be proved in the reopened proceeding[5][9][16][26]. Critically, the motion must be supported by affidavits or other documentary evidence demonstrating eligibility for the requested immigration benefit at the time the underlying application or petition was filed[5][9][16][26]. This requirement creates a logical framework: the new facts must bear on the applicant's eligibility as of the original filing date, not on circumstances that have changed since the denial. For example, if an I-140 was denied because the employer lacked the ability to pay the prevailing wage in 2020, a motion to reopen might be supported by newly obtained financial records from 2020 that demonstrate the employer's actual capacity, or by expert affidavits explaining why the USCIS officer's financial interpretation was erroneous. Conversely, an employer's improved financial performance in 2024 would be less compelling because it speaks to current ability to pay rather than ability to pay at the relevant time.

Definition of "New Facts." The regulatory framework does not require that new facts be genuinely unknown or unavailable at the time of the original application[5][16]. Instead, the standard is that the facts were not previously submitted to USCIS[5][16]. An applicant may have possessed certain facts at the time of the original filing but failed to include them in the application package; a motion to reopen can present those facts as "new" for purposes of reopening, provided the facts are supported by documentary evidence and would materially affect the outcome[5][16]. However, practitioners should exercise caution in characterizing previously known facts as "new"; the stronger position is to present genuinely newly discovered information or evidence that has been created since the original filing.

Specific Evidentiary Requirements for Abandonment Cases. Where an application or petition was denied due to abandonment (failure to respond to a request for evidence, notice of intent to deny, or interview notice), the motion to reopen has additional requirements codified at [8 CFR 103.5(a)(2)][5][16][26]. The motion must establish that the denial was in error because: (i) the requested evidence was not material to the issue of eligibility; (ii) the required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or (iii) the request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or the applicant advised the Service in writing of a change of address or representation and the request did not go to the new address[5][16][26]. These additional requirements reflect

the principle that abandonment is a procedural defect, and reopening on abandonment grounds requires demonstrating that the defect was not the applicant's fault or that the evidence was not actually needed.

Timing and Excusable Delay for Late-Filed Motions. A motion to reopen must normally be filed within 30 calendar days of the USCIS decision (33 days if mailed)[1][5][16][26]. However, unlike late-filed appeals (which are rejected unless they can be converted to a motion to reconsider or reopen), a late-filed motion to reopen may be excused in the discretion of USCIS where the applicant demonstrates that the delay was reasonable and was beyond the applicant's control[1][5][16][26]. This provision permits USCIS to accept motions to reopen filed after the deadline if, for example, the applicant was hospitalized, suffered a death in the family, experienced significant hardship, or was misrepresented by an incompetent or unreliable attorney[28]. The applicant bears the burden of establishing that the delay satisfies both prongs: that it was reasonable (not merely the applicant's preference or oversight) and that it was beyond the applicant's control (not attributable to the applicant's negligence or deliberate choice).

Processing Timelines and Success Rates. Motions to reopen are adjudicated by the originating USCIS office, and practitioners report processing timelines of 3 to 6 months, similar to motions to reconsider[13][25][33]. Success rates vary significantly depending on the strength of the new evidence and the nature of the original denial. Where new evidence clearly cures the original deficiency (for example, newly obtained documentation showing the employer's ability to pay where financial documentation was previously incomplete), success rates can exceed 50%[25]. Where new evidence merely amplifies or recapitulates previously submitted evidence, success rates are lower.

San Francisco-Specific Context and Northern California Practice Considerations

San Francisco Immigration Court and EOIR Context

While the I-290B process is a USCIS administrative procedure rather than an immigration court proceeding, practitioners in Northern California must understand the procedural intersection between USCIS denials, administrative appeals, and potential downstream immigration court proceedings. The San Francisco Immigration Court, located at 100 Montgomery Street, Suite 800 (primary location) and with additional hearing locations at 630 Sansome Street, 4th Floor and in Concord at 1855 Gateway Boulevard, Suite 850, exercises jurisdiction over removal proceedings and certain other immigration matters. If an I-290B appeal to the AAO is filed in the context of an employment-based petition (I-140, I-129) or family-based petition (I-130), and the applicant is concurrently placed in removal proceedings, the interaction between the administrative appeal timeline and the immigration court proceedings becomes critical.

The San Francisco Immigration Court has published local rules and procedural expectations that affect the strategic timing of administrative filings. While these rules do not directly govern I-290B procedures (which are administered by USCIS outside the court system), they establish broader procedural norms for Northern California immigration practice. The San Francisco Court's practice has historically permitted continuances to allow administrative appeals to conclude before immigration judges rule on related issues, though this accommodation is not guaranteed and depends on the specific facts and the judge assigned to the case.

San Francisco Asylum Office and Impact on I-589 Denials

For asylum applicants who receive denials from the San Francisco Asylum Office (which covers most of Northern California), the current legal landscape has changed dramatically. As noted above, USCIS has paused processing of all Form I-589 asylum applications as of December 2025, and this pause includes

processing of I-290B appeals of denied I-589 applications[39][54]. Asylum applicants who received denials prior to the pause and who wish to file I-290B appeals should be aware that their appeals will be subject to the same adjudicative hold affecting the underlying asylum application. The San Francisco Asylum Office's specific procedures for handling I-290B appeals of I-589 denials may be affected by this hold, and practitioners should verify the current status of any pending asylum appeals.

Northern California ICE Enforcement Context and Removal Proceedings Risk

For individuals whose denials place them at risk of removal proceedings, the I-290B filing serves not only as a substantive legal remedy but also as potential protection against immediate enforcement action. Filing an I-290B does not automatically grant deferred action status or preclude ICE enforcement; however, it places the case in "pending" status, which creates a practical disincentive for ICE to initiate removal proceedings while administrative remedies are pending. For employment-based cases, the employer's visa petition status affects the beneficiary's ability to maintain lawful work status; a pending I-290B appeal preserves the beneficiary's derivative authority to remain and work while the appeal is pending, though this protection is limited and depends on the specific visa category and the timing of the denial.

ICE's Northern California Field Office 1 (with enforcement responsibility for the Bay Area and surrounding regions) has historically followed enforcement priorities announced by DHS leadership, which as of January 2026 have shifted significantly toward prioritizing enforcement against removable aliens, with reduced discretion for prosecutorial discretion or deferred action[39]. The memo issued in January 2026 regarding processing holds on benefits for individuals from designated "high-risk" countries also signals a more restrictive enforcement posture. Practitioners should advise clients that filing an I-290B, while providing some practical protection against enforcement, should not be relied upon as a substitute for exploring alternative remedies, such as deferred action status, Temporary Protected Status (for eligible countries), or other humanitarian relief.

California State Law Protections and Interaction with I-290B Strategy

California state law provides several mechanisms for challenging conviction-based immigration consequences that can interact with federal immigration proceedings. California Penal Code § 1473.7 permits defendants to move to vacate a conviction on the ground that the conviction had an adverse immigration consequence that the defendant did not understand at the time of conviction, if the defendant received ineffective assistance of counsel with respect to immigration consequences[1][2]. California Penal Code § 1203.43 permits judges to suspend imposition of sentence and terminate probation early in certain circumstances, which can reduce immigration exposure. California Proposition 47 (reducing certain felonies to misdemeanors) and Proposition 64 (regarding marijuana offenses) have both created opportunities for conviction modification that can affect immigration cases, particularly employment-based cases where a criminal record might create grounds of deportability or inadmissibility.

For beneficiaries of I-140 petitions or I-130 petitions who have criminal convictions, a strategic approach may involve simultaneously pursuing state conviction modification under PC § 1473.7 or PC § 1203.43 while filing an I-290B appeal on the federal immigration petition. If the state court vacates the conviction or reduces the felony to a misdemeanor, the removal of the criminal ground of deportability or inadmissibility can fundamentally alter the federal immigration case. Practitioners should coordinate with criminal defense counsel or conviction modification specialists to ensure that state-level remedies are pursued in parallel with federal I-290B filings.

California's Values Act (SB 54) limits the extent to which state and local law enforcement can cooperate with

ICE, which provides an additional layer of protection for immigrant defendants in state criminal proceedings. This protection is particularly important for individuals who have received I-290B denials and who are not in valid immigration status, as it reduces the likelihood that state criminal proceedings will result in ICE referrals while federal administrative remedies are pending.

Strategic Decision Framework: Which Option Is Best for Your Circumstances?

Analytical Framework for Strategic Selection

Selecting between an appeal, motion to reconsider, and motion to reopen requires analysis of multiple factors that together determine the optimal path. The framework should consider the following variables: (1) the nature and strength of grounds for challenging the denial; (2) the availability and strength of new evidence; (3) the timeline pressure created by the applicant's status, visa category, and other pending applications; (4) the cost differential between filing an I-290B (currently \$675) and re-filing the underlying petition; and (5) the realistic likelihood of success for each option given the specific denial grounds.

The "Why Was I Denied?" Analysis. The first step is to carefully read and categorize the USCIS denial notice. The notice should identify with specificity the grounds for denial. Common denial reasons fall into a small number of categories: (1) the applicant or petitioner was ineligible due to failure to meet statutory or regulatory requirements (such as failing to meet the job requirements for an EB-3 position or lacking the qualifying family relationship for an I-130); (2) insufficient evidence was submitted to establish eligibility (such as insufficient documentation of the claimed job experience or insufficient evidence of the claimed family relationship); (3) USCIS exercised discretion to deny despite technical eligibility (such as denying an I-601 waiver application or finding that the applicant cannot be granted adjustment of status despite meeting statutory requirements); (4) abandonment, where the applicant failed to respond to a request for evidence or failed to appear for a required interview; or (5) procedural error or file loss on USCIS's part, where documents were mislaid or administrative mistakes were made.

The categorization of the denial grounds determines which I-290B option is most appropriate. If the denial was based on ineligibility under the statute or regulations, and the applicant disputes the USCIS officer's interpretation of the law or the USCIS officer's factual determinations, an appeal is appropriate. If the denial was based on insufficient evidence, a motion to reopen is appropriate if the applicant now has additional evidence that was not previously available; a motion to reconsider is appropriate if the applicant can argue that the evidence that was submitted should have been considered sufficient; and re-filing with additional evidence is appropriate if the cost and timeline factors favor it. If the denial was based on discretionary grounds, an appeal is the only option available (as appeals can challenge discretionary denials, but motions to reconsider and reopen cannot, because they implicitly concede the discretionary denial and merely challenge the legal or factual predicate for it).

The "What New Evidence Do I Have?" Analysis. Practitioners should prepare a detailed inventory of evidence that: (1) exists now but did not exist at the time of the original filing; (2) existed at the time of the original filing but was not submitted; and (3) was submitted at the time of the original filing but the applicant believes was misunderstood or given insufficient weight by the USCIS officer. The first category of evidence (newly created) can support an appeal or a motion to reopen. The second category of evidence (existed but not submitted) can support a motion to reopen but not a motion to reconsider or an appeal. The third category of evidence (submitted but misweighted) can support a motion to reconsider or an appeal, depending on whether the applicant can identify specific legal error in the officer's evaluation.

The "What's My Timeline Pressure?" Analysis. The applicant's timeline situation is critical. If the applicant is in valid H-1B status or another lawful status that is independent of the pending I-140 petition, and there is no imminent deadline (such as a visa number availability date or an interview appointment), then the applicant can afford to wait 12-18 months for an AAO appeal to conclude. If, conversely, the applicant's lawful status depends entirely on the pending petition (for example, the applicant is on a dependent visa whose validity derives from the principal's employment visa petition), and the status is expiring soon, or if the applicant is in removal proceedings with an immigration court hearing date scheduled, then the timeline urgency shifts dramatically toward either a motion to reconsider or re-filing.

The "Cost-Benefit Analysis" of Appeal vs. Re-file. The cost to file an I-290B appeal is currently \$675[25][40][55]. The cost to file a fresh petition (for example, a new I-140 or I-130) varies by form type: I-130 petitions cost \$640, and I-140 petitions cost \$700[25][40][55]. In many cases, the cost differential between an I-290B appeal and a fresh petition is minimal (approximately \$25-\$60 difference)[2][13]. However, re-filing adds the cost of obtaining new evidence, updated country conditions reports (for humanitarian cases), expert affidavits, and translation services, which can multiply the total cost significantly.

The timeline differential is more substantial. An I-290B appeal to the AAO requires 12-18 months minimum (often longer), while a fresh petition receives an initial decision within 3-6 months (absent backlogs or processing holds)[13][25]. For employment-based cases, re-filing a fresh I-140 results in loss of the original priority date, which is a significant drawback if visa number availability is the limiting factor. For family-based cases, re-filing an I-130 also results in loss of the priority date, which can add months or years of waiting for the case to become current again.

The "Re-filing" Decision. Re-filing is strategically advantageous in the following scenarios: (1) the USCIS officer made clear procedural or legal errors that are unlikely to survive appellate review, but the applicant does not have the time or resources to wait 12-18 months for an appeal; (2) the applicant has identified and corrected the specific deficiencies that led to the original denial, and the applicant can submit a strengthened petition; (3) the original petition was denied on discretionary grounds, and the applicant has new evidence of changed circumstances that would support a fresh discretionary determination; or (4) for family-based petitions, the applicant believes that there is a strong likelihood of AAO reversal, but the visa number availability situation is deteriorating and waiting for an appeal might result in further delays.

Re-filing is not strategically advantageous in the following scenarios: (1) the applicant would lose an important priority date (in preference categories where significant waits are expected); (2) the applicant has already re-filed once and wants to avoid the appearance of a pattern of failed applications; (3) the grounds for the original denial are not remediable by additional evidence or changed circumstances; or (4) the applicant is in removal proceedings and needs the judicial deference that comes from having filed a proper administrative appeal to preserve appellate arguments for federal court.

Qualitative Assessment of Likelihood of Success for Each Option

Appeals. Appeals succeed at moderate rates when the applicant can identify a specific legal error (misinterpretation of a statute, regulation, or precedent case) or a specific factual error (such as USCIS officer's statement about facts that is clearly contradicted by the record). Appeals are less likely to succeed when the applicant is essentially re-arguing the same legal theories that the USCIS officer considered and rejected, or when the original denial rested on factual findings (such as credibility determinations) that are reviewed with deference by appellate authorities. The empirical success rate for AAO appeals is approximately 10-15% overall, with variation by case type; appeals of EB-2 and EB-3 denials based on ability to pay tend to succeed at slightly higher rates (15-20%) when strong financial evidence supports the appeal,

while appeals of EB-1A denials have lower success rates (5-10%) given the subjective nature of the "extraordinary ability" determination.

Motions to Reconsider. Motions to reconsider succeed at higher rates (25-35%) when the motion identifies a clear legal error or demonstrates that the USCIS officer overlooked significant submitted evidence. Motions to reconsider are less likely to succeed when the USCIS denial letter explicitly addresses the applicant's legal arguments and credibly distinguishes unfavorable precedent, indicating that the officer considered and consciously rejected the legal theory.

Motions to Reopen. Motions to reopen succeed at rates ranging from 30-50% when the new evidence directly addresses the deficiency identified in the denial notice and is accompanied by credible documentation or expert affidavits explaining why the new evidence supports eligibility. Motions to reopen are less likely to succeed when the "new" evidence is merely a repackaging of previously submitted evidence or when the evidence is tangential to the core deficiency.

Decision Tree for Practitioners and Clients

If the applicant has new evidence: File a motion to reopen (if the new evidence was not previously available or not previously submitted and would materially change the outcome) or an appeal (if the applicant also wishes to raise legal arguments and can afford to wait 12-18 months). Motions to reopen can be filed concurrently with appeals on the same I-290B (by selecting the "combined motion" option), which allows for efficient presentation of both factual and legal arguments while preserving the faster processing timeline for the motion component.

If the applicant does not have new evidence: File either an appeal (if the applicant can identify a specific legal error or misapplication of law) or a motion to reconsider (if the applicant can identify a specific legal error and prefers a faster timeline). Do not file a motion to reopen if there is genuinely no new evidence; a motion to reopen will be denied, and the applicant will lose time.

If the applicant is under timeline pressure: File a motion to reconsider if there is a plausible legal error argument; re-file if the denial grounds are remediable and the cost-benefit analysis favors it; or request that the originating USCIS office grant a supervisory review or provide an explanation for an apparent administrative error (though this is not a formal appeal option, USCIS has some authority to revisit decisions that rest on clear error or newly discovered material facts).

If the applicant has lost a priority date or visa number availability: Do not re-file unless there is a compelling reason; file an appeal instead, as the AAO appellate process preserves priority date and visa number availability while the appeal is pending (though this depends on the specific visa category and the length of the appeal).

Processing Timelines, Outcomes, and What Happens After an I-290B Decision

Realistic Processing Timeline Expectations

The I-290B process unfolds in predictable but time-consuming stages. Upon filing the Form I-290B, the applicant receives a receipt notice (Form I-797-NR) confirming that USCIS has received the filing. The originating USCIS office then has 45 days from receipt to complete the initial field review and determine whether to take favorable action[19][22]. In a minority of cases (estimates suggest 5-15%), the field office officer will acknowledge that an error was made or will be persuaded by the applicant's legal arguments or

newly submitted evidence, and will grant favorable action, resulting in approval of the underlying petition or application without further AAO involvement[9][19][22].

In the majority of cases (85-95%), the field office will determine that favorable action is not warranted and will forward the case to the AAO. The applicant receives notification of the transfer to the AAO, typically 1-2 weeks after the 45-day field review period expires. The AAO then begins its independent review. As of February 2026, the AAO reports targeting completion of appeals within 180 days of receiving the complete case record[3][40], but this target is frequently exceeded. The most recent quarterly data shows that a majority of cases (95-100% for certain form types) are completed within 180 days in FY 2026 Q1[3], suggesting that processing times may have improved somewhat, though this data may not be representative of the broader caseload.

However, aggregate data on AAO processing timelines indicates that median processing times range from 12 to 18 months, with many cases extending to 2 years or longer[6][13][25][40]. Several factors affect processing speed: (1) case complexity, with asylum and cancellation of removal cases taking longer due to evidentiary complexity; (2) whether the applicant submitted a brief; (3) whether the applicant requested oral argument (which delays decision while the AAO schedules the argument); (4) the current AAO caseload; and (5) whether the case involves a discretionary determination (which may require more extensive analysis).

Processing speed by form type. Based on FY 2026 Q1 data, employment-based petitions (I-129 and I-140) are completing at the highest percentages within the 180-day target (95-100% for I-129 L-1 and I-140 EB-2/EB-3 categories)[3]. Family-based appeals (I-130) do not have reported separate statistics in the recent data, suggesting they may be processed more slowly. Asylum-related appeals (I-589) are currently subject to the processing hold noted earlier, meaning they are not being adjudicated to completion despite initial processing stages occurring.

Possible Outcomes of I-290B Review

The AAO or originating field office may issue one of several categories of decisions on an I-290B:

Approval. The most favorable outcome is approval of the underlying petition or application. An approval at the field office level (during the 45-day initial field review) is final and requires no further USCIS action. An approval by the AAO becomes final and binding. When a petition (such as an I-140) is approved on appeal, the approval date is typically retroactive to the original filing date, preserving priority date status and visa number availability.

Sustained (Affirmed) Denial. The AAO sustains the original USCIS denial, meaning the AAO agrees with the officer's decision that the applicant is ineligible or that the denial was properly exercised discretion. A sustained denial is final unless the applicant files a motion to reconsider or motion to reopen the AAO decision (which is available for non-precedent decisions and requires new evidence or demonstration of clear legal error not previously considered).

Remand with Instructions for Further Proceedings. The AAO may determine that the field office made a procedural error, failed to develop the administrative record fully, or misapplied the law in a manner that requires reconsideration. In such cases, the AAO may remand the case to the originating USCIS office with instructions to reconsider the petition or application in light of the AAO's decision. Upon remand, the field office has discretion but also obligation to follow the AAO's legal direction. The applicant cannot compel approval based on a remand; the field office can still deny the petition if it determines that the applicant remains ineligible even after accounting for the AAO's instructions. However, a remand is generally viewed as favorable because it signals that the AAO found legal error and is giving the field office an opportunity to

correct it.

Partial Reversal or Limited Approval. In some cases, the AAO may reverse the denial on one ground of ineligibility but sustain it on another, or may reverse the denial but remand for the field office to make a final discretionary determination. These mixed outcomes require careful parsing to understand what steps the applicant must take next.

Timeline to Final Resolution After AAO Decision

Once the AAO issues a decision, the applicant receives notification (typically within 1-2 weeks). If the decision is approval, the applicant may proceed with next steps (such as filing I-485 for adjustment of status, or scheduling consular interview for applicants in consular processing). If the decision is sustained denial, the applicant may file a motion to reconsider or motion to reopen the AAO decision (with different requirements than motions filed on original USCIS denials), or may consider federal court litigation.

If the decision is a remand, the field office has no fixed timeline to complete reconsideration and issue a new decision. Based on practitioner experience, remanded cases can take anywhere from a few months to over a year for the field office to issue a new decision, depending on the office's caseload and the complexity of the issues requiring reconsideration. For cases remanded from the AAO, there is often a notation in the case file indicating AAO direction, which signals to the field office that thorough reconsideration is required.

Timeline Risk for Applicants

For applicants who are employment-based visa holders (H-1B, L-1, O-1, etc.), the extended I-290B timeline creates risk if the applicant's current visa status is expiring. An applicant whose H-1B status will expire before an AAO decision is issued must explore options for extending the H-1B (through an I-539 Change of Status/Extension petition) or transitioning to a different status while the I-140 appeal is pending. For applicants who are not in valid status and are awaiting I-290B resolution, the timeline creates risk of enforcement action, though the existence of a pending appeal provides some practical protection.

For applicants who are waiting for visa number availability (in preference categories with long queues), the I-290B timeline can be viewed either as favorable (if it preserves the applicant's priority date while administrative remedies are exhausted) or as unfavorable (if the applicant could re-file with a fresh petition and hope for a faster decision on the new filing, though this sacrifices the priority date).

Beyond the AAO: Federal Litigation and Judicial Review of USCIS Denials

Administrative Procedure Act Claims in Federal District Court

If an AAO appeals sustains the USCIS denial, the applicant may retain options for federal court review in limited circumstances. The Administrative Procedure Act (APA), codified at 5 U.S.C. § 701 et seq., provides a mechanism for parties to seek judicial review of agency action that is deemed "unlawful" because the agency acted arbitrarily and capriciously, without proper procedure, or in violation of a statute[29][32][53]. Federal district courts in Northern California (both the Northern District of California and the Central District of California) retain jurisdiction to review some USCIS denials under the APA, though several statutory bars limit the scope of reviewable claims.

The primary jurisdictional bar is 8 U.S.C. § 1252(g), which precludes judicial review of final decisions by the Attorney General (or, by delegation, the Secretary of DHS) regarding whether an individual is deportable or

inadmissible[29]. However, § 1252(g) does not preclude review of USCIS discretionary denials of immigration benefits (such as denials of I-140 petitions based on discretionary grounds), as such denials do not constitute "final decisions" regarding deportability or inadmissibility[29]. Additionally, § 1252(g) does not preclude review of APA claims challenging USCIS policies or procedures, as opposed to individual case decisions[29][32].

For applicants challenging USCIS denials of employment-based or family-based petitions on non-discretionary grounds, the APA provides a viable avenue for judicial review if the applicant can establish that: (1) the USCIS decision is "final agency action" (which is generally true of non-discretionary denials); (2) the applicant has exhausted administrative remedies (which means the applicant must file the I-290B and receive an AAO decision before filing in federal court, though exceptions exist where administrative remedies are inadequate or unavailable); (3) the applicant has standing to sue (which is typically established by demonstrating injury in fact and that the applicant is within the "zone of interests" protected by the statute at issue); and (4) the applicant is not barred by a jurisdictional statute (such as § 1252(g), though applicants not in removal proceedings are more likely to retain jurisdiction than those in removal proceedings).

Standards of Review. Under the APA, a federal court reviews agency decisions for arbitrariness and capriciousness under the standard codified at 5 U.S.C. § 706(2)(A). This standard requires the court to determine whether the agency has "examined the relevant data and articulated a satisfactory explanation for its action, including a rational connection between facts found and the choice made[29][32]. An agency action is arbitrary and capricious if the agency has relied on factors which Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, offered an explanation that runs counter to the record, or is so implausible that it cannot be ascribed to a difference in view or the agency's expertise[29][32].

For applicants challenging USCIS interpretations of statutes or regulations, the APA standard incorporates the Chevron doctrine (from *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)), which requires courts to first determine whether Congress has directly spoken to the precise question at issue. If the statute is ambiguous, the court must defer to the agency's reasonable interpretation of the statute[29][32]. However, if the statute's language is clear and unambiguous, the agency's interpretation receives no deference, and the court may find that the agency acted "not in accordance with law" in violation of 5 U.S.C. § 706(2)(A)[29][32].

Likelihood of Success on APA Challenges. Federal courts have shown mixed results in APA challenges to USCIS denials. Some courts have found USCIS interpretations of statutes to be unreasonable and have set aside USCIS denials[29]. Other courts have upheld USCIS denials based on finding that the agency's interpretation of ambiguous statutes was reasonable, or that the denial rested on permissible discretionary determinations not subject to judicial review[29][32]. The Ninth Circuit has historically been somewhat more receptive to APA challenges than some other circuits, though recent decisions have narrowed the scope of reviewable claims.

Procedural Requirements for Federal Litigation

An applicant seeking to file an APA challenge in federal district court must comply with federal civil procedure requirements, including filing a complaint in the district court having jurisdiction over the applicant's place of residence (or, in some cases, where the defendant agency has its principal office)[29][56]. The complaint must assert federal question jurisdiction under 28 U.S.C. § 1331 and must state a claim for relief under the APA. The applicant must name the appropriate USCIS official (typically the Secretary of DHS or the USCIS Director) as the defendant. Filing fees apply (currently several hundred dollars), and the applicant must pay these fees unless a fee waiver is granted based on indigency.

The applicable standard of review in federal court is de novo review of questions of law, but the court will defer to the agency's factual findings if they are supported by substantial evidence in the administrative record[29][32][53]. This deference to factual findings means that even if the court disagrees with the agency's legal analysis, the applicant will lose if the agency's factual conclusions are supported by the record.

Exhaustion of Administrative Remedies. Generally, an applicant must exhaust administrative remedies before filing in federal court, meaning the applicant must file an I-290B and receive an AAO decision before filing a complaint in federal district court[29][32][53]. However, the requirement to exhaust is not absolute; an applicant may challenge the exhaustion requirement itself if the administrative process is inadequate, unavailable, or unreasonably prolonged[29][32]. In rare cases, courts have found that exhaustion is excused where the USCIS administrative process is patently inadequate or where the applicant would suffer irreparable harm by waiting for administrative remedies to conclude.

Relief Available in Federal Court. If the applicant succeeds in establishing that the USCIS denial was arbitrary and capricious, violates a statute, or exceeds the agency's authority, the federal court can order the agency to set aside the denial and take further action[29][32]. The court cannot force the agency to approve the petition; rather, the court can order the agency to reconsider the petition in compliance with the law or the court's legal interpretation. In practical terms, if a court sets aside a USCIS denial of an I-140 petition based on a finding that the agency misinterpreted the law, the court order will typically direct USCIS to reconsider the petition in light of the court's legal ruling, which often results in approval if the applicant's facts satisfy the correct legal standard.

Strategic Considerations for Federal Litigation

Federal litigation of USCIS denials is expensive (attorney fees can easily exceed \$5,000-\$15,000 even for relatively straightforward cases) and slow (litigation timelines are typically 1-2 years from filing to final resolution). However, federal litigation may be worth pursuing in the following scenarios: (1) the applicant has a strong legal claim based on clear statutory language that the USCIS officer misinterpreted; (2) the AAO sustained the denial on grounds that the applicant believes are legally erroneous but the applicant lacks resources to file a motion to reconsider; (3) the applicant's timeline pressure (such as visa expiration or removal proceedings) makes the extended AAO timeline untenable; or (4) the applicant has access to pro bono legal representation that would reduce the cost of litigation.

Federal litigation is generally not worth pursuing if: (1) the denial rested on factual findings (such as credibility determinations) that courts review with substantial deference to the agency; (2) the USCIS denial exercised discretion (such as denying a waiver application), as courts generally defer to discretionary agency decisions; (3) the applicant lacks clear legal authority supporting their position, as courts will likely uphold the agency's reasonable interpretation of ambiguous statutes; or (4) the applicant has exhausted financial resources and cannot afford both the I-290B filing fee and the cost of federal litigation.

Evidence and Argumentation Strategy for Strong I-290B Filings

Types of Supporting Evidence That Strengthen Appeals and Motions

The strength of an I-290B filing depends substantially on the quality and organization of supporting evidence and legal argumentation. For appeals, while new evidence is permissible, the primary focus should be on legal argument and reinterpretation of the existing record. For motions to reconsider and motions to reopen, supporting evidence is critical.

Documentary Evidence. Original documents and certified copies of documents (such as birth certificates with certified English translations, marriage certificates, diplomas, employment letters, and financial records) strengthen the factual foundation of the filing. For employment-based petitions, updated financial documentation showing the employer's ability to pay is often critical. For family-based petitions, updated evidence of the continuing qualifying relationship (such as photos, joint financial documents, communications, or affidavits from third parties who can attest to the relationship) strengthens the filing.

Expert Affidavits and Declarations. For cases involving technical questions (such as whether a job requires a bachelor's degree in a specific field, whether a work experience letter accurately reflects the beneficiary's actual duties, or whether country conditions support a persecution claim in an asylum case), expert affidavits can significantly strengthen the filing. The expert must have genuine qualifications and experience in the relevant field; USCIS is skeptical of self-serving declarations from paid experts who lack specific knowledge of the case facts.

Employer and Personal Financial Documents. For employment-based petitions, certified copies of the employer's federal income tax returns (with IRS transcripts), state tax returns, audited financial statements, or certified public accountant attestations provide objective evidence of the employer's financial condition. For family-based petitions and affidavits of support (Form I-864), the sponsor's financial documents (tax returns, employment letters, bank statements) establish the sponsor's ability to support the beneficiary.

Country Conditions Evidence. For humanitarian cases (asylum, CAT, withholding of removal), current country conditions reports from the State Department, Human Rights Watch, Amnesty International, or UNHCR provide objective evidence of conditions in the applicant's country of origin. These reports are particularly important when the original denial was based on a determination that conditions in the country are not sufficiently dangerous or that persecution is not likely; updated country conditions reports can rebut such determinations.

Legal Precedent and Policy Materials. For motions to reconsider and appeals, USCIS Policy Manual sections, AAO precedent decisions, and BIA decisions provide legal authority supporting the applicant's legal arguments. An effective brief cites the most directly controlling authority, distinguishes adverse precedent, and explains how the applicant's facts differ from those in cases where denials were upheld.

Structuring a Strong Legal Brief

A legal brief submitted with an I-290B should follow a logical structure designed to guide the AAO officer or reviewing official through the applicant's legal arguments. The brief should include the following components: (1) a concise statement of the issue(s) presented; (2) a brief factual background summarizing the applicant's circumstances and the USCIS officer's reasoning; (3) a legal argument section organizing the substantive arguments by claim, with citations to controlling authority; (4) integration of evidence (referencing specific documents or affidavits that support each legal argument); and (5) a conclusion restating the relief requested.

Concision and Organization. The brief should be concise and well-organized, using numbered headings and subheadings that guide the reader. USCIS officers and AAO adjudicators review hundreds of cases; a brief that rambles or repeats arguments is less likely to persuade. The first page should contain a summary of the issue and the requested relief, allowing a busy adjudicator to quickly understand the applicant's position.

Citation to Controlling Authority. Every legal argument should be supported by citation to a statute, regulation, precedent decision, or official USCIS Policy Manual section. The applicant should lead with the strongest authorities-controlling precedent that directly supports the applicant's position-and then address potential counterarguments or distinguish adverse precedent.

Evidence Integration. Rather than merely listing evidence, the brief should explain how each piece of evidence supports specific legal claims. For example: "The employer's 2022 federal income tax return [Exhibit A] demonstrates net income of \$150,000, which exceeds the prevailing wage of \$120,000 identified in the labor certification, thus establishing the employer's ability to pay as required by 8 CFR 204.5(g)(2)."

Responsive Briefing. Where the USCIS denial letter articulates specific reasoning for the denial, the brief should directly address that reasoning, either agreeing with it (if the applicant is arguing a motion to reconsider with new legal authority or evidence) or disagreeing and explaining why the officer's reasoning was incorrect.

Conclusion: Strategic Guidance for Decision-Making

The I-290B process provides a critical opportunity to challenge USCIS denials and revocations, but the choice among appeal, motion to reconsider, and motion to reopen-and the decision whether to pursue an I-290B filing or instead re-file the underlying petition-requires careful analysis of the specific denial grounds, available evidence, timeline pressures, and realistic likelihood of success.

For applicants and practitioners facing this decision, the analytical framework presented in this research brief provides structured guidance. The threshold question is always whether an appeal, motion, or re-filing is available for the specific type of denial; the USCIS denial notice will specify which options are available. The second question is whether the applicant has new evidence or facts not previously presented; the availability of new evidence strongly favors a motion to reopen, while the absence of new evidence favors an appeal or motion to reconsider focused on legal error or misinterpretation of existing law.

The third question is whether the applicant is under timeline pressure; timeline pressure favors a motion to reconsider or re-filing over an appeal, as the former processes faster. The fourth question is cost-benefit analysis: is the cost of the I-290B filing (\$675) plus the cost of legal representation and supporting evidence worth the expected timeline (12-18 months) and uncertainty of outcome (10-35% success rate depending on the option selected)? For some applicants, particularly those facing multiple years of visa processing ahead, an I-290B appeal is clearly worthwhile. For others, particularly those with deteriorating visa number availability or imminent status expiration, re-filing or seeking other interim relief options may be preferable.

Practitioners and beneficiaries should consult with experienced immigration counsel before selecting a filing strategy, as the specific facts of each case-including the denial grounds, available evidence, visa category, country of origin, and the applicant's financial and personal circumstances-all affect the optimal path forward. The I-290B process, while procedurally straightforward in its mechanics, requires strategic sophistication to maximize the applicant's likelihood of success.

Appendix A: Key Regulatory Citations and Statutory Framework

Statutes

- * 8 U.S.C. § 1103: Authority of Secretary of Department of Homeland Security; appointment of officers and employees; regulations
- * 8 U.S.C. § 1252(g): Judicial review bar for certain agency determinations regarding deportability and inadmissibility

* 5 U.S.C. § 701 et seq.: Administrative Procedure Act; judicial review of agency action

* 5 U.S.C. § 706: Standards of review

Regulations

* 8 CFR § 103.3: Denials, appeals, and precedent decisions

* 8 CFR § 103.5: Appeals and motions on applications and petitions

* 8 CFR Part 103: Immigration benefit requests; USCIS notices and decisions

Forms and Instructions

* Form I-290B, Notice of Appeal or Motion: Official USCIS form for filing appeals and motions

* Form I-290B Instructions: Published by USCIS; provides detailed guidance on completing the form and procedural requirements

Appendix B: Processing Timeline Reference

Field Office Initial Review: 45 days maximum from receipt of Form I-290B for the originating office to determine whether to take favorable action or forward to AAO.

AAO Appellate Review Target: 180 days from receipt of complete case record; actual median timelines range from 12-18 months (sometimes longer).

Motion to Reconsider Processing: 3-6 months typical (adjudicated by originating office).

Motion to Reopen Processing: 3-6 months typical (adjudicated by originating office); longer if motion is denied and applicant pursues appeal of the denial.

Federal District Court Litigation: 12-24 months typical from filing complaint to final judgment.

Report Generated: February 3, 2026 | Facilitated by: The Law Offices of Fernando Hidalgo, Inc. | Legal AI Assistant