Motion to Reconsider Before the Executive Office for Immigration Review: A Legal Research Report

Generated by: Legal AI Assistant

Facilitated by: The Law Offices of Fernando Hidalgo, Inc.

February 2, 2026

FINDINGS

MOTION TO RECONSIDER BEFORE THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW: A COMPREHENSIVE LEGAL RESEARCH REPORT

This research report provides foundational guidance on filing a motion to reconsider before the Executive Office for Immigration Review (EOIR), including detailed analysis of procedural requirements, deadline mechanics, substantive standards for establishing error, strategic considerations for remedy selection, and implementation protocols specific to Northern California immigration practice. A motion to reconsider in immigration court is a post-decision mechanism governed by 8 U.S.C. § 1229a(c)(6) and implemented through 8 C.F.R. § 1003.23(b) (for Immigration Judge motions) and 8 C.F.R. § 1003.2(b) (for Board of Immigration Appeals motions) that challenges alleged errors of law or fact in a prior immigration court or administrative decision or identifies changes in law affecting eligibility for relief[1][3]. Unlike its counterpart motion to reopen, which introduces new evidence on a changed factual record, a motion to reconsider contests the correctness of the original decision based solely on the existing administrative record and applies only to legal errors or changes in controlling law[1][3]. The motion must be filed within thirty calendar days of the final decision, must specify the alleged errors with particularity supported by relevant legal authority, and is subject to strict one-motion limits for respondents (though the Department of Homeland Security faces no such restrictions in removal proceedings)[1][3]. This report synthesizes current federal law, Board of Immigration Appeals precedent, recent Ninth Circuit developments regarding equitable tolling, San Francisco Immigration Court procedural requirements, and Northern California enforcement patterns to provide practitioners with the comprehensive framework necessary to evaluate whether a motion to reconsider is strategically appropriate and to execute such a motion with the necessary procedural precision and substantive foundation.

Legal Framework Governing Motions to Reconsider

The statutory authority for motions to reconsider appears in 8 U.S.C. § 1229a(c)(6), which provides that an alien "may file one motion to reconsider proceedings under this section" within thirty days of entry of a final administrative order of removal, and that such motion "shall state the reasons for the motion by specifying the errors of fact or law in the previous order and shall be supported by pertinent authority"[29]. This statutory provision was codified in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and operates as a claim-processing rule rather than a jurisdictional restriction, a distinction that has become crucial in recent Ninth Circuit jurisprudence[29]. The parallel regulatory frameworks appear in 8 C.F.R. § 1003.23(b) for Immigration Judge motions and 8 C.F.R. § 1003.2(b) for Board of Immigration Appeals motions[1][3].

Purpose and Scope of Motion to Reconsider

The EOIR Immigration Court Practice Manual Chapter 5.8 defines a motion to reconsider as either identifying an error in law or fact in the Immigration Judge's prior decision or identifying a change in law that affects the prior decision, asking the Immigration Judge to reexamine the ruling[1]. Critically, a motion to reconsider is based exclusively on the existing record and does not seek to introduce new facts or evidence, distinguishing it fundamentally from a motion to reopen[1]. The Board of Immigration Appeals articulated this distinction in Matter of Cerna, 20 I&N Dec. 399 (BIA 1991), explaining that a motion to reconsider "questions the Board's decision for alleged errors in appraising the facts and the law," whereas a motion to reopen "seeks to reopen

proceedings so that new evidence can be presented and a new decision can be entered, normally after a further evidentiary hearing"[46]. This distinction carries profound strategic implications because practitioners cannot supplement their record with newly discovered evidence through reconsideration; rather, they must identify errors in how the original decision-maker applied existing law to facts already part of the record.

The substantive scope of what constitutes an "error" sufficient to warrant reconsideration has been refined through BIA precedent. In Matter of O-S-G-, 24 I&N Dec. 56 (BIA 2006), the Board held that a motion to reconsider based on a legal argument that could have been raised earlier in proceedings will be denied, establishing that reconsideration is not an avenue for parties to resurrect previously available arguments[43]. The Board further held that a motion to reconsider should include: (1) an allegation of material factual or legal errors in the prior decision under the applicable standards; (2) specific citations to the record demonstrating how those errors affected the prior decision; (3) appropriate legal authority supporting the claim of error; and (4) an explanation of how correcting those errors would change the disposition of the case[43]. A motion to reconsider based solely on an argument that an Immigration Judge's decision should not have been affirmed without opinion by the BIA will be denied under [8 C.F.R. § 1003.2(b)(3)][3].

Procedural Requirements for Filing a Motion to Reconsider

The procedural architecture for filing a motion to reconsider differs slightly depending on whether the motion is filed before an Immigration Judge or the Board of Immigration Appeals, though both share core requirements outlined in EOIR guidance documents.

Filing Requirements Before the Immigration Judge

Chapter 5.8(b) of the Immigration Court Practice Manual establishes that a motion to reconsider must be filed with a cover page labeled "MOTION TO RECONSIDER" and must comply with the deadlines and requirements for filing specified in Chapter 5.2[1]. If the respondent is represented by a practitioner of record or has received document assistance from a practitioner, the motion must be accompanied by [Form EOIR-28 (Notice of Entry of Appearance as Attorney or Accredited Representative)][18] or Form EOIR-61 (if the appearance is limited to document assistance)[1]. To ensure that the immigration court has the respondent's current address, practitioners should file a [change of address form (EOIR-33/IC) with the motion, though this is recommended rather than mandatory][1].

According to the EOIR Types of Appeals, Motions, and Required Fees guidance, a motion to reconsider before the Immigration Court requires no form but does require payment of a filing fee[7]. As of February 1, 2026, pursuant to the One Big Beautiful Bill Act (H.R. 1), the filing fee for a motion to reconsider or motion to reopen filed with the Immigration Court is $1,045 (comprising a $900 statutory addition plus $145, unless the motion is based exclusively on an asylum claim, law, or regulation, in which case the fee is $0)[34][56]. This represents a significant increase from the prior $1,065 fee structure[34]. Practitioners should note that motions to reconsider based exclusively on asylum claims, law, or regulation remain free[34].

A fee waiver may be requested on [Form EOIR-26A (Fee Waiver Request)][10], which requires the respondent to provide an affidavit or declaration explaining why they cannot pay the filing fee[10]. The immigration court may grant the fee waiver if the respondent establishes inability to pay[1]. If a fee waiver request does not establish inability to pay, the respondent receives fifteen days to refile the motion with the proper filing fee or a new fee waiver request, and any applicable filing deadline is tolled during this fifteen-day cure period[3][10]. This cure provision is critical for practitioners whose fee waiver requests are initially rejected; missing this fifteen-day window can result in loss of the reconsideration right entirely.

The physical or electronic assembly of a motion to reconsider package is specified in Chapter 3.3(c)(1)(E) of the Immigration Court Practice Manual, which requires documents be assembled in the following order: Form EOIR-28 or Form EOIR-61 (if required); cover page; fee receipt (stapled to the motion) or motion for fee waiver; the motion to reconsider itself; a copy of the Immigration Judge's decision; if applicable, a motion brief; if applicable, a copy of the application for relief; supporting documentation (if any) with table of contents; a change of address form (EOIR-33/IC) even if the address has not changed; a proposed order for the Immigration Judge's signature; and proof of service[15]. This precise ordering requirement ensures that immigration court staff can process the filing efficiently and that all necessary documents are present for adjudication.

Filing Requirements Before the Board of Immigration Appeals

Chapter 5.7(b) of the BIA Practice Manual provides that motions to reconsider before the Board must comply with the general requirements for filing a motion specified in Chapter 5.2 of the BIA Practice Manual[3]. Unlike motions before the Immigration Judge, there is no requirement to submit Form EOIR-28 or Form EOIR-61 with a motion to reconsider filed with the BIA; however, if the respondent is represented, the representative should ensure that they are listed as the practitioner of record and that any changes in representation are properly documented[3]. The BIA does not accept paper filings of motions to reconsider; most filings must be submitted electronically through the [ECAS (Electronic Courts and Appeals System)][21]. System outages may extend deadlines; if EOIR determines that an unplanned ECAS outage has occurred on the last day for filing in a specific case, the filing deadline is extended until the first day of system availability that is not a Saturday, Sunday, or legal holiday[3].

As of February 1, 2026, the filing fee for a motion to reconsider before the BIA is $1,010 (comprising a $900 statutory addition plus $110, unless the motion is based exclusively on an asylum claim, law, or regulation, in which case the fee is $0)[34][56]. This is distinct from the fee for motions to reconsider filed with the Immigration Court ($1,045) and reflects the statutory allocation of fees between different EOIR levels[34]. Fee waivers are available on the same basis as for Immigration Court filings, with the same fifteen-day cure period if the initial fee waiver request is denied[3].

Deadline Mechanics and Temporal Rules

The thirty-day deadline for filing a motion to reconsider is the most critical procedural requirement and has been the subject of substantial recent litigation, particularly regarding equitable tolling and the application of claim-processing versus jurisdictional rule standards.

Computation of the Thirty-Day Deadline

Chapter 3.1(b)(2) of the Immigration Court Practice Manual establishes that parties should use specific guidelines to calculate deadlines[40]. When a filing deadline is based on a specific date and time period following the Immigration Judge's decision, the day the Immigration Judge renders an oral decision or mails or sends electronic notification of a written decision counts as "day 0"[40]. The following day counts as "day 1"[40]. Statutory and regulatory deadlines are calculated using calendar days; therefore, Saturdays, Sundays, and legal holidays are counted toward the deadline[40]. However, if a statutory or regulatory deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day[40].

The distinction between the "receipt rule" and the "mailbox rule" is crucial for understanding how deadlines operate. Chapter 3.1(a)(3) of the Immigration Court Practice Manual explicitly states that the Immigration Court does not observe the "mailbox rule"[40]. Accordingly, a document is not considered filed merely

because it has been received by the U.S. Postal Service, commercial courier, detention facility, or other outside entity[40]. Instead, an application or document is not deemed "filed" until it is received by the immigration court, with all submissions receiving a date stamp upon receipt[40]. This receipt rule creates significant practical challenges for incarcerated individuals and those in detention, as the date of mailing is irrelevant; only receipt at the immigration court's offices establishes the filing date.

For appeals and motions filed with the Board of Immigration Appeals, Chapter 3.1(a)(1) of the BIA Practice Manual clarifies that an appeal or motion is not deemed "filed" until it is received at the Board[57]. An electronic filing that is accepted by the Board is deemed filed on the date it was submitted; a paper filing that is accepted by the Board is deemed filed on the date it was received by the Board[57]. The Board does not observe the "mailbox rule"; receipt by the U.S. Postal Service, commercial courier, or detention facility does not suffice[57]. Chapter 3.1(b)(4) of the BIA Practice Manual further provides that postal or delivery delays do not affect existing deadlines, and the Board does not excuse untimeliness due to such delays except in rare circumstances[57].

Receipt Rule Application and Practical Implications

The practical implications of the receipt rule are substantial. For an incarcerated respondent, the motion to reconsider is not filed when placed in the detention facility's mail system or given to facility staff to mail; it is filed only when actually received by the immigration court's filing window or the Board of Immigration Appeals' Clerk's Office[40][57]. This creates a critical planning imperative: practitioners must account for all mailing delays and anticipate that even express or overnight delivery services may fail. [The Immigration Court Practice Manual explicitly encourages parties to use courier or overnight delivery services whenever appropriate to ensure timely filing][40], but also notes that failure of any service to deliver a filing in a timely manner does not excuse an untimely filing[40].

For Northern California immigration court filings, the relevant addresses are [100 Montgomery Street, Suite 800, San Francisco, CA 94104, or 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111, or for Concord Hearing Location, 1855 Gateway Boulevard, Suite 850, Concord, CA 94520][1]. For BIA filings, the exclusive address is the [Board of Immigration Appeals, Clerk's Office, 5107 Leesburg Pike, Suite 2000, Falls Church, VA 22041][57].

Electronic Filing Through ECAS

Electronic filing through ECAS has become increasingly mandatory for cases with an electronic record of proceedings (eROP). The ECAS User Manual explains that a three-step filing process applies: (1) upload the document in accordance with filing requirements; (2) receive an email from EOIR confirming successful upload of the document(s); and (3) file the motion (meaning the filing process is not complete until all three steps are satisfied)[21]. For electronic filings, the filing window closes at 4:30 p.m. EST at the BIA[45]. Users must register with EOIR through eRegistry to electronically file through the Case Portal, and non-DHS users must maintain current registration information[21].

One critical procedural error involves confusion regarding what constitutes "filing." A motion that is successfully uploaded to ECAS but not yet accepted by the immigration court or BIA is in the intake queue and is not yet deemed "filed"[21]. Only upon acceptance by the immigration court or BIA does the document enter the official electronic record of proceedings and become deemed filed on the date it was submitted[21].

Equitable Tolling of the Thirty-Day Deadline

Until recently, the BIA treated the thirty-day deadline for filing a motion to reconsider as non-extendable.

However, a significant development occurred with Matter of Morales-Morales, 28 I&N Dec. 714 (BIA 2023), which established that the thirty-day deadline for filing appeals to the BIA is a claim-processing rule rather than a jurisdictional rule and therefore is subject to equitable tolling[11]. Although Morales-Morales addressed appeal deadlines rather than motion to reconsider deadlines, the reasoning applies to motion deadlines as well, given that they are governed by the same regulatory structure and statutory authority[11].

In Matter of Morales-Morales, the BIA explained that equitable tolling is a court's discretionary extension of a filing deadline when a party can prove they diligently tried to comply with the original deadline, but an extraordinary circumstance prevented them from doing so[11]. The BIA applied the equitable tolling framework from Holland v. Florida, 560 U.S. 631 (2010), which requires a party seeking equitable tolling to clearly establish both that: (1) they have been pursuing their rights diligently, and (2) some extraordinary circumstance prevented timely filing[11].

In the Morales-Morales case itself, the respondent's attorney had retained counsel only five days before the appeal deadline was due and did not sufficiently explain what steps the respondent had taken in the first twenty-five days to diligently pursue the appeal[11]. Additionally, the respondent did not show that an extraordinary circumstance prevented timely filing because an inadvertent mailing error (sending the appeal via regular mail instead of express mail) is typically not an extraordinary circumstance[11]. However, the BIA left open the possibility that other circumstances-such as counsel's inability to work due to health emergency, institutional failures preventing access to filing systems, or patterns of attorney misconduct-could constitute extraordinary circumstances warranting equitable tolling[11].

For practitioners in the Northern California region, this development is significant because Ninth Circuit judges have long recognized equitable tolling principles, and the BIA's adoption of this framework may make equitable tolling arguments viable in more cases. However, practitioners must understand that merely filing a motion to accept a late motion to reconsider (often called a "Motion to Reconsider Dismissal of Late-Filed Motion to Reconsider" or similar caption) is not sufficient; the motion must clearly establish both diligence and extraordinary circumstance and must be supported by affidavits, declarations, or other evidence demonstrating these elements[11].

Substantive Standards for Establishing Error

The substantive standards governing whether a motion to reconsider will be granted require understanding how different types of errors are evaluated and what showing is necessary for each category.

Errors of Law

An error of law occurs when the decision-maker misapplies or fails to apply governing statutes, regulations, or case law precedent to the facts established in the record. [The statutory language at 8 U.S.C. § 1229a(c)(6)(C) and parallel regulation at 8 C.F.R. § 1003.23(b)(2) requires that a motion to reconsider "specify the errors of fact or law in the previous order and shall be supported by pertinent authority"][1][3][29]. The requirement for "pertinent authority" means that the party cannot simply assert legal error without citing to controlling statutes, regulations, court decisions, or agency guidance[1][3].

Legal errors that reconsideration may address include: misinterpretation of the elements required for a particular form of relief; failure to consider a factor that the law requires to be considered; application of a legal test that is contrary to controlling precedent; or misapplication of the law to undisputed facts[43]. For example, if an Immigration Judge denied asylum without addressing all elements of the persecution standard from [Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018)][29], reconsideration might be appropriate based on a

legal error in analyzing persecution grounds.

Notably, however, [a motion to reconsider based on a legal argument that could have been raised earlier in the proceedings will be denied][43][46]. This means that practitioners cannot use reconsideration as a second bite at the apple to present arguments they should have raised during the original proceeding or appeal. This doctrine requires that any legal error identified must either be previously unargued or reflect an oversight by counsel or the decision-maker.

Errors of Fact

Errors of fact are more subtle and more rarely successful on reconsideration. A factual error would involve a finding of fact that is unsupported by the record or directly contradicted by evidence in the record. [However, the BIA applies clear error review to factual findings on appeal][9][25], and factual determinations on reconsideration are reviewed to determine whether the original decision-maker's findings were actually supported by the record evidence[9][25]. An unsupported factual finding that contradicts documentary evidence (such as a passport showing a birth date, or medical evidence showing a health condition) may constitute a factual error warranting reconsideration.

The difficulty with factual errors is that the motion to reconsider cannot introduce new evidence; it can only demonstrate that existing evidence in the record contradicts the factual finding[1][3]. This means the practitioner must point to evidence already in the record of proceedings that undermines the Immigration Judge or BIA's factual conclusions.

Changes in Law

A change in law constitutes the third category of basis for reconsideration. [If a motion to reconsider is premised upon changes in the law, the motion should identify the changes and, where appropriate, provide copies of that law][1][3]. This might include a recent Supreme Court decision, circuit court precedent, new BIA precedent decision, or changed regulations that affect the respondent's case.

For Northern California practitioners, changes in law have frequently arisen from Ninth Circuit decisions affecting asylum, withholding of removal, and Convention Against Torture claims. For example, if the BIA had denied asylum based on an interpretation of persecution or particular social group (PSG) that was later rejected by the Ninth Circuit, a motion to reconsider citing the new Ninth Circuit precedent might be appropriate. Recent examples include changes in how "family" is analyzed as a particular social group and evolving standards for gang-related persecution.

The Board has held that a "change in law" must materially affect the analysis of the case. In [Matter of O-S-G-, 24 I&N Dec. 56 (BIA 2006)][43], the BIA emphasized that a motion to reconsider based on changed law must explain how the new law materially affects the prior decision and how the issues raised on appeal involved such precedent, as well as how the case law changes the outcome of the case[43].

One-Motion Rule and Related Procedural Limitations

The one-motion rule is among the most restrictive procedural limitations in EOIR practice and carries significant consequences that practitioners must fully understand before filing.

The One-Motion Limitation

[Both the Immigration Court Practice Manual Chapter 5.8(d) and BIA Practice Manual Chapter 5.7(d) establish that, as a general rule, a party may file only one motion to reconsider][1][3]. This means that once a

motion to reconsider has been denied, the respondent cannot file a second motion to reconsider addressing different errors or providing additional legal arguments. Critically, [a party may not file a motion to reconsider the denial of a motion to reconsider][1][3]. This two-fold restriction (one motion total; no motion to reconsider a denial of a prior motion to reconsider) creates a high-stakes procedural environment where practitioners must identify all potential errors and arguments in a single motion.

However, there is one exception: [although a party may file a motion to reconsider the denial of a motion to reopen, a party may not file a motion to reconsider the denial of a motion to reconsider][1][3]. This exception appears counterintuitive but reflects the underlying statutory structure: if a motion to reopen was denied and that denial contained legal error, reconsideration of that denial is appropriate. But if a motion to reconsider was denied, the respondent's remedies are limited to appeal or, in federal court, habeas petition.

Consequences of the One-Motion Rule

The one-motion rule has several critical consequences. First, practitioners must strategically decide whether to file a motion to reconsider at all, because doing so consumes the only opportunity for reconsideration and may foreclose other strategies. Second, all potential errors should ideally be included in a single motion rather than addressing only one error and then filing a second motion with additional errors. Third, practitioners must ensure that they have thoroughly researched all potential legal errors and changes in law before filing, because they will not have a second opportunity for reconsideration.

For immigrants detained in Northern California ICE ERO Field Office 1 facilities, this one-motion limitation creates additional urgency. Detention increases the likelihood of removal proceedings moving quickly, and the thirty-day motion deadline may coincide with other pressing deadlines such as motion to stay removal deadlines or habeas petition deadlines.

DHS Exception to the One-Motion Rule

[For cases in removal proceedings, the Department of Homeland Security (DHS) is not subject to time and number limits on motions to reconsider][1][3]. This asymmetric procedural rule means that DHS can file unlimited motions to reconsider at any time, while respondents are limited to one motion within thirty days. [For cases brought in deportation or exclusion proceedings, DHS is subject to the time and number limits on motions to reconsider, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum][1][3].

This asymmetry underscores the importance of practitioners acting expeditiously. DHS counsel can file a motion to reconsider to challenge an Immigration Judge's decision granting relief even long after thirty days have passed, but the respondent has only one chance to reconsider and must do so within thirty days.

Interaction with Appeal Deadlines

A critical procedural trap exists regarding the interaction between motion to reconsider deadlines and appeal deadlines, and many practitioners inadvertently forfeit appellate rights through misunderstanding this interaction.

No Automatic Stay or Extension of Appeal Deadline

[A motion to reconsider filed prior to the deadline for filing an appeal does not stay or extend the deadline for filing an appeal][1][39]. This means that if an Immigration Judge renders a decision on January 1st, the respondent has thirty days (through January 31st) to file either a motion to reconsider or an appeal. However, filing a motion to reconsider on January 15th does not extend the appeal deadline to January 30th (thirty days

after the motion). Instead, the appeal deadline remains January 31st, regardless of whether a motion to reconsider is pending[1][39].

The practical consequence is severe: if a respondent files a motion to reconsider on day 20, and the Immigration Judge does not rule on the motion until day 35 (after the original appeal deadline has passed), the respondent may have lost the right to appeal because the appeal deadline is not tolled by the pending motion to reconsider[1][39]. This is a jurisdictional trap that has ensnared many respondents.

Proper Strategic Sequencing

To avoid this trap, practitioners must decide immediately upon receiving a decision whether to pursue reconsideration, appeal, or both. The generally advisable strategy is to file a Notice of Appeal on the last day of the thirty-day appeal deadline while also filing a motion to reconsider with the Immigration Judge. This preserves both remedies: if the motion to reconsider is granted, the appeal becomes moot (as there is no longer a final order to appeal); if the motion is denied, the appeal is already pending with the Board.

Alternatively, practitioners can file a motion to reconsider within the thirty-day window and reserve appeal rights with the Immigration Judge, then file the appeal with the Board after the Immigration Judge rules on the motion (assuming the ruling is still timely for the appeal deadline). However, this second approach is riskier because if the Immigration Judge's ruling on the motion extends beyond the original appeal deadline, the appeal window closes and the respondent is bound by the Immigration Judge's original (or reconsidered) decision.

Motion to Reconsider While Appeal is Pending

[Once an appeal is filed with the Board of Immigration Appeals, the Immigration Judge no longer has jurisdiction over the case][1][51]. Therefore, [motions to reconsider should not be filed with an Immigration Judge after an appeal is taken to the Board][1]. Any motion to reconsider must be filed directly with the Board, which may treat it as a motion to reconsider of the Board's own decision (if the Board has already decided) or as a motion to supplement or amend the appeal record (if the appeal is still pending).

This jurisdictional shift means that practitioners must be extremely careful about the timing of motions. A motion to reconsider filed with the Immigration Judge after a Notice of Appeal has been filed with the Board will be rejected for lack of jurisdiction or will be transferred to the Board for handling.

Standards of Review and Scope of Reconsideration

Understanding what standard of review applies to reconsideration decisions is essential for framing arguments effectively and for understanding the likelihood of success.

Standards Applied to Factual Findings and Legal Conclusions

[Under 8 C.F.R. § 1003.1(d)(3), the BIA reviews an Immigration Judge's factual findings for "clear error," and it reviews all other issues de novo, including "questions of law, discretion, and judgment"][9][25]. However, [the regulations at 8 C.F.R. § 1003.1(d)(3) apply to appeals from Immigration Judge or USCIS decisions, not to motions to reconsider filed with the BIA in the first instance][9]. This distinction is crucial: when the BIA is considering its own motion to reconsider (as opposed to reviewing an appeal from an Immigration Judge), the applicable standard of review is different.

For motions to reconsider before the Immigration Judge, the Immigration Judge has discretion to grant or deny the motion, and the applicable standard is whether the Immigration Judge abuses that discretion in

denying reconsideration[43]. For motions to reconsider before the BIA, the Board retains jurisdiction over a motion to reconsider its dismissal of an untimely appeal to the extent that the motion challenges the finding of untimeliness or requests consideration of reasons for untimeliness, but the Board also has discretion to deny a motion to reconsider as a matter of discretion[43].

The BIA's Approach to Motions to Reconsider under Summary Affirmance Orders

A particularly challenging scenario involves motions to reconsider when the BIA has issued a summary affirmance order (AWO)-a decision in which the BIA affirms the Immigration Judge's decision without issuing a full opinion. [A motion to reconsider may not be based solely on an argument that an Immigration Judge's decision should not have been affirmed without opinion][1][3]. Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the BIA's initial decision, or must show how a change in law materially affects the prior decision[43]. Additionally, the movant must show that the factual or legal issues that were raised on appeal were substantial and should have been considered, and the movant must explain how the issues, if addressed, would have changed the disposition of the appeal[43].

Filing Fees and Fee Waiver Procedures

The current fee structure for motions to reconsider, updated as of February 1, 2026, represents a significant increase from prior years and reflects the implementation of fee increases authorized by the One Big Beautiful Bill Act.

Current Fee Structure

[For a motion to reconsider filed with the Immigration Court, the filing fee is $1,045, comprising a $900 statutory addition plus $145, unless the motion is based exclusively on an asylum claim, law, or regulation, in which case the fee is $0][34][56]. For a motion to reconsider filed with the BIA, the filing fee is $1,010, comprising a $900 statutory addition plus $110, unless the motion is based exclusively on an asylum claim, law, or regulation, in which case the fee is $0][34][56]. Notably, [there is no fee-waiver or reduction in fee permitted for certain applications][31], but fee waivers are available for motions to reconsider.

For respondents who are represented by counsel, the question of who bears this cost requires explicit discussion at the outset of representation. Many respondents cannot afford to pay these fees, and public interest organizations or court-appointed counsel may need to absorb the cost or seek cost-sharing arrangements.

Fee Waiver Procedures and the Fifteen-Day Cure Period

[A respondent may request a fee waiver by filing Form EOIR-26A (Fee Waiver Request)][10]. The respondent must provide an affidavit or declaration explaining why they cannot pay the filing fee[10]. [The Immigration Judge may grant the fee waiver request for an EOIR application or motion filed with the Immigration Court if the respondent shows that they are unable to pay the filing fee][10]. [The Board of Immigration Appeals may grant the fee waiver request for an appeal or motion filed with the BIA if the respondent shows that they are unable to pay the filing fee][10].

If a fee waiver request does not establish inability to pay, the critical procedural safeguard is the fifteen-day cure period. [The immigration judge or BIA will provide a rejection notice, and the respondent will be given 15 days from the date of the denial to refile the rejected application, motion, or appeal with the filing fee or a new fee waiver request][10]. [Any applicable filing deadline for the application, motion, or appeal will be

extended and tolled during these 15 days][10]. This means that if a respondent files a motion to reconsider with a fee waiver request on day 28 of the 30-day deadline, and the fee waiver is denied, the respondent has until day 43 to refile with the fee or a new fee waiver request, as the original 30-day deadline is tolled[3][10].

However, [practitioners should be aware that the government has not yet implemented a mechanism to collect asylum fees, and EOIR has issued guidance stating that Immigration Courts will implement temporary measures until asylum fees are fully integrated into existing payment systems][10]. Additionally, [EOIR Policy Memorandum 25-36 instructs EOIR adjudicators to follow Policy Memorandum 21-10 when adjudicating fee waivers, which provides that each fee waiver request is assessed on its own merits and EOIR has no policy directing automatic grant or denial of fee waiver requests][10].

Recent case law has created additional complications. [In Matter of Garcia Martinez, 29 I&N Dec. 169 (BIA 2025)][56], the BIA denied a fee waiver where the noncitizen was represented by a private attorney and stated they had no income[56]. This decision suggests that the BIA may scrutinize fee waiver requests more carefully when respondents are represented by private counsel, potentially on the theory that counsel can subsidize the costs.

San Francisco Immigration Court Context

The San Francisco Immigration Court has distinctive procedural tendencies and judge-specific practices that should inform strategic decisions about motions to reconsider.

San Francisco Immigration Court Locations and Operations

[The San Francisco Immigration Court operates at three locations: 100 Montgomery Street, Suite 800, San Francisco, CA 94104; 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111; and Concord Hearing Location, 1855 Gateway Boulevard, Suite 850, Concord, CA 94520][1]. The San Francisco court handles a substantial docket of asylum cases, removal proceedings, and bond hearings. The court's procedural orders and local rules, while not formally published as "local rules," are communicated through judge-specific practices and standing orders.

The San Francisco court has historically been receptive to motions for continuances to gather additional evidence and written motions generally. This suggests that well-drafted motions to reconsider with clear legal arguments and supporting authority are likely to receive serious consideration from most judges in the San Francisco courthouse.

Master Calendar and Individual Calendar Procedures

[Motions to reconsider are filed post-decision and do not involve master calendar or individual calendar hearings in the traditional sense, but practitioners should be aware that if a respondent files a motion to reconsider and the decision is still pending before the Immigration Judge, the filing deadlines depend on whether the next scheduled hearing is a master calendar or individual calendar hearing][40]. For master calendar hearings, filings must be submitted at least 15 days in advance if requesting a ruling at or prior to the hearing[40]. For individual calendar hearings, the Immigration Judge specifies filing deadlines[40].

Judge-Specific Practices

Information about individual judge practices in San Francisco is not systematically published, but practitioners should consult with colleagues familiar with specific judges to understand their approaches to reconsideration motions. Some judges are more receptive to legal arguments about errors in prior decisions, while others may view reconsideration motions with skepticism if they perceive the motion as an attempt to circumvent appeal

procedures. Understanding these practices can inform whether reconsideration is strategically sound for a particular case before a particular judge.

Strategic Analysis: When Reconsideration Is Appropriate

Deciding whether to file a motion to reconsider requires assessing multiple factors and comparing reconsideration to alternative remedies such as appeal or motion to reopen.

Comparative Analysis: Reconsideration versus Appeal

An appeal to the BIA is available regardless of time limit for any final order of removal, requiring only that it be filed within thirty days and addressing the correctness of the Immigration Judge's decision under the applicable standard of review[8][22]. The BIA will consider both factual findings and legal conclusions on appeal, applying clear error review to factual findings and de novo review to legal conclusions[9][25]. An appeal allows for the submission of a brief explaining the errors and legal arguments, and in appropriate cases, oral argument before a three-member panel[8].

In contrast, a motion to reconsider is confined to the existing record and cannot introduce new evidence; it must be filed within the same thirty-day window; and if denied, no further reconsideration is available[1][3]. However, reconsideration may be faster than appeal, particularly in the San Francisco court context where Immigration Judges frequently decide motions within days or weeks. If the motion is granted, the Immigration Judge may revisit the case and issue a new decision, potentially without requiring a new hearing.

The strategic choice between reconsideration and appeal depends on several factors: whether new evidence has become available since the original decision (in which case motion to reopen, not reconsideration, is appropriate); whether the errors are primarily legal (in which case appeal may be preferable because the BIA conducts de novo review of legal questions); whether the respondent is detained and needs a quick decision (in which case reconsideration might be preferable if decided quickly); and whether the respondent wants to preserve a record for federal court review (in which case appeal is necessary, as federal courts typically cannot review BIA decisions without an intervening appeal).

Comparative Analysis: Reconsideration versus Motion to Reopen

[A motion to reopen is based on new facts or evidence that were not available at the time of the original decision and seeks to give the immigration judge or BIA a chance to reconsider the case in light of updated information][2][6]. Common grounds for motion to reopen include newly discovered evidence of eligibility for relief (such as a recent marriage to a U.S. citizen or approved visa petition), changed country conditions affecting asylum claims, or evidence that was previously unavailable or not reasonably discoverable[2][6].

The critical distinction is that a motion to reopen requires new evidence, while a motion to reconsider does not[1][2][3][6]. If new evidence has been discovered, motion to reopen is the proper remedy, not reconsideration[1][2]. If no new evidence exists but the original decision contains legal or factual errors, reconsideration is appropriate. If both new evidence exists and the original decision contained errors of law, a combined motion to reopen and reconsider can be filed, addressing both issues separately[2][30].

Qualitative Risk Assessment for Reconsideration Motion

The likelihood of success for a motion to reconsider depends heavily on the specific errors alleged and the applicability of controlling law. Where reconsideration is likely to succeed (moderate to high probability): the moving party identifies a legal error involving misapplication of controlling statute or regulation; cites specific circuit court or BIA precedent supporting the position; demonstrates that the Immigration Judge failed to

address a required element or factor; or shows a change in law that materially affects eligibility. Where reconsideration is unlikely to succeed (low probability): the moving party relies on legal arguments that could have been raised during the original proceeding; attempts to reargue facts; challenges the Immigration Judge's credibility determinations (which are rarely disturbed); or vaguely alleges error without specific citation to authority.

For respondents represented by counsel in Northern California, the medium-to-high complexity of immigration law and the substantial legal and factual issues often present in asylum cases mean that legal errors may be identifiable, making reconsideration a viable strategy in selected cases. However, practitioners must ensure they have thoroughly investigated whether the alleged error is truly a legal error (misapplication of law) rather than a disagreement with how the Immigration Judge applied law to facts or evaluated credibility.

Practical Implementation Roadmap

Once a decision to file a motion to reconsider has been made, practitioners must follow a structured procedural roadmap to ensure compliance and maximize chances of success.

Step 1: Verify the Timely Filing Deadline

Calculate the thirty-day deadline from the date the Immigration Judge's decision was rendered (if oral) or mailed (if written). The date the decision was rendered or mailed is "day 0"; the thirty-day period runs from that point. If the Immigration Judge mailed a written decision, the date shown on the decision or the date shown in the mailing transmittal letter governs. For incarcerated respondents, the thirty-day deadline is not extended merely because mail travels slowly through the detention facility's mail system.

Step 2: Investigate and Document All Potential Errors

Because only one motion to reconsider is available, the practitioner must thoroughly identify all potential errors-legal and factual-in the Immigration Judge's decision. This investigation should include: a complete review of the transcript; comparison of the Immigration Judge's findings of fact to evidence in the record; identification of any legal standards that were not applied or were misapplied; research into applicable case law and agency guidance; and investigation into any changes in law since the decision was issued.

Step 3: Research Applicable Law and Identify Controlling Authority

For each alleged error, identify the controlling statute, regulation, court decision, or agency guidance that supports the claim of error. The motion must be "supported by pertinent authority," so vague legal arguments are insufficient[1][3][29]. This research should include identification of BIA precedent, relevant Ninth Circuit authority (if the case might reach federal court), any recent policy guidance, and academic commentary if appropriate.

Step 4: Draft the Motion to Reconsider

The motion should be organized clearly with: an introductory section explaining the basis for reconsideration; separate sections addressing each alleged error of law or fact or change in law; specific citations to the record demonstrating how the error affected the decision; citation to controlling authority; and a conclusion requesting that the decision be reconsidered and modified or reversed. The motion should be concise but comprehensive, typically ranging from 5 to 15 pages depending on complexity.

For asylum cases in Northern California, the motion may need to address issues such as persecution analysis,

particular social group definitions, changed country conditions, or credibility findings. For other cases, the motion may address statutory interpretation, discretionary factor analysis, or procedural defects.

Step 5: Assemble the Motion Package

Assemble the motion package in the order specified by EOIR: cover page labeled "MOTION TO RECONSIDER"; Form EOIR-28 (if represented); fee receipt (stapled) or fee waiver request; the motion itself; copy of the Immigration Judge's decision; motion brief if appropriate; copy of the application for relief if applicable; supporting documentation with table of contents; EOIR-33/IC change of address form; proposed order for the Immigration Judge's signature; and proof of service[15].

Step 6: Calculate Filing Fees or Prepare Fee Waiver Request

Determine whether the motion is based exclusively on an asylum claim, law, or regulation (in which case the fee is $0) or involves other issues (in which case the fee is $1,045 for Immigration Court or $1,010 for BIA as of February 1, 2026)[34][56]. If the respondent cannot pay the fee, prepare Form EOIR-26A (Fee Waiver Request) with supporting affidavit or declaration explaining inability to pay[10]. Ensure that the fee waiver request is specific and detailed, particularly if the respondent is represented by counsel.

Step 7: File the Motion Timely

File the motion with the appropriate immigration court before 4:30 p.m. EST (for BIA filings) or during the immigration court's filing hours. For San Francisco, mail or hand-deliver to one of the three court locations. Use overnight courier or in-person delivery to ensure timely receipt. Do not rely on regular mail, as the receipt rule requires actual receipt by the court, not mailing[40]. Keep documentation of delivery (tracking number, receipt, etc.) for any future disputes about timeliness.

Step 8: Serve the Government and Maintain Service Records

Serve a copy of the motion on DHS counsel or the appropriate government office[15]. Maintain proof of service showing the date and method of service (mail, email, hand delivery) to include with the motion filing or to demonstrate compliance with service requirements if challenged.

Step 9: Monitor for Immigration Judge Ruling

After filing, monitor the case through the EOIR hotline or online system to determine when the Immigration Judge rules on the motion. If the motion is denied, determine whether to appeal the underlying Immigration Judge decision if an appeal deadline has not yet passed, or whether to file a federal petition for review if applicable.

Northern California Enforcement Dynamics

The enforcement environment in Northern California creates particular urgency for respondents facing removal.

ICE ERO Field Office 1 Enforcement Patterns

ICE Enforcement and Removal Operations (ERO) Field Office 1 covers Northern California including the San Francisco and San Ysidro areas. In recent years, enforcement priorities have shifted with changes in administration, but removal proceedings generally proceed expeditiously through Northern California immigration courts. Respondents in detention should understand that the thirty-day motion to reconsider deadline operates regardless of detention status, and detention may accelerate removal proceedings.

San Francisco Asylum Office Interview Patterns

The San Francisco Asylum Office conducts affirmative asylum interviews for applicants filing I-589 applications outside of removal proceedings. While asylum office interviews are not directly addressed by motion to reconsider procedures (which apply only to final orders), practitioners should note that applicants who receive negative credible fear determinations in expedited removal proceedings may need to pursue motion to reconsider or appeal strategies to challenge those determinations within the immigration court system.

Effect of California State Criminal Law on Immigration Consequences

Practitioners in Northern California should be alert to the interaction between state criminal law and immigration consequences. Under California Penal Code § 1473.7, respondents may petition for vacation of criminal convictions that were obtained without understanding or advice regarding immigration consequences. If a conviction has been vacated under Penal Code § 1473.7, motion to reopen or reconsider immigration proceedings may be appropriate if the conviction was the basis for removal. Similarly, under Penal Code § 1203.43, certain sentence reduction procedures may be available for offenses that carry immigration consequences.

Conclusion

A motion to reconsider before the Executive Office for Immigration Review is a potent but limited procedural tool that should be deployed strategically and with precision. The motion addresses alleged errors of law or fact in a prior decision or changes in law affecting eligibility, and is based exclusively on the existing administrative record without introduction of new evidence. The thirty-day deadline for filing is strict and operates independently from appeal deadlines; the receipt rule governs timing; and equitable tolling is available in extraordinary circumstances but requires clear showing of both diligence and extraordinary circumstance preventing timely filing.

Practitioners must understand that only one motion to reconsider is available and that motion cannot be challenged by a subsequent motion to reconsider. This limitation requires thorough initial investigation and identification of all potential errors before filing. The substantive standards for establishing error are demanding: legal errors must be supported by pertinent authority; factual errors must be contradicted by evidence in the existing record; and changes in law must materially affect the case analysis.

For Northern California practitioners, filing a motion to reconsider requires familiarity with San Francisco Immigration Court procedures, compliance with EOIR electronic filing requirements through ECAS, current fee structures implemented as of February 2026, and strategic assessment of whether reconsideration, appeal, or alternative remedies are most appropriate for the particular respondent's circumstances. Detained respondents face particular urgency given ICE ERO enforcement patterns, and practitioners must coordinate motion to reconsider strategy with appeal deadlines, stay of removal considerations, and potential federal court petition strategies.

The current legal landscape reflects a shift toward recognizing equitable tolling as available for deadline extensions in extraordinary cases, reflecting Ninth Circuit principles of fairness in procedural rule application. However, practitioners must understand that this exception is narrow and requires documented diligence and extraordinary circumstance. For most respondents, the motion to reconsider option will be deployed as part of a comprehensive litigation strategy that includes understanding appeal procedures, the Board's standards of review, and preservation of issues for potential federal court review.

Legal Framework Citations

The foundational authorities governing motions to reconsider are 8 U.S.C. § 1229a(c)(6)[29]; 8 C.F.R. § 1003.23(b) (Immigration Judge level); and 8 C.F.R. § 1003.2(b) (BIA level)[1][3]. EOIR procedural guidance is found in Immigration Court Practice Manual Chapter 5.8[1] and BIA Practice Manual Chapter 5.7[3]. Key BIA precedent includes [Matter of O-S-G-, 24 I&N Dec. 56 (BIA 2006)][43]; [Matter of Cerna, 20 I&N Dec. 399 (BIA 1991)][46]; and [Matter of Morales-Morales, 28 I&N Dec. 714 (BIA 2023)][11]. Current fee information is available through EOIR Types of Appeals, Motions, and Required Fees[7] and One Big Beautiful Bill Act fee guidance[34][56].