

EOIR-29 Appeal of I-130 Denials: Legal Research and Framework

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February 2, 2026

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FINDINGS

EOIR-29 APPEAL OF I-130 DENIALS: COMPREHENSIVE LEGAL RESEARCH AND STRATEGIC FRAMEWORK

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Executive Summary

When the U.S. Citizenship and Immigration Services denies a Form I-130 (Petition for Alien Relative), the petitioner possesses a limited appellate remedy: filing a Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer (Form EOIR-29) with the BIA[1][19]. This appeal process represents a critical juncture in family-based immigration proceedings, as the decision whether to appeal versus pursue alternative strategies fundamentally affects case outcomes and timelines. The appeal must be filed within a strict 30-calendar-day deadline measured from the date USCIS mails or serves the denial notice, with no authority for extension except in limited circumstances involving equitable tolling or system outages[1][9][48]. The current filing fee for an EOIR-29 appeal is \$1,030.00, payable directly to the appropriate DHS office[5][19][48].

The strategic analysis surrounding I-130 appeal decisions involves weighing several competing considerations. First, practitioners must assess whether the denial is based on legal error, factual insufficiency, or procedural defect—each category receiving different treatment on appeal and carrying distinct probabilities of success. Second, the nature of the specific grounds for denial significantly impacts appealability; certain bases such as INA § 204(c) fraud findings establish permanent, non-waivable bars that resist appellate reversal[16][50][52]. Third, practitioners must evaluate whether refiling the I-130 with additional evidence would produce faster resolution than the BIA appellate process, which typically requires six months to eighteen months from filing to final decision[1][4][20][23]. A qualitative risk assessment across these dimensions yields a medium-to-high likelihood of success for appeals challenging legal or procedural errors, but a low-to-medium likelihood when the denial rests primarily on factual insufficiency or credibility determinations. Client risk tolerance, detention status, available evidence, and family circumstances should inform the decision between appellate and alternative strategies.

Legal Framework for EOIR-29 Appeals of I-130 Denials

Statutory Authority and Regulatory Foundation

The appellate jurisdiction of the Board of Immigration Appeals over USCIS decisions derives from 8 U.S.C. § 1252 and the Immigration and Nationality Act § 242, which authorizes federal courts of appeals to review final removal orders and BIA decisions[6]. The BIA, as the highest administrative body for interpreting and applying immigration laws, exercises nationwide jurisdiction to hear appeals from decisions rendered by district directors of the Department of Homeland Security in visa petition proceedings[6][30]. The regulatory framework governing EOIR-29 appeals is codified at 8 C.F.R. § 1003.3, which establishes the procedural requirements for filing notices of appeal from DHS officer decisions[1][14][17][19].

The legal authority for the I-130 petition itself derives from INA § 201 and INA § 204, which establish the

framework for family-based immigration and the classification of immediate relatives and family preference beneficiaries[38][40][41]. When USCIS denies an I-130 petition, the agency issues a detailed denial notice explaining the basis for rejection. Unlike denials by the Administrative Appeals Office (AAO) under Form I-290B procedures, I-130 denials proceed directly to the BIA via the EOIR-29 process, creating a distinct appellate pathway designed specifically for visa petition adjudications[1][14][15][17]. This distinction is material to practitioners, as the substantive standards of review, burdens of proof, and briefing requirements differ materially between AAO and BIA proceedings.

Standards of Review Applied by the Board of Immigration Appeals

The BIA applies a bifurcated standard of review when adjudicating appeals of USCIS visa petition denials. According to 8 C.F.R. § 1003.1(d)(3), the Board reviews factual findings for "clear error" and reviews all other matters de novo, including questions of law, discretion, and judgment[25][28]. When the BIA conducts de novo review of legal questions, it exercises independent judgment without deference to the USCIS determination, which significantly enhances the probability of successful appeal where the underlying denial reflects legal misinterpretation or misapplication of regulatory standards[25].

However, factual findings made by the USCIS officer receive more deferential review. The "clear error" standard requires that the appealing party demonstrate the factual finding is "manifestly contrary to the weight of the evidence" or that the adjudicator drew conclusions unreasonable in light of the record[25]. This heightened deference to factual findings-particularly credibility determinations and evidentiary sufficiency assessments-represents a significant barrier to successful appeals predicated solely on disagreement with the officer's factual conclusions. In EOIR-29 proceedings, the record consists of all decisions and documents in the petition record, including the I-130 form, supporting documentation, any RFEs or NOIDs issued, and the USCIS decision letter[1][17][44]. The BIA does not accept new evidence during appellate review absent extraordinary circumstances; submission of new evidence may trigger treatment as a motion to remand[1][36].

Burden of Proof Standards in I-130 Proceedings

A foundational principle of visa petition law is that the petitioner bears the burden of proving by a preponderance of the evidence that the beneficiary meets all statutory and regulatory requirements for the classification sought[56][60]. Under the preponderance standard, the evidence must establish that it is "probably true" (i.e., more likely than not, or greater than 50%) that the applicant's claim is valid[56][60]. This differs materially from the "clear and convincing evidence" standard applied to deportability determinations, which requires proof that is "highly probable" or establishes an "abiding conviction" of truth[60].

For family relationships specifically, petitioners must establish the qualifying relationship through competent evidence. When USCIS raises concerns about the authenticity or sufficiency of documents-such as late-registered birth certificates, poorly photocopied documents, or documents lacking official government seals-the petitioner on appeal must demonstrate that the officer abused discretion in rejecting the evidence or made findings unsupported by the record[7][29]. For marriage-based I-130 petitions, the petitioner must prove the bona fides (genuineness) of the marriage by a preponderance of the evidence[50][52][54]. Recent BIA precedent establishes that the "substantial and probative evidence" standard for marriage fraud requires evidence establishing that it is more than probably true that the marriage is fraudulent, not merely that fraud is inferentially suggested by circumstantial evidence[50][52].

Current Legal Landscape and Recent Developments (Last 90 Days)

2025-2026 BIA Precedent and EOIR Policy Updates

The BIA has issued significant precedent decisions in 2025-2026 affecting I-130 appeals and family-based immigration. *Matter of R-E-R-M- & J-D-R-M-*, 29 I&N Dec. 202 (A.G. 2025) represents an Attorney General reversal of prior precedent on a critical issue in family-based cases, overruling [*Matter of L-E-A-*, 28 I&N Dec. 304 (A.G. 2021)][32][37]. This decision carries direct implications for practitioners appealing I-130 denials where credibility or persecution-related issues intersect with family classification eligibility.

Additional 2025-2026 BIA decisions address administrative procedures and evidentiary standards relevant to appellate practice. *Matter of B-N-K-*, 29 I&N Dec. 96 (BIA 2025) reaffirms that when immigration judges and the Board exercise their duty to promptly and fairly bring removal proceedings to close, whether there exist persuasive reasons for a case to proceed remains the primary consideration in administrative closure determinations[35]. While technically addressing removal proceedings rather than visa petitions, the decision's framework regarding factual findings and burden allocation reflects broader BIA jurisprudence on evidentiary requirements.

Fee Changes and Procedural Updates

As of February 2026, the EOIR-29 filing fee remains at \$1,030.00[5][19][48]. The EOIR has issued updated forms and guidance through Form EOIR-29 (Revised July 2025)[5], which reflects current procedural requirements. Practitioners should verify they are using the most current form version to avoid rejection and potential loss of deadlines.

Ninth Circuit and Northern District of California Recent Activity

No published Ninth Circuit decisions directly addressing I-130 appeal procedures have issued within the last 90 days that materially alter controlling precedent applicable to EOIR-29 appeals. However, practitioners should remain alert to habeas corpus petitions and Administrative Procedure Act challenges filed in the Northern District of California and Central District of California challenging USCIS policy regarding I-130 denials based on fraud or relationship insufficiency. While such federal court challenges are generally barred by exhaustion requirements, rare circumstances involving constitutional questions or novel legal theories may permit federal court intervention prior to BIA exhaustion in specific factual scenarios.

Northern California Immigration Court and San Francisco Asylum Office Context

The San Francisco Immigration Court (located at 100 Montgomery Street, Suite 800, San Francisco, CA 94104, and 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111) processes removal cases that may intersect with I-130 appellate strategy when beneficiaries of denied I-130 petitions face removal proceedings. While EOIR-29 appeals proceed directly to the BIA independent of immigration court involvement, practitioners representing clients in Northern California should be aware of local procedural tendencies. San Francisco-based immigration judges have historically demonstrated receptiveness to continuance requests to permit parallel I-130 appeals to proceed, although recent BIA precedent regarding administrative closure standards has tightened judicial discretion in this area.

The EOIR-29 Appeal Process: Procedural Roadmap

Filing Requirements and Jurisdictional Deadlines

An EOIR-29 appeal of an I-130 denial must be filed with the USCIS Field Office that issued the denial, not

with the BIA directly, within 30 calendar days of the date the denial notice was mailed or personally served[1][14][17][48]. This 30-day deadline is jurisdictional and strictly enforced; the BIA lacks authority to extend the time for filing a Notice of Appeal[9]. The date of mailing controls rather than the date of receipt, meaning practitioners must calculate the 30-day period from the official mailing date stated on the USCIS decision letter. The computation of time follows the rules in 8 C.F.R. § 1003.1(d)(3) and Chapter 3.1(b)(2) of the EOIR Reference Materials, which provide that the 30-day period excludes the date of the decision but includes the final day for filing[9].

Equitable tolling—a narrow exception to the 30-day rule—may be available where the petitioner demonstrates both diligence in attempting to file the appeal and an extraordinary circumstance that prevented timely filing[9]. Approved circumstances for equitable tolling have included complete lack of notice of the denial, incarceration preventing communication with counsel, or demonstrated fraud by the petitioner's attorney. However, the threshold for equitable tolling is deliberately high, and ordinary procrastination, attorney neglect (absent gross negligence rising to fraud), or lack of receipt of mail absent extraordinary circumstances do not qualify[9].

The petition record must be filed with the same DHS office that issued the denial. For I-130 petitions processed by USCIS Service Centers, the appeal goes to the appropriate Service Center; for petitions processed by local Field Offices, the appeal goes to that Field Office[1][14][17]. USCIS may issue a briefing schedule specifying deadlines for submission of the appeal brief, or the appealing party may be instructed that briefs are due within 30 days of the Notice of Appeal filing[1][17].

Form Completion and Representation Considerations

The Notice of Appeal (Form EOIR-29) must be signed by the petitioner, not the beneficiary, with narrow exceptions for self-petitioners such as battered spouses and widows or widowers[17]. The form requires clear and specific identification of the grounds for appeal, meaning petitioners cannot summarily state "I disagree with the denial" but must articulate specific findings of fact or conclusions of law being challenged[1][17][51]. Vague or inadequately articulated grounds for appeal create risk of summary dismissal under 8 C.F.R. § 1003.1(d)(2)(i)(A)[51].

If the petitioner is represented by counsel, a Notice of Appearance as Representative Before the BIA (Form EOIR-27) must be filed directly with DHS at the same time as the EOIR-29, not with the BIA[2][17][42]. Filing the Form EOIR-27 directly with the BIA before the BIA receives the petition record from DHS will result in non-recognition and rejection. Once the BIA confirms receipt of the petition record, subsequent filings may be directed to the BIA, but initial appearance forms must go to DHS[2][17][42].

Appeals Versus Motions: Strategic Distinctions

A critical distinction exists between appeals of USCIS decisions (Form EOIR-29) and motions to reopen or reconsider (Form I-290B) filed with the Administrative Appeals Office[1][4][15][24]. An EOIR-29 appeal proceeds directly to the BIA based on the record that existed when USCIS made the initial decision; no new evidence can be submitted unless the submission is converted to a motion to remand[1][36]. By contrast, a Motion to Reopen (I-290B) filed with USCIS's local field office or service center requests that USCIS reconsider the case based on newly discovered evidence that was not previously available, typically triggered by DNA test results, newly obtained birth certificates, or newfound documentation of relationship[4][8][15][18].

In practice, where new evidence has become available post-denial, practitioners must choose between filing an EOIR-29 appeal (which does not permit new evidence to be considered at the appeal stage) or filing a Motion

to Reopen with the local USCIS office to give USCIS a second opportunity to adjudicate the petition in light of the new evidence[4][8][15][24]. This choice carries significant timing implications. An EOIR-29 appeal typically requires six months to eighteen months for BIA adjudication[1][20][23], whereas a Motion to Reopen filed with USCIS's field office may receive a faster response (particularly if USCIS simply reaffirms the initial denial) but carries risk that USCIS will issue a more detailed RFE or revised denial rather than grant the petition[21].

The Record of Proceeding and Briefing Requirements

Once the USCIS Field Office receives the EOIR-29, it conducts a preliminary review to determine whether the grounds stated in the appeal overcome the basis for the initial denial[1]. If the Field Office determines the appeal does not overcome the grounds for denial, it prepares a Record of Proceeding (ROP), which includes the initial I-130 petition with all supporting documents, any RFEs or notices of intent to deny, the petitioner's responses, the USCIS decision letter, the Notice of Appeal, and any briefs filed by the parties[1][44]. The Field Office then forwards the ROP to the USCIS Office of Chief Counsel, which reviews the record and prepares a government response brief articulating the agency's position on the appeal[1].

Briefs submitted in support of an EOIR-29 appeal should follow the standards applicable to general appellate briefs, as set forth in EOIR Reference Materials Chapter 4.6. Briefs should clearly identify the specific findings of fact or conclusions of law being challenged, explain why the USCIS officer's decision constitutes legal error or is unsupported by the evidence, and articulate what relief should be granted on appeal (reversal, remand to USCIS for further development of the record, or other specific remedy). For I-130 appeals based on marriage fraud findings or relationship insufficiency determinations, briefs typically address evidentiary standards, the sufficiency of the record, and whether the petitioner meets the applicable burden of proof.

The briefing schedule is controlled by DHS; briefs filed with DHS are due within the timeframe specified in that schedule, typically 21 to 30 days from notice of the briefing schedule[1][17]. Extensions of briefing deadlines must be requested from the DHS office processing the appeal rather than from the BIA[1][17]. Once both parties have submitted briefs (or the time for brief submission has passed), DHS forwards the complete petition record to the BIA for final adjudication[1].

Common Grounds for I-130 Denial and Appellate Standards

Insufficient Evidence of Qualifying Relationship

One of the most frequent grounds for I-130 denial is insufficient evidence of the qualifying relationship. This category encompasses cases where birth certificates are unavailable or difficult to authenticate, where marriage certificates are late-registered or appear to lack official government authentication, or where the documentary evidence appears inconsistent with other documents in the file[7][29]. When USCIS denies an I-130 based on insufficient evidence, the petitioner on appeal must establish that either (a) the evidence submitted was actually sufficient to meet the statutory burden, or (b) the USCIS officer abused discretion in rejecting particular documents without rational basis[7][29].

For appeals challenging sufficiency of evidence determinations, practitioners should carefully analyze the evidentiary standard. The petitioner bears the burden of proving by a preponderance of evidence that the beneficiary meets the definition of "child," "spouse," or "parent" as applicable. When documents are foreign language originals, certified English translations must accompany them; absence of translation is not merely a technical defect but may constitute valid grounds for denial if the officer cannot independently verify the

document's content and authenticity[7][29][57]. However, where USCIS has rejected documents categorically without meaningful examination or where the documents facially appear authentic and bear official seals, appellate reversal becomes more probable.

A particular evidentiary challenge in Northern California and nationwide involves late registration of birth certificates, common in Mexico and Central American countries where systemic government record-keeping gaps have historically required families to register births years after occurrence. Recent BIA precedent and circuit court decisions have recognized that late-registered birth certificates, when accompanied by circumstantial evidence of accuracy (such as consistent ages referenced in school records, employment documents, or prior government filings), may constitute sufficient evidence despite the registration delay[7][29]. On appeal, practitioners should emphasize that the lateness of registration does not inherently render the document unreliable, and that the appropriate standard is whether the totality of evidence establishes by a preponderance that the relationship exists.

Marriage Fraud Findings and the INA § 204(c) Permanent Bar

The most serious ground for I-130 denial involves an agency finding that the marriage is fraudulent or that the beneficiary previously participated in a fraudulent marriage, triggering the bar in INA § 204(c). The statute provides that a visa petition may not be approved where the beneficiary has previously attempted or conspired to enter into a fraudulent marriage for purposes of evading immigration laws[13][16][50][52]. Critically, the 204(c) bar is permanent and non-waivable; once a 204(c) finding has been made, no subsequent petition for the same person will be approvable absent reversal of the 204(c) determination[13].

Recent BIA precedent has clarified the evidentiary standard for 204(c) findings. In *Matter of P. Singh*, 27 I&N Dec. 598 (BIA 2019), the BIA held that to be "substantial and probative," evidence of marriage fraud must establish that it is MORE THAN PROBABLY TRUE (i.e., greater than 50% probability) that the marriage was fraudulent[50][52]. The BIA rejected the notion that "reasonable inference" of fraud suffices; instead, the agency must have evidence creating more than a mere reasonable suspicion of fraud[50]. Both direct evidence (such as admissions by the parties or documentary evidence of payment for the marriage) and circumstantial evidence may support a 204(c) finding, but the evidence must, in its totality, establish more than probable truth of fraud[50].

The burden-shifting analysis in fraudulent marriage cases requires that USCIS first establish a prima facie case of fraud by "substantial and probative evidence," after which the petitioner bears the burden of rebutting the fraud finding by preponderance of the evidence[50][52]. USCIS must inform the petitioner of any derogatory evidence before issuing a denial[50][52]. Where USCIS fails to disclose evidence it relied upon or makes a 204(c) finding without substantial evidentiary support, appellate reversal becomes achievable. However, where the agency identifies specific factors suggesting fraud—such as large age gaps, minimal courtship period before marriage, minimal cohabitation, or inconsistent testimony by the parties regarding fundamental facts about their relationship—the burden shifts to the petitioner, and appellate reversal requires demonstration that the evidence in rebuttal creates a genuine dispute as to a material fact.

Recent federal district court decisions, including *Matter of Bouarfa* from Connecticut, have held that USCIS acted arbitrarily and capriciously when it made 204(c) findings without "substantial and probative evidence" specifically establishing the petitioner-beneficiary connection to fraud rings or fraudulent arrangements[13]. While district court decisions are not binding on the BIA, they demonstrate federal scrutiny of 204(c) determinations and provide persuasive authority on appeal.

Bona Fides Questions and Credibility Challenges

Even where 204(c) fraud bars do not apply, USCIS may deny an I-130 based on determination that the marriage lacks bona fides (genuineness), meaning the marriage was entered into for the primary purpose of obtaining immigration benefits rather than as a genuine personal relationship[10][24][50][54]. BIA precedent and recent district court decisions establish that an immigration judge may inquire into the bona fides of a marriage even when an I-130 petition has been approved by USCIS[3][54]. An approved I-130 is "some evidence of validity" but not conclusive[3][54].

Factors suggesting lack of bona fides include inconsistent testimony by the petitioner and beneficiary regarding fundamental facts (such as how they met, date of marriage, period of courtship, or current residence); minimal documentary evidence of shared life (joint bank accounts, shared leases, utility bills, photographs); and little evidence of cohabitation or financial interdependence[50][54]. However, the petitioner need not provide perfect consistency or exhaustive documentation; credible testimony alone may suffice to establish bona fides where the trier of fact believes the petitioner's testimony and the government offers no contradictory evidence[58][60].

On appeal of a denial based on perceived lack of bona fides, practitioners must carefully examine whether the immigration judge (or, in initial I-130 adjudication, the USCIS officer) made explicit credibility findings or merely made factual inferences from inconsistencies in testimony or document gaps. Under the "clear error" standard of review for factual findings, appellate reversal of credibility determinations is difficult absent demonstration that the credibility findings are manifestly unreasonable or contradicted by the overwhelming weight of the evidence[25]. By contrast, where the USCIS officer did not make explicit credibility determinations but instead drew inferences, de novo review of the legal conclusions regarding bona fides becomes possible, and appellate remand for further consideration may be appropriate.

Relationship Not Recognized at Law

USCIS may deny an I-130 where the claimed relationship does not fall within statutory definitions or where facts establish the relationship has been legally terminated. Common scenarios include marriages that have been dissolved by divorce (with no recognition in certain countries), step or adoptive relationships lacking legal documentation, or unmarried partners where no marriage ceremony has occurred[7][8]. For denials based on lack of legally recognized relationship, appellate standards are straightforward: the question is purely legal-whether the facts established by the record fall within the statutory definition-and the BIA conducts de novo review without deference to the USCIS determination[25].

In Northern California practice, questions frequently arise regarding recognition of foreign divorces, validity of unmarried partnership arrangements in certain cultures, and standing of step-relations. Practitioners appealing denials on these grounds should research the applicable law of the beneficiary's country of residence to establish whether the claimed relationship is legally recognized and, if so, submit evidence from foreign counsel or official government documents establishing the legal status[7][29].

Strategic Decision-Making: Appeal Versus Alternative Strategies

Factors Favoring EOIR-29 Appeal

Filing an EOIR-29 appeal is strategically appropriate when one or more of the following conditions obtain. First, the denial clearly reflects legal error-such as misapplication of the preponderance standard, incorrect interpretation of INA provisions, or procedural defect-such that de novo BIA review is likely to yield reversal[1][8][25]. Second, the specific ground for denial (such as relationship insufficiency based on

late-registered birth certificates) is one where appellate precedent or federal circuit authority supports the petitioner's position, creating reasonable probability of success[7][29]. Third, new evidence has not emerged that would materially strengthen the case; if new evidence is available, Motion to Reopen with USCIS's field office may provide faster resolution[4][8][15][24].

Fourth, the petitioner is not in removal proceedings, such that delay pending BIA resolution does not create urgent risk of deportation[1]. Fifth, the petitioner is not in deferred action or TPS status dependent on immediate I-130 approval to maintain present status; visa petition approval does not itself grant status but rather provides basis for adjustment of status or consular processing, which involve separate applications. Sixth, the denial does not rest solely on credibility findings or evidentiary sufficiency based on factual circumstances unlikely to change during the appellate process[1][8][25].

Factors Favoring Motion to Reopen or Case Refiling

By contrast, Motion to Reopen (Form I-290B) filed with USCIS becomes strategically preferable when new evidence has emerged post-denial that materially addresses USCIS's stated grounds for denial[4][8][15][24]. Common scenarios include: DNA test results newly obtained to establish paternity where USCIS questioned biological relationship; newly discovered government documents or birth certificates not previously available; affidavits from extended family, employers, or community members providing new corroborating evidence of the relationship; or documentary evidence of shared residence and financial interdependence where USCIS questioned cohabitation[4][8][15].

Practitioners frequently encounter cases where clients initially filed I-130 petitions prematurely, before assembling comprehensive documentation. For such cases, filing a Motion to Reopen to present previously unavailable evidence may be faster and more efficient than awaiting BIA resolution of an EOIR-29 appeal[4][8][15][24]. Alternatively, in cases where the initial I-130 was denied for reasons now remedied (such as beneficiary's prior immigration violations now resolved, or relationship established only after initial filing), requesting USCIS to reopen for reconsideration may be appropriate[4][8][15].

Complete refiling of the I-130 (rather than appeal or motion to reopen) is sometimes optimal strategy when: (1) the initial petition had numerous defects or inconsistencies correctable in a fresh submission; (2) insufficient time has passed to materially strengthen the case through appeal; or (3) the petitioner's circumstances have changed materially (such as petitioner now possessing increased income to sponsor the beneficiary, or petitioner having become a U.S. citizen after initially filing as LPR)[4][8][24]. A fresh I-130 filing restarts the processing clock and provides the opportunity to present comprehensively organized evidence without appellate delays.

Northern California Implementation Details and San Francisco-Specific Context

San Francisco Field Office and I-130 Processing Patterns

The USCIS San Francisco Field Office processes I-130 petitions from Northern California petitioners. While USCIS publicly provides processing time estimates, actual adjudication timelines in the San Francisco jurisdiction have historically ranged from 10-14 months for immediate relative cases to several years for family preference category cases[43]. Practitioners in Northern California should monitor USCIS processing time updates available on the USCIS website and account for San Francisco jurisdiction-specific delays when advising clients on appeal versus refiling strategy.

The San Francisco Field Office has issued various localized policy guidance regarding evidence requirements for I-130 petitions, particularly regarding late-registered birth certificates from Mexico, El Salvador, Guatemala, and Honduras—the primary source countries for Northern California clients. Practitioners appealing denials of I-130 petitions for beneficiaries from these countries should research whether the San Francisco office has issued specific directives regarding authentication standards for vital records and present appellate briefs accordingly.

San Francisco Immigration Court Continuance Requests Pending I-130 Appeal

Where a beneficiary of a denied I-130 petition faces removal proceedings in San Francisco Immigration Court, the immigration judge may consider a request for continuance to permit the pending EOIR-29 appeal to conclude[1]. Recent BIA precedent in *Matter of B-N-K-*, 29 I&N Dec. 96 (BIA 2025), however, has tightened the standard for continuances, establishing that whether there exist persuasive reasons for the case to proceed remains the primary consideration under the totality of circumstances[35]. Practitioners seeking continuances must affirmatively demonstrate both that the I-130 appeal presents reasonable likelihood of success and that the timing would permit materially affecting the removal proceedings' outcome[35].

San Francisco Immigration Court judges have historically shown willingness to grant limited continuances for I-130 appeals, though preferences vary by individual judge. Counsel should be familiar with the specific judge's procedural tendencies and prior rulings on similar requests before filing continuance motions.

California State Law Intersections

California criminal law intersects with immigration proceedings in ways affecting I-130 strategy. California Penal Code § 1473.7 permits post-conviction relief where a conviction has immigration consequences, and Penal Code § 1203.43 addresses relief from immigration-related convictions. If a beneficiary has prior criminal convictions that may have triggered immigration-related bars, practitioners should investigate whether California post-conviction relief is available, as removal of certain convictions may eliminate bars to I-130 approval. Such relief efforts may require coordination with appellate immigration strategy.

Additionally, California's Values Act (SB 54) limits cooperation between state and local law enforcement and federal immigration authorities, which may provide tactical advantages in limiting detention or enforcement action pending EOIR-29 resolution.

Evidentiary Strategy and Record-Building for Appellate Success

Evidence Submission at Appeal Stage

A critical procedural point is that the BIA generally does not accept new evidence submitted for the first time on appeal[1][36]. If new evidence is submitted, the Board may treat the submission as a motion to remand, returning jurisdiction to the USCIS Field Office to reconsider the evidence[1][36]. This distinction has significant implications for appellate strategy. If new evidence has emerged after USCIS's initial decision, practitioners must choose between (1) submitting the new evidence as part of a motion to remand (which requires explanation of why the evidence was not previously available), or (2) filing a separate Motion to Reopen with USCIS's field office[1][4][36].

Credibility and Corroborating Evidence

For appeals challenging denials based on credibility or evidentiary insufficiency, appellate briefs should

carefully address the applicable burden of proof and distinguish between the USCIS officer's role and the appellate standard. Practitioners should articulate whether the denial rests on explicit credibility findings (subject to deferential "clear error" review) or on legal conclusions regarding the sufficiency of evidence (subject to de novo review)[25]. Where the USCIS officer issued findings of fact regarding witnesses' credibility, appellate challenge is more difficult; practitioners must demonstrate the credibility findings are manifestly unreasonable or contradicted by overwhelming evidence[25].

Affidavits and declarations from family members, employers, clergy, neighbors, and others with knowledge of the petitioner and beneficiary's relationship can provide corroborating evidence of bona fides, shared residence, and financial interdependence[50][54]. However, affidavits alone generally do not overcome specific documentary evidence of fraud or inconsistent testimony; the BIA has held that "affidavits alone will generally not be sufficient to overcome evidence of marriage fraud in the record without objective documentary evidence to corroborate the assertions made by the affiants"[50][52].

Documentary Evidence Organization and Presentation

Appellate briefs should organize evidence thematically rather than chronologically, presenting all documents related to a particular element of the relationship (such as cohabitation, financial interdependence, or courtship) in a unified discussion. For I-130 petitions involving late-registered birth certificates or foreign documents, practitioners should submit with the brief a detailed narrative explaining the document's provenance, how it was obtained, why authentication delay occurred, and what objective evidence corroborates the document's accuracy[7][29].

BIA Appeal Outcomes, Timelines, and Post-Decision Options

Probabilities of Appeal Success and Timeline Expectations

BIA adjudication of EOIR-29 appeals typically requires 6 to 18 months from submission of the complete petition record[1][20][23]. The BIA states it generally seeks to adjudicate cases within 180 days, but appeals involving novel legal issues, complex factual records, or high caseload at the Board may extend well beyond this timeframe[1][20]. As of February 2026, the BIA's docket continues to reflect significant backlog, and practitioners should account for 12-month minimum timelines when advising clients.

Qualitative assessment of appeal success likelihood depends on the specific grounds for denial. Appeals challenging clear legal error carry high to medium-high probability of success (high confidence). Appeals based on evidentiary insufficiency or relationship documentation issues carry medium probability (moderate confidence), as successful appeals typically require demonstration that USCIS abused discretion in evaluating evidence. Appeals predicated solely on disagreement with credibility findings carry low-to-medium probability (low to moderate confidence), as factual credibility determinations receive deferential review. Appeals challenging 204(c) fraud determinations carry low-to-medium probability (low to moderate confidence) unless the evidence of fraud is transparently lacking substantial and probative support.

Possible BIA Outcomes

The BIA may enter one of several decisions on an EOIR-29 appeal: (1) affirmance of USCIS's denial; (2) reversal and grant of the I-130 petition; (3) reversal and remand to USCIS for further development of the record; or (4) reversal and remand to USCIS with instructions to issue a new decision addressing specific issues[1][36]. Affirmance of the denial concludes the administrative appellate process, after which federal

court review via petition for review to the appellate court becomes the only remaining remedy[1][45]. Reversal and grant represents the optimal outcome and results in the I-130 petition being approved[1]. Remand to USCIS for further consideration creates opportunity for USCIS to issue a new decision but does not guarantee approval; the field office may issue a new denial or may issue an RFE requiring additional evidence[1][21].

Motion to Reconsider After BIA Denial

If the BIA affirms the USCIS denial, the petitioner may file a motion to reconsider with the BIA arguing that the Board's decision overlooked significant evidence or misapplied legal standards[33]. Motions to reconsider are subject to strict procedural requirements and must be filed within specified timeframes; the motion must clearly articulate the alleged error and cite specific record evidence supporting reconsideration[33]. However, motions to reconsider rarely result in reversal; the threshold for obtaining reconsideration is deliberately high, and the Board is reluctant to revisit its own decisions absent clear showing of manifest error[33].

Federal Court Review via Petition for Review

If both the BIA and any motion to reconsider have been exhausted, the petitioner may file a petition for review to the federal court of appeals with jurisdiction over the case. For cases originating in Northern California, a petition for review would be filed with the Ninth Circuit Court of Appeals[28][45]. Petitions for review must be filed within 30 days of the BIA's final decision and present legal, constitutional, or jurisdictional challenges to the BIA's determination[45]. The court may review legal questions de novo and factual findings for substantial evidence support[28][45].

Practitioners must be aware that federal court review of BIA visa petition decisions is more limited than review of removal orders. Under the REAL ID Act, courts of appeals have jurisdiction to review constitutional claims and questions of law related to removal orders, but review of visa petition denials involves more restrictive jurisdictional limitations[28][45]. Petitions for review alleging violations of the Administrative Procedure Act or constitutional due process defects may succeed where petitions based solely on disagreement with the BIA's factual findings or legal conclusions would fail[28][45].

Risk Assessment and Preservation Strategies

Best-Case Scenario

In the most favorable scenario, the petitioner's appellate brief clearly articulates legal error by the USCIS officer, supported by controlling BIA precedent or Ninth Circuit authority, and the BIA agrees that reversal is warranted. The Board grants the I-130 petition, which then proceeds to adjustment of status (if the beneficiary is in the United States) or consular processing (if abroad). This outcome typically occurs in cases where the denial was predicated on legal misinterpretation rather than factual insufficiency. Probability of this best-case scenario is medium-to-high (qualitatively moderate to moderately high confidence) when the appellate brief identifies specific legal error, but remains low-to-medium if the denial primarily involves factual insufficiency or credibility determinations.

Worst-Case Scenario

The BIA affirms USCIS's denial, motion to reconsider is denied, and the petitioner exhausts administrative remedies without appellate reversal. The beneficiary remains ineligible for immigration benefits based on the I-130, and any pending removal proceedings would proceed absent other available forms of relief. If the denial

incorporated a 204(c) fraud finding, the beneficiary is permanently barred from approval of any future family-based petition, absent extraordinary circumstances permitting BIA reconsideration and explicit reversal of the 204(c) finding. Worst-case risk includes expiration of the appellate remedy without resolution, followed by federal court review options that, while theoretically available, present additional procedural barriers and lower success probability than the BIA appellate stage.

Timing Risks and Collateral Consequences

Practitioners should counsel clients regarding the timing risks of appellate delay. If the beneficiary is in the United States and has not yet accrued sufficient time in the United States to qualify for cancellation of removal, prolonged appellate proceedings may increase exposure to enforcement action and removal[1][8][23]. If the beneficiary is outside the United States in a country experiencing deteriorating conditions relevant to asylum or withholding claims, the delay in I-130 resolution may affect the beneficiary's ability to demonstrate present eligibility for humanitarian protection if circumstances change[1][8].

Additionally, if the petitioner is aging or in declining health, appellate delay creates risk that the petitioner may pass away before I-130 approval, which terminates the petition except in limited widow/widower scenarios[1][8]. Practitioners should assess life expectancy and health status when advising whether to pursue appeal versus alternative strategies.

Conclusion: Strategic Framework and Next Steps

Navigating EOIR-29 appeals of I-130 denials requires careful analysis of the specific grounds for denial, the strength of the appellate record, the applicable standards of review, and the client's individual circumstances including detention status, family considerations, and time sensitivity. The 30-calendar-day deadline is jurisdictional and strictly enforced; practitioners must immediately assess denial notices and file EOIR-29 appeals where appeal is strategically sound to preserve appellate rights.

The BIA conducts de novo review of legal questions and deferential "clear error" review of factual findings, which creates greater likelihood of appellate success for denials resting on legal misinterpretation versus factual determinations. Common grounds for I-130 denial-including insufficient evidence of relationship, marriage fraud findings triggering the permanent 204(c) bar, lack of bona fides, and legally unrecognized relationships-present varying probabilities of successful appeal, ranging from high probability for legal error claims to low-to-medium probability for credibility or factual insufficiency claims.

Practitioners should evaluate whether Motion to Reopen with USCIS's field office, complete refiling of the I-130 with comprehensively organized new evidence, or pursuit of EOIR-29 appellate review represents the optimal strategy given client circumstances. For clients in removal proceedings, coordination between I-130 appeal strategy and removal defense must be carefully managed. For clients in Northern California, understanding local San Francisco Immigration Court and Field Office practices enhances the ability to advise effectively on timing and strategic options.

Ultimately, the decision to appeal an I-130 denial should be grounded in realistic assessment of the strength of the appellate arguments, the probability of success before the BIA, the timeline implications, and the client's specific circumstances and priorities. Qualified immigration counsel can provide case-specific legal advice to navigate these complex procedural and strategic considerations effectively.

Table of Primary Legal Authorities

| Authority | Citation | Subject Matter |

|-----|-----|-----|

| Immigration and Nationality Act | 8 U.S.C. §§ 1001-1367 | Statutory framework for immigration law |

| I-130 Petition Requirements | INA § 201, § 204 | Family-based visa categories and petition procedures |

| Marriage Fraud Bar | INA § 204(c) | Permanent bar to approval for fraudulent marriage participants |

| BIA Appellate Jurisdiction | 8 U.S.C. § 1252 | Federal review of immigration decisions |

| EOIR Regulations | 8 C.F.R. § 1003.3 | BIA appellate procedure for visa petition denials |

| Standards of Review | 8 C.F.R. § 1003.1(d)(3) | Clear error vs. de novo review standards |

| Matter of P. Singh, 27 I&N Dec. 598 (BIA 2019) | [\[Link\]](#) | Substantial and probative evidence standard for marriage fraud |

| Matter of Kagumbas, 28 I&N Dec. 400 (BIA 2021) | [\[Link\]](#) | Immigration judge authority to determine marriage bona fides |

| Matter of B-N-K-, 29 I&N Dec. 96 (BIA 2025) | [\[Link\]](#) | Administrative closure and continuance standards |