



**Notice of Appeal from a Decision of an  
Immigration Judge**

**GENERAL INSTRUCTIONS**

**(Please read carefully before completing and filing Form EOIR-26)**

**A. When to Appeal:**

- Use this form (Form EOIR-26) only to appeal a decision by an **Immigration Judge**. If you wish to appeal a decision of the Immigration and Naturalization Service (INS), you must use a different form (Form EOIR-29).
- You must send the Notice of Appeal so that it is **received** by the Board within thirty (30) calendar days after the Immigration Judge's oral decision, or within thirty (30) calendar days after the date the Immigration Judge's written decision was mailed (if no oral decision was rendered).
- Simply mailing your Notice of Appeal in thirty (30) days or less is not enough. Your Notice of Appeal must arrive at the Board in thirty (30) days or less. If your Notice of Appeal arrives late, your appeal will be dismissed.

**B. Where to Appeal:**

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|---|--|--|---|
| <i>To send by courier or overnight delivery service, or to deliver in person, use this address:</i> | Board of Immigration Appeals<br>Clerk's Office<br>5201 Leesburg Pike, Suite 1300<br>Falls Church, VA 22041 | <i>To send by regular first-class mail use this address:</i> | Board of Immigration Appeals<br>Clerk's Office<br>P.O. Box 8530<br>Falls Church, VA 22041 |
|---|--|--|---|

**C. How to Appeal:**

- Read all of these instructions. **Note:** If you are the person in proceedings, you are the "Respondent" or Applicant."
- Fill out all three pages of the Notice of Appeal completely, answering items # 1 - 12 **in English only**.
- List in item # 1 the name(s) and Alien Number(s) ("A" number(s)) of **all** Respondent(s)/Applicant(s) who are appealing the decision of the Immigration Judge.
- Sign item # 9.
- List the mailing address of the Respondent(s)/Applicant(s) in item # 10.
- Translate all documents that you attach to the Notice of Appeal into English. All translations must include the translator's statement stating that the translator is competent, and that the translation is true and accurate.
- Write your name(s) and "A" Number(s) on all documents attached to the Notice of Appeal.
- Mail or give a copy of the completed Notice of Appeal and any attached documents to the opposing party. Complete and sign the "Proof of Service" to show you did this (item # 12). **Note:** If you are the Respondent or Applicant, the "Opposing Party" is the District Counsel for the INS.
- Your appeal will be rejected or dismissed if you fail to properly complete the "Proof of Service" (item # 12).

**D. Paying for the Appeal:**

- Attach a check or money order to the Notice of Appeal for exactly one hundred and ten dollars (U.S. \$110) made payable to "United States Department of Justice." All checks must be drawn on a bank located in the United States. If there are not sufficient funds in your account, your appeal may be dismissed.
- Write the name(s) and "A" Number(s) of all Respondent(s)/Applicant(s) on the check or money order.

- If you cannot pay for the appeal, complete a Fee Waiver Request (Form EOIR-26A) and attach it to the Notice of Appeal. The Board will review your request and decide whether to allow the appeal without payment of the fee.
- Your appeal will be rejected or dismissed if you fail to submit a fee or a properly completed Fee Waiver Request (Form EOIR-26A).

**E. Lawyer or Representative Allowed:**

- You may be represented by an attorney or representative who is authorized to appear before the Board. The Government will not pay for your attorney or representative, and an attorney or representative will not be provided to you.
- If you are represented by an attorney or authorized representative, he or she **must** file, **with** the Notice of Appeal, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

**F. Specify Reasons for the Appeal:**

- Give specific details of why you disagree with the Immigration Judge's decision.
- Most appeals are reviewed by a single Board Member. If you assert that your appeal warrants review by a three-Board Member panel, you may identify the specific factual or legal basis for your contention.

Cases will be reviewed by a three-member panel only if the case presents one of these circumstances:

- The need to settle inconsistencies among the rulings of different Immigration Judges;
  - The need to establish a precedent construing the meaning of laws, regulations, or procedures;
  - The need to review a decision by an Immigration Judge that is not in conformity with the law or with applicable precedents;
  - The need to resolve a case or controversy of major national import;
  - The need to review a clearly erroneous factual determination by an Immigration Judge; or
  - The need to reverse the decision of an Immigration Judge, other than a reversal under 8 C.F.R. § 3.1(e)(5).
- Specify the finding(s) of fact, the conclusion(s) of law, or both, that you are challenging. If a question of law is presented, cite supporting legal authority. If the dispute is over the findings of fact, identify the specific facts you are challenging.
  - Where the appeal concerns discretionary relief, state whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion. Identify the specific factual and legal findings you are challenging.
  - If you do not give specific reasons, with details, in item # 6, or in attachments to your Notice of Appeal, the Board may dismiss your appeal on that basis alone.

**G. Briefs:**

- Indicate in item # 8 if you intend to file an additional written brief or statement at a later date. The Board will send you a briefing schedule and, when appropriate, a transcript of the testimony.
- Even if you intend to file an additional brief or statement at a later date, you still must give detailed reasons for your appeal on the Notice of Appeal in item # 6 and attachments.

**H. Oral Argument:**

- If you ask for oral argument in item # 7, the Board will notify you if your request is granted.
- Even if you ask for oral argument, you still must give detailed reasons for your appeal on the Notice of Appeal in item # 6, and attachments.
- The Board ordinarily will not grant a request for oral argument unless you also file a brief.

- If you request oral argument, you should also state in item # 6 why you believe your case warrants review by a three-member panel.

#### **I. Change of Address:**

- If you move after you send your Notice of Appeal to the Board, you must give your new address **to the Board** within five (5) working days after you move. Use an alien's Change of Address Form (Form EOIR-33/BIA).
- Attorneys or representatives must also let the Board know if they change addresses or phone numbers, using Form EOIR-27. An attorney's or representative's change of address notification is only effective for the case in which it is submitted.

#### **J. Further Information:**

- For further guidance please see the Board of Immigration Appeals Practice Manual and Questions and Answers which are available on the EOIR website at [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir).

#### **K. Paperwork Reduction Act:**

- Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is thirty (30) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

#### **Departure From the United States:**

If you leave the United States after an Immigration Judge's decision in removal or deportation proceedings, but before you appeal the decision to the Board, you may have waived your right to appeal. If you leave the United States after filing an appeal with the Board, but before the Board decides your appeal, your appeal may be withdrawn and the Immigration Judge's decision put into effect as if you had never filed an appeal.

#### **Summary Dismissal of Appeal:**

The Board may summarily dismiss any appeal or portion of any appeal in which: (1) The appellant fails to specify the reasons for the appeal (see Part F); (2) The only reason specified by the appellant for his/her appeal involves a finding of fact or conclusion of law which was conceded by him/her at a prior proceeding; (3) The appeal is from an order that granted the appellant the relief that had been requested; (4) The appeal is filed for an improper purpose, such as unnecessary delay, or lacks an arguable basis in fact or law, unless the Board determines that it is supported by a good faith argument for extension, modification, or reversal of existing law; (5) The appellant indicates on Form EOIR-26 that he/she will file a separate brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his/her failure to do so, within the time set for filing (see Part G); (6) The appeal does not fall within the Board's jurisdiction or jurisdiction lies with the Immigration Judge rather than the Board; (7) The appeal is untimely or barred by an affirmative waiver of the right to appeal that is clear on the record; or (8) The appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

#### **WARNING! You must:**

- Sign the Notice of Appeal (item # 9).
- Include the fee or Fee Waiver Request.
- Complete and sign the Proof of Service.
- Make sure your appeal is received at the Board on or before the filing due date.

Notice of Appeal from a Decision of an  
Immigration Judge

Staple Check or Money Order Here. Include Name(s) and "A" number(s) on the face of the check or money order.

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

For Official Use Only

**!** **WARNING:** Names and "A" Numbers of **everyone** appealing the Immigration Judge's decision must be written in item #1.

2. I am the  Respondent/Applicant  INS (Mark only one box.)

3. I am  DETAINED  NOT DETAINED (Mark only one box.)

4. My last hearing was at \_\_\_\_\_ (Location, City, State)

5. **What decision are you appealing?**

*Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).*

I am filing an appeal from the Immigration Judge's decision *in merits proceedings* (example: removal, deportation, exclusion, asylum, etc.) dated \_\_\_\_\_ .

I am filing an appeal from the Immigration Judge's decision *in bond proceedings* dated \_\_\_\_\_ .

I am filing an appeal from the Immigration Judge's decision *denying a motion to reopen or a motion to reconsider* dated \_\_\_\_\_ .

*(Please attach a copy of the Immigration Judge's decision you are appealing.)*