U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

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Falls Church, Virginia 22041

QUESTIONS AND ANSWERS REGARDING PROCEEDING BEFORE THE BOARD

These questions and answers are being provided as a public service for persons in proceedings before the Board.

Be sure to use the latest version of these questions and answers, which is available on the Internet website of the Executive Office for Immigration Review (EOIR) at www.usdoj.gov/eoir. For more detailed guidance and citations to the law, you may wish to consult the Board of Immigration Appeals' Practice Manual, which is also available on the EOIR website.

Below, you will find answers to frequently asked questions about how to file an appeal or motion with the Board of Immigration Appeals ("BIA" or "Board"). The answers only apply to removal, deportation, and exclusion proceedings *before the BIA*. For guidance in filing a motion before an Immigration Judge, please contact the Immigration Court. For guidance in filing an appeal or motion before the Department of Homeland Security ("DHS"), please contact DHS.

The answers below are not legal advice. Rather, the answers are intended to guide you through the appeals and motions process before the Board. If you wish to seek legal advice, call an attorney or Accredited Representative.

The Questions and Answers begin with general questions, which you should read first. After that, the Questions and Answers are divided into separate sections regarding appeals and motions. Be sure to read any specific questions that apply to your situation.

There is also a "Glossary" at the end of this document that defines words that may be unfamiliar.

These Questions and Answers are intended only as an aid to understanding proceedings before the Board. The Questions and Answers do not supersede the statute, regulations, or case law. If there is any conflict between these Questions and Answers and those sources of law, it is the statute, regulations, and case law that control.

The Board of Immigration Appeals

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The Board would like to express its gratitude to Stephen Griswold, Andrea Macri, and David Neal for their efforts in the preparation of the Practice Manual and these Questions and Answers Regarding Proceedings Before the Board.

Chairman, Board of Immigration Appeals

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PART 1: GENERAL QUESTIONS

DEFINITIONS

1. *What is the Board of Immigration Appeals (BIA)?*

The Board of Immigration Appeals (BIA or "Board") is not the Department of Homeland Security ("DHS," formerly known as the Immigration and Naturalization Service or "INS"). The Board is also not the Immigration Court or Immigration Judge. The Board is entirely different and separate from DHS, the Immigration Court, and the Immigration Judge. The Board is like a court of appeals within the United States Department of Justice. The Board reviews most types of decisions of Immigration Judges and some types of decisions of DHS officers when one of the parties files an appeal with the Board.

2. *What is an appeal?*

An appeal is a set of papers in which you state why you disagree with the Immigration Judge's decision in your case. By filing an appeal, you can ask the Board to change the decision of the Immigration Judge.

A Glossary appears at the end of this document. It gives the meanings of many words used here.

3. *What is a motion?*

A motion is a formal request to the Board to do something in your case after you have filed an appeal or after the Board has decided your appeal.

4. *What is a visa petition?*

A visa petition is the first step in asking DHS to give lawful permanent resident status (a "green card") to a person. It can be filed by certain relatives or employers. The immigration laws have specific requirements for who may qualify for a "green card."

These Questions and Answers do not apply to visa petition cases. Contact DHS for questions regarding the filing of visa petitions.

DEADLINES

5. *How do I count out a due date?*

There are strict due dates for filing an appeal and for filing some motions. See PART 3: MOTIONS PROCEDURES. You should follow these guidelines to figure out how much time you have to file your appeal or motion:

- You start counting on the day *after* a decision is made. Count the day after the Immigration Judge's or Board's decision as "day 1."

- Each due date is given in "calendar days"; that is, you must count *every* day, including weekends and holidays.

- If the due date falls on a weekend or federal holiday, the appeal or motion is due the next workday.

- A due date indicates that something must be *received* at the Board *on or before that date*. Getting a postmark or simply putting an item in the mail on or before your due date is not sufficient. The item must *arrive* at the Board on or before your due date. Appeals or motions received by the Board after the deadline will usually be rejected or denied. You should file your documents with the Board as long before the deadline as possible, to avoid the risk of the Board not considering the documents because they were filed late.

- If you send an item to the Board using regular mail, you run the risk that the item might not arrive at the Board before the deadline.

- You are encouraged to use a courier or a guaranteed overnight delivery service – such as Federal Express, United Parcel Service, Airborne Express, etc. – to make sure that your appeal or motion is received at the Board on time. Also, choose a service that can tell you when your appeal or motion was delivered.

> Example: The Board issues an unfavorable decision in your case on Friday, September 20, 2002. You wish to file a motion to reconsider, for which there is a deadline of 30 days. You begin counting on Saturday, September 21, 2002, the day after the date of your decision. Counting 30 days brings you to Sunday, October 20, 2002. However, since that date falls on a weekend, your motion is due at the Board on or before the next business day, Monday, October 21, 2002.

FORMS

6. *Where can I get forms?*

It depends on what kind of form you need. You may print each EOIR form from the Internet at www.usdoj.gov/eoir. You may also get Board appeal forms in person at your local Immigration Court or at the Clerk's Office of the Board (if you live in the Washington, DC, area). If necessary, you may request the forms by mail from the Immigration Court or the Clerk's Office of the Board, but it will take longer, due to mailing time.

7. *May forms be copied or computer generated?*

Yes. Official forms may be photocopied or generated on a computer, as long as the copy is accurate and legible. The copy should be on the same color paper as the official form whenever possible; otherwise the form should be printed on regular white paper. Colored paper is used so that the form can be easily found in the file. That way, a Board employee reviewing the file can quickly determine if you have filed an appeal, if you are represented, or if you have moved.

8. *What if I want to include family members in my appeal?*

If the Immigration Judge's decision in your case included family members, you must list the name and "A Number" of all those family members on your Notice of Appeal and on any other papers you file with the Board, unless you have a reason why a particular family member does not want to appeal the decision. For example, a husband and wife and children who are all included in the same Immigration Judge's decision, and who all wish to appeal, should all be listed on one Notice of Appeal form. This is called a "consolidated appeal."

WARNING!
You must list all your family members for whom you wish to file an appeal. Otherwise, they might lose their right to appeal.

NOTE: Only *one* $110 fee is required for the whole family in a consolidated appeal.

CERTIFIED TRANSLATION

9. May I submit a document that is not in English?

Yes, you may submit a foreign-language document, but it *must* have a certified English translation with it. Ask someone who is skilled in both the foreign language and English to translate the document for you, and to complete a Certificate of Translation. Here is a sample Certificate of Translation, which you can copy and use:

CERTIFICATE OF TRANSLATION

I,_____, am competent to translate from
[name of translator]

_____ into English, and certify that the translation is true and
[language]

accurate to the best of my abilities.

_____
[signature of translator]

_____
[typed/printed name of translator]

FILING

10. How do I file something at the Board?

To send by courier or overnight delivery service, or to deliver in person, use this address:	To mail by regular first-class mail, use this address:
Board of Immigration Appeals Clerk's Office 5201 Leesburg Pike, Suite 1300 Falls Church, Virginia 22041 The window hours are 8:00 a.m - 4:30 p.m., Monday-Friday, except federal holidays. The telephone number is (703) 605-1007.	Board of Immigration Appeals Clerk's Office P.O. Box 8530 Falls Church, VA 22041

A document filed at the Board *must*:

- be in English or have a certified English translation. See Question #9.
- have a completed Proof of Service. Give or mail to DHS a copy of any document you file with the Board. Complete a Proof of Service to prove that you delivered or mailed a copy of the document to DHS. See Questions #20 and #21 and the SAMPLE PROOF OF SERVICE.
- have the fee or Fee Waiver Request, if required, stapled to your appeal or motion. Note that if a fee is required, you must file the fee ($110) or a Fee Waiver Request form (Form EOIR-26A) *with* your appeal or motion to the Board.
- if it is a motion, be supported by evidence or an affidavit or declaration under penalty of perjury. Be sure to read the definition of "affidavit" and "declaration under penalty of perjury" in the GLOSSARY attached at the end of this document.

Any document filed at the Board also should:

- if it is a motion or brief, have a cover page on which you have written your name and "A Number," the title of the document, and the type of proceedings (either removal, deportation, exclusion, or bond). Be sure to look at the MOTIONS and BRIEFS sections and the SAMPLE COVER PAGE.
- have your name and "A Number" or "A Numbers" at the bottom of each page.
- be on 8½" x 11" white paper, unless it is an official form that should be on the appropriate color of paper, if possible. See Questions #6 through #8.
- be signed.
- have a copy of the decision you are appealing or asking to have reopened.
- have all items securely attached (for example, staple photographs to a piece of paper and staple it to your appeal, motion, or brief).
- be unbound; you may staple items together at the top, but do not bind them on the side.
- if possible, have two holes punched 2-3/4 inches apart and centered at the top of each page.

The Board recommends that you also:

- keep a copy of everything you submit, for your own records.

- use a guaranteed overnight delivery service – such as Federal Express, United Parcel Service, Airborne Express, etc. – to ensure that your appeal, motion, or brief is received by the Board before the filing deadline. Be sure to keep a receipt to show when you sent your documents to the Board. Track and keep a record of when delivery was attempted and completed.

NOTE: Do not mix two different appeals on one form. For example, if you have been denied bond *and* the Immigration Judge has ordered you removed from the United States, you need to file two separate appeals. Anything that you submit after filing your appeal forms must also clearly state on its cover page whether the attached materials concern your "bond appeal" or your "case appeal."

WARNING!
Failure by the postal service to timely deliver your items is not a valid excuse for an untimely filing.

11. May I fax an appeal or motion?

No. You may not send your appeal or motion directly to the Board by fax machine. The Board will accept items faxed to local counsel or a local delivery agent who then hand-delivers the items to the Board.

FEES

12. Is a fee required in my case?

A fee, or a Fee Waiver Request form, is required for:

- an appeal
- a motion to reopen
- a motion to reconsider

No other motions require a fee. There are certain exceptions to these fee requirements. See Question #49 and Questions #89 through #91.

13. What is the filing fee for an appeal or motion before the Board?

The Board only has one filing fee amount: $110. Only the filings listed in the answer to the previous question require a fee.

14. Does the filing fee include my family?

If the Immigration Judge's decision covers your entire family, you pay only *one* $110 fee for your appeal or motion. Be sure to list all family members on your Notice of Appeal or motion.

If the Immigration Judge issued a *separate* decision for anyone in your family, that person must pay a separate $110 fee with his or her own appeal or motion.

> *WARNING!*
> *If your check is returned because there is not enough money in your bank account, your appeal or motion will be denied.*

15. What form of payment will be accepted for a filing fee?

A check or money order in U.S. dollars. Make the check or money order payable to the *"United States Department of Justice."* A check must be drawn on a bank located in the United States. Print your name(s) and "A Number(s)" on the check or money order. *Cash will not be accepted.*

16. How do I file the fee?

The check or money order should be *stapled to* your Notice of Appeal (Form EOIR-26) or your motion and should be filed with the Board of Immigration Appeals. *Do not file the fee with the Immigration Court or with DHS.*

17. What if I cannot afford the filing fee?

If you cannot afford the $110 fee, you must complete a Fee Waiver Request (Form EOIR-26A), on tan or white paper, and file it *with* your Notice of Appeal (Form EOIR-26) or motion. That form must show that you cannot pay the fee. If it does not, the Board will dismiss your appeal or motion.

18. May I pay the filing fee electronically?

No. Fees may only be paid by check or money order.

COPIES

19. Do I need to file extra copies?

No. When you file an appeal, motion or brief, you do not need to file any extra copies with the Board. You only need to file the *original*. Include attachments (if you have any).

Don't forget that you also need to:

- serve one photocopy of the original on DHS. See Questions #20 and #21.
- keep one photocopy for your own records.

PROOF OF SERVICE

20. What is a Proof of Service?

Every time you file a document with the Board, you must give (or "serve") a copy to DHS. You must fill out a "Proof of Service" (sometimes called a "Certificate of Service") to prove that you gave a copy of your document to DHS. This makes sure that everyone has a copy of everything you filed. See Question #21.

21. How do I use a Proof of Service?

Every time you submit an appeal, motion, form, letter, statement, brief, or other document to the Board, you must:

- give or mail a copy of the item to DHS, and
- complete a Proof of Service.

Some forms, such as the Notice of Appeal (Form EOIR-26), contain a Proof of Service on the form, which you must fill in. When you want to file a motion or a form that does not contain a Proof of Service, you must attach a Proof of Service. See the SAMPLE PROOF OF SERVICE in PART 5, which you may copy and use.

WARNING!
If you do not include a Proof of Service when you send something to the Board, it will be rejected.

NOTE: Do not put the address of the Board on the Proof of Service. Put the address of the DHS office.

RECEIPT

22. Will I receive a receipt for my filing?

The Board will issue a receipt when you file an appeal, a motion to reopen, or a motion to reconsider. You will receive your receipt by mail. The Board does not issue receipts for briefs.

If you want to have a date-stamped copy of a document you mailed to the Board, which is called a "conformed copy," you should submit the following:

- a copy of the page or pages you want returned to you, clearly marked "DATE STAMP COPY – PLEASE RETURN TO SENDER," and
- a self-addressed stamped envelope (or a completed pre-paid overnight delivery service mailer with your account number).

CHANGE OF ADDRESS

23. What if I move?

By law, you must complete and file an Alien's Change of Address Form (Form EOIR-33 / **BIA**), on pink or white paper, with the Board. You must file an Alien's Change of Address Form within 5 days of your move. Even if you have an attorney or Accredited Representative, you should file that form with the Board every time you move. Remember:

- You *must* use the Form EOIR-33 / **BIA**. (Do not use the Form EOIR-33 / **IC**.)
- If you do not use that form, your address will *not* be changed, and the Board will continue to send notices and decisions to your old address.
- Never use a letter to change your address with the Board. Use the form.
- Make sure that your name, alien registration number ("A Number"), and address are on the form. Be sure the information is correct, complete, and clear.

24. May I use the same Change of Address Form that is used before an Immigration Judge?

No. When you have a case before the Board, you must use an Alien's Change of Address Form, called Form EOIR-33 / **BIA**, on pink or white paper, because it has the Board's mailing address on it. Do not use the Form EOIR-33 / **IC**.

25. What if I am in prison? What if I am released?

Even if you are detained by DHS or you are in prison, you should notify the Board every time you are moved or transferred. To do this, you should file an Alien's Change of Address Form (Form EOIR-33 / **BIA**), on pink or white paper. If you cannot obtain an Alien's Change of Address Form, send the Board a letter telling the Board that you are detained at a new address.

NOTE: When you are released, send an Alien's Change of Address Form (Form EOIR-33 / **BIA**) to notify the Board that you have been released and that you have a new mailing address. This is to make sure that the Board has your new address.

26. What if my attorney or representative moves?

If your attorney or representative moves his or her office, he or she is required to promptly inform the Board of the change of address, in writing, preferably on a clearly marked Notice of Entry of Appearance (Form EOIR-27), on yellow or white paper. The form should have the "new address" box check-marked. Your attorney is required to file a separate form for each case (name and "A Number") he or she is representing before the Board.

STAY OF DEPORTATION

27. If I file an appeal or motion, can DHS deport me while I am waiting for a decision from the Board?

It depends on what kind of appeal or motion you have filed. Which one applies to you is complicated. You may wish to consult an attorney or Accredited Representative.

Appeals and motions basically fall under two categories. Some have an "automatic stay of deportation" and others do not.

Automatic stay: Usually, you cannot be deported if your case fits one of the following descriptions:

- If you filed an appeal from the decision of the Immigration Judge that found you removable or deportable or excludable, you generally cannot be deported while the Board is making a decision on your appeal. You do *not* have an automatic stay if you filed an appeal of an Immigration Judge's denial of a motion to reopen.

- If you are in deportation proceedings and you filed an appeal of an Immigration Judge's denial of a motion to reopen on a case in which you failed to appear at the hearing (*in absentia*), you generally cannot be deported pending the Board's decision on your appeal. This is only true in deportation proceedings, not in removal or exclusion proceedings.

- If you are in the 30-day appeal period for one of the above categories (unless you waived your right to appeal).

  NOTE: If the Board dismisses your appeal, the automatic stay of deportation ends.

No automatic stay: If your case is not described above, you probably do not have an automatic stay.

If you do not have an automatic stay, *and* you are in detention, *and* you are about to be deported, see Question #28.

Note that the following categories do not provide an automatic stay of deportation:

- Filing an appeal of a custody or bond determination does not, by itself, stop DHS from deporting you.

- Filing an appeal of an Immigration Judge's denial of a motion to reopen generally does not, by itself, stop DHS from deporting you.

CAUTION: The above information is provided for general guidance only. If you are uncertain about where your particular case falls, you should seek legal advice from an attorney or an Accredited Representative.

28. Can I ask not to be deported while I am waiting for a decision on my appeal or motion?

Yes. You may ask for a "stay of deportation" from the Board. If the Board grants your request, it issues a "stay of deportation," which is an order that stops DHS from deporting you until the Board makes a decision in your case. If you have an automatic stay, you do not need to request a stay of deportation. See Question #27. If you do not have an automatic stay, then you must request a stay as follows:

Stay request: You may request a "stay of deportation" while waiting for the Board to send you a decision on your appeal or motion. You may file a request for a stay of deportation at the same time you file your appeal or motion, or you may file it later while your appeal or motion is pending at the Board. You may request a stay of deportation by following the procedure below that describes your situation.

Emergency situation: If you want a stay, are in DHS detention, and are about to be deported, you *must telephone the Board* at (703) 605-1007.

Any other situation: If you want a stay and are not in DHS detention, you may file a motion titled "MOTION FOR STAY OF DEPORTATION" with the Board. You may file this "stay request" along with your appeal or motion, or at a later time, if you wish. If you are not in DHS detention, the Board will not rule on your stay request immediately. The Board will generally make a decision on your stay request at the same time as the Board makes a decision on your appeal or motion. See Question # 85.

NOTE: If you want to request a stay of deportation, you must first file an appeal, a motion to reopen, or a motion to reconsider with the Clerk's Office of the Board. Otherwise, the Board will not grant a stay of deportation.

IMMIGRATION LAW AND LEGAL ADVICE

29. Where can I find more information about immigration law?

The laws controlling immigration are found in various parts of the United States Code and the Code of Federal Regulations. Most can be found in:

- Title 8 of the United States Code, which contains the Immigration and Nationality Act, at sections 1101 and following.
- Title 8 of the Code of Federal Regulations, which contains the federal regulations regarding immigration matters.

These and other immigration law books are available in some law libraries and at EOIR's Virtual Law Library at www.usdoj/gov/eoir.

30. Can I get legal advice from the Board?

No. The Board will not give legal advice. The Board can only give general guidance on the procedures for filing appeals and motions, which you can find in:

- these Questions and Answers
- the Board's Practice Manual
- the Board's Internet website at www.usdoj.gov/eoir

31. Do I need an attorney or an Accredited Representative?

You are not required to be represented by an attorney or Accredited Representative. However, you should seriously consider getting legal advice because immigration law is complicated.

You have the right to be represented, but the government will not pay for such representation. Sometimes, attorneys or Accredited Representatives can provide representation at low or no cost to you. Your local Immigration Court has a list of providers of legal services. See Question #33.

32. Who can represent me before the Board?

Following is a list of the types of people who are allowed to represent you:

Attorney. An attorney is someone licensed by a state to practice law. An attorney must be "in good standing" to represent you before the Board. This means, in part, that the attorney's law license must be currently valid. (Note that some attorneys are not allowed to represent you. The Board has prohibited certain attorneys from practicing immigration law. Those attorneys are listed on the EOIR website at www.usdoj.gov/eoir. Also, some attorneys are prohibited from practicing any kind of law. If you are not sure if an attorney is licensed to practice law, you may contact the Bar Counsel at EOIR's Office of General Counsel at (703) 305-0470 or the bar association in the state where the attorney has a law license.)

Accredited Representative. An Accredited Representative is a person of good moral character who works for a nonprofit, religious, charitable, social service, or similar organization. Both the individual and the organization must have been officially approved by the Board to represent aliens before the Board. If you want to verify that a person is authorized to represent you as an Accredited Representative before the Board, you may contact the Office of General Counsel for the Executive Office for Immigration Review (EOIR) at (703) 305-0470 and ask for the recognition and accreditation coordinator.

Reputable individual. A "reputable individual" must be a person:

- who has a pre-existing relationship with you, such as a relative, neighbor, clergyman, or personal friend,
- of good moral character,
- appearing on an individual basis, at your request,
- who files a written declaration that he or she is not being paid to represent you,
- who does not regularly engage in immigration practice or claim to do so, *and*
- who files a Notice of Entry of Appearance (Form EOIR-27) and documentation proving that he or she meets all of the requirements listed here.

WARNING!

Most visa consultants and notaries (or "notarios") are *not* authorized to represent you before the Board.

You should be careful about anyone who cannot prove that he or she is either an attorney licensed in the United States or an Accredited Representative.

Law student or law graduate. A law student or law graduate not yet admitted to the bar, under certain defined conditions.

Government official. An official of the government to which you owe an allegiance, in his or her official capacity and with your consent.

33. How do I get an attorney or Accredited Representative?

There are various places where you can get a list of licensed attorneys, for example:

- your local Immigration Court
- your local state bar association (which licenses attorneys)
- nonprofit organizations dealing with immigration matters

Some attorneys can provide their services for free (*pro bono*) or at a low cost.

There is also a list of Accredited Representatives on the EOIR website at www.usdoj.gov/eoir.

34. May I keep my old attorney or Accredited Representative?

Yes. If an attorney or Accredited Representative represented you at your immigration hearing, he or she may continue to represent you at the Board, but he or she must first file a Notice of Entry of Appearance (Form EOIR-27), on yellow or white paper.

35. What does an attorney or Accredited Representative have to do to represent me before the Board?

To represent you before the Board, your attorney or Accredited Representative should follow these guidelines:

- Your attorney or Accredited Representative *must* complete a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27), on yellow or white paper.
- An attorney or Accredited Representative must file a Notice of Entry of Appearance (Form EOIR-27) with the Board even if he or she represented you before the Immigration Judge and even if he or she signed the Notice of Appeal.
- A copy of the completed Notice of Entry of Appearance (Form EOIR-27) must be served on DHS.
- If your attorney does not file a Notice of Entry of Appearance (Form EOIR-27), all notices and correspondence will be sent directly to *you* by the Board and will not be sent to your attorney or Accredited Representative.
- If you have an attorney or Accredited Representative, but you receive correspondence from the Board, take the correspondence to your attorney or representative *immediately*.
- You can only be represented before the Board by one person at a time. The Board will only send correspondence to the last person who filed a Notice of Entry of Appearance (Form EOIR-27) in your case. If you wish to have more than one person assist you with your case, you must decide which one should be officially recognized by the Board, so that the person you select can file the most recent Notice of Entry of Appearance (Form EOIR-27).

36. What if I get a new attorney or representative?

Your new attorney or Accredited Representative *must* file a Notice of Entry of Appearance (Form EOIR-27) with the Board. The Board will recognize only one attorney or representative at a time. A change of attorney or representative does not automatically stop any deadlines.

CAREFUL!

A withdrawal or change of attorney or representative does not automatically stop any deadlines. However, you or your attorney may request an extension of time in some situations. See Question #57.

37. What if I fire my attorney or representative?

If you decide to dismiss your attorney, you should:

- Send a letter to the Board, telling the Board that you have fired your attorney. You should write on the letter the title "NOTICE OF DISMISSAL OF ATTORNEY," along with your name and "A Number." You should sign and date your letter. Attach copies of separate Proofs of Service on DHS and on the attorney you are dismissing. See Questions #20 and #21.

- Let the Board know your current address using the Alien's Change of Address Form (Form EOIR-33 / **BIA**). See Questions #23 through #25.

- Send a copy of your letter to DHS and complete a Proof of Service showing that you did so. See Questions #20 and #21 and the SAMPLE PROOF OF SERVICE.

- Send a copy to the attorney you are dismissing and complete a Proof of Service showing that you did so. See Questions #20 and #21 and the SAMPLE PROOF OF SERVICE.

- If you hire a new attorney to represent you, make sure that your new attorney files a Notice of Entry of Appearance (Form EOIR-27), on yellow or white paper, with the Board.

Follow the same procedures if you decide to dismiss your representative, but use the word "REPRESENTATIVE" in your notice.

38. What if my attorney or representative decides not to represent me anymore?

If your attorney or representative no longer wishes to represent you, he or she should file a motion with the title "MOTION TO WITHDRAW AS ATTORNEY OR REPRESENTATIVE" in your case. He or she is required to notify you of any deadlines, and must prove to the Board that he or she has done so. He or she must also provide your most recent address to the Board.

If you wish to represent yourself (*"pro se"*), you should let the Board know your current address. Send an Alien's Change of Address Form (Form EOIR-33 / **BIA**), on pink or white paper, to the Board. Be sure to read Questions #23 through #25. If you hire a new attorney to represent you, he or she should file a Notice of Entry of Appearance (Form EOIR-27), on yellow or white paper.

39. Can I file a complaint against my attorney or representative?

Yes. You can file a complaint by completing an Immigration Practitioner Complaint Form (Form EOIR-44). You may also write your own statement or letter, in which you must include the following:

- your name and address
- the attorney's or representative's name and address
- an explanation of the reasons for your complaint, in detail
- your signature

You may also submit documents and further information to support your complaint, for example: photocopies of letters between you and your attorney or representative, and documents relating to your immigration case.

Send your complaint to:

Office of the General Counsel
ATTN: Bar Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

PROCESS

40. What can I expect to happen after I file an appeal or motion with the Board?

If you filed an appeal or motion with the Board, you can expect the following events to happen:

- You will receive a receipt, usually within 1 to 2 weeks.
- If you filed an appeal, you will receive a briefing schedule sometime after you filed your appeal. You might receive a transcript with your briefing schedule. See Questions #66 and #67.
- If you filed a motion to reopen or a motion to reconsider, you will *not* receive a briefing schedule or transcript.
- The Board will then consider your case.
- When the Board has made a decision in your case, the Board will send a copy of its decision by mail to you (if you are unrepresented) or to your attorney or representative (if you are represented).

- If you are not in DHS detention, how long the Board will take to make a decision in your case depends on whether your case must be reviewed by one or three Board Members, as well as several other factors.

- If you are in DHS detention or are in prison, you will generally receive a decision in your case from the Board within 6 months.

PART 2: APPEALS PROCEDURES

FILING AN APPEAL

41. Do I need to file an appeal?

If you disagree with the Immigration Judge's decision in your case, you generally have the right to file an appeal to the Board of Immigration Appeals ("BIA" or "Board"). There is a 30 day deadline for filing your appeal. See Question #43.

42. Can I appeal if I did not go to my immigration hearing?

If you did not go to your hearing, you should look at the Immigration Judge's decision and cover letter to see what you can do next. The cover letter should tell you whether the next step is to file an appeal with the Board or file a motion to reopen with the Immigration Judge. Carefully follow the instructions on that letter.

If there is no cover letter or the cover letter does not contain instructions, look at the Immigration Judge's decision to see whether it has the title "REMOVAL" or "DEPORTATION" or "EXCLUSION."

- If you are in removal or deportation proceedings, you are not allowed to appeal directly to the Board. You must first file a motion to reopen with the Immigration Court. If the Immigration Judge denies your motion to reopen, *then* you may file an appeal to the Board.

- If you are in exclusion proceedings, you may file an appeal directly with the Board.

CAUTION: You may be subject to strict time limits on filing a motion to reopen. See Question #77. If you missed your hearing, you generally have 180 days after the date of the hearing to file your motion to reopen *with the Immigration Judge*. If you did not receive proper notice of the hearing date, you may file a motion to reopen with the Immigration Judge at any time.

43. What is the deadline for filing an appeal with the Board?

You must file your appeal within 30 calendar days. To calculate your due date, follow these rules:

- If the Immigration Judge gave the decision to you (or your representative) at the Immigration Court, begin counting on the next day.

- If the Immigration Judge mailed the decision to you (or your representative), you should begin counting on the day after the date printed on the letter from the Immigration Court. Read question #5 to understand how to calculate your due date.

- If the 30th day falls on a Saturday, Sunday, or U.S. federal holiday, the appeal is due the following workday.

- The signed Notice of Appeal (Form EOIR-26) with the fee ($110) or a Fee Waiver Request (Form EOIR-26A) must be *received* by the Board within 30 calendar days after the Immigration Judge's oral decision or within 30 calendar days after the date the Immigration Judge's written decision was mailed.

- Simply *mailing* the Notice of Appeal or having it *postmarked* within the time limit is *not* timely filing.

- If a notice of appeal is received at the Board after the time limit, the Board will usually dismiss it as untimely. That means the Board will not consider the merits of the claims you made on your appeal form.

- The Board encourages you to use a guaranteed overnight delivery or courier service – such as Federal Express, United Parcel Service, Airborne Express, etc. – to make sure that your appeal is delivered on time and to make sure you have proof that your appeal was delivered.

CAUTION: When you file your appeal, be sure to follow the guidelines under Question #45. If you do not follow those guidelines, your appeal may be rejected and returned to you. See Question #51.

44. Can I ask for more time to file my appeal?

No. The Board does not have the authority to extend the filing deadline for an appeal. You must file an appeal within the time limits set by law. See Questions #5, #43, #45, and #51.

45. How do I file an appeal from the decision of an Immigration Judge?

You must file a special form, a "Notice of Appeal from a Decision of an Immigration Judge" (Form EOIR-26), on blue or white paper. Follow these steps:

- Read the instructions included with the Notice of Appeal.

- Complete the Notice of Appeal. Clearly state the date, location, and type of Immigration Judge's decision you are appealing in the space provided on the form.

- Clearly state *in detail* why you think the Immigration Judge's decision is wrong. See Question #46.
- Sign the Notice of Appeal.
- Attach the fee or Fee Waiver Request (Form EOIR-26A).
- Send a copy to DHS.
- Complete a Proof of Service showing that you sent a copy of your appeal to DHS. See Questions #20 and #21 and the SAMPLE PROOF OF SERVICE.
- Make and keep a copy of every document you submit, for your own records.
- Deliver or send the completed Notice of Appeal to the Board, with all attachments. It is best to use a courier or overnight delivery service – such as Federal Express, United Parcel Service, Airborne Express, etc. – to do so.
- If you have an attorney or representative, he or she must submit a Notice of Entry of Appearance (Form EOIR-27), on yellow or white paper, to receive documents and correspondence regarding the case.

WARNING!

Your appeal must be received at the Board on or before the filing due date.

You must include the fee or Fee Waiver Request (if a fee is required) and a completed Proof of Service.

NOTE: If you want to appeal a decision of DHS, you should contact DHS. Do not file such an appeal directly with the Board. See Questions #4 and #50.

46. What is required in the statement of my reasons for the appeal?

You must give *specific details* of why you disagree with the Immigration Judge's decision. Read the Immigration Judge's decision. Carefully answer question #4 of your Notice of Appeal (Form EOIR-26). You must tell the Board how the Immigration Judge's decision was wrong in one or more of these areas:

- The finding(s) of fact. If you disagree with the Immigration Judge's statement of facts in your case, you must identify *specific* facts and state why you disagree with the Immigration Judge. Tell the Board what was said at the hearing, or what documents were presented at the hearing, that the Immigration Judge did not properly consider or did not correctly understand.
- The conclusion(s) of law. If you disagree with how the Immigration Judge applied the law in your case, you must state how you believe the Immigration Judge was wrong. You should refer to cases, laws, or regulations to support your arguments, if you have them.

- Other errors. If you believe the Immigration Judge made any other mistakes in your case, you must identify and explain what those mistakes were, in as much detail as possible.

- Weighing of facts. If you believe that the Immigration Judge gave too much importance or not enough importance to certain facts in your case, you must state what those facts were and why the decision should have been different.

WARNING!
If you do not state specific reasons on your Notice of Appeal,
your appeal may be "summarily dismissed."
This means that the Board may dismiss your appeal in a short order,
without reviewing the merits of your case,
because you did not clearly explain why you are appealing.

47. May I attach additional pages?

Yes. You should attach as many pages and documents as you need to explain the reasons for your appeal. Be sure to include your name and "A Number" at the bottom of *each* page you attach. You are also encouraged to attach a copy of the Immigration Judge's decision.

48. What is oral argument?

Oral argument is when the Board allows an alien and DHS to argue in person before the Board. Oral argument may be granted in certain circumstances, such as a case which presents new issues of law. Oral argument is only sparingly granted by the Board. If you request oral argument before the Board, you will only be notified if your request is *granted.*

49. How much does it cost to file an appeal?

Each appeal must include the $110 filing fee or a Fee Waiver Request (Form EOIR-26A), if required. See Questions #12 through #18 and Questions #89 through #91.

Exception: Custody bond appeals – If you are detained by DHS, appeals of Immigration Judge decisions regarding your detention by DHS do not require a fee. Make sure to check mark "bond proceedings" on your Notice of Appeal (Form EOIR-26).

50. Where do I file my appeal?

An appeal from the decision of an Immigration Judge should be filed directly with the Board. See Question #10.

An appeal from the decision of a DHS officer should be filed with DHS. Your filing should be to the address on the decision you received from DHS. Contact DHS if you have questions.

51. What happens if I don't file my appeal correctly?

Your appeal may be rejected or dismissed.

Rejection. "Rejected" means the Board has not yet accepted your appeal because it has not been properly filed. For example, your appeal may be rejected if you forgot to complete the Proof of Service or forgot to include the fee (or Fee Waiver form). The Clerk's Office will return your appeal to you for correction with a letter telling you what you did wrong. You should correct any mistakes and *immediately* refile the appeal.

Dismissal. Even if the Board does not reject your appeal, the Board may "dismiss" your appeal. If your appeal is dismissed, the Board has issued a written decision, and you did not win your appeal. Be careful: an appeal that is filed late will be dismissed. The Board therefore encourages you to file your appeal as early as possible. *Don't wait until the last minute to file your appeal.*

52. If I file an appeal, can DHS deport me while I am waiting for a decision from the Board?

It depends. See Questions #27 and #28.

BRIEFS SUPPORTING AN APPEAL

53. What is a brief?

If you appealed the Immigration Judge's decision, a "brief" is a written statement in which you explain in detail to the Board why you believe the Immigration Judge did not make the correct decision in your case.

If DHS appealed the Immigration Judge's decision, a "brief" is a written statement in which you can explain in detail to the Board why you disagree with the DHS appeal.

54. Do I need to file a brief?

You are not required to file a brief. However, the Board strongly encourages you to file a brief. A brief gives you the opportunity to present detailed factual and legal arguments, with full explanations. It will help the Board understand your concerns. It may help avoid a summary dismissal of your case. ("Summary dismissal" means that the Board may dismiss an appeal because a brief was not filed or because the reasons for appealing were not stated clearly enough.)

Even if you did not mark your Notice of Appeal (Form EOIR-26), item 8, to indicate that you would file a brief, you may still file a brief.

WARNING: *If you mark on your Notice of Appeal (Form EOIR-26) that you will file a brief, you must do so.* If you do not, the Board may summarily dismiss your appeal.

If you decide not to file a brief, you should send a statement to the Board with a cover page titled "DECISION NOT TO FILE BRIEF."

55. How do I know when to file a brief?

Sometime after the Notice of Appeal is filed with the Board, you will receive a briefing schedule notice, which will inform you when your brief and the DHS brief are due. Your brief must be *received* by the Board on or before your due date. In certain types of cases, a transcript (a printed version of the tape recording) of your hearing before the Immigration Judge is made and is sent to you with a briefing schedule.

Transcripts are not made of bond hearings or for appeals of Immigration Judge decisions on motions to reopen.

56. When will my brief be due?

<u>If you are not detained</u>, and you filed the appeal, you will be given 21 calendar days from the date the briefing schedule is sent to you to file a brief. DHS will then be given 21 calendar days to respond to your brief. If you are not detained, and DHS filed the appeal, DHS will be given 21 calendar days to file its brief, and then you will be given 21 days (a total of 42 days) to file your brief.

<u>If you are detained</u> both you and DHS will be given the same deadline 21 days from the date the briefing schedule is sent to you.

<u>CAUTION</u>: Be sure to file your brief on time.

57. May I ask for more time to file my brief?

Yes. Under the following guidelines:

- You may generally make only *one* request for a briefing deadline extension.
- The extension request must be *received by the Board on or before the date your brief was originally due*.
- You must submit a written request for an extension of time in which to file your brief, which should be titled "REQUEST FOR EXTENSION OF TIME TO FILE BRIEF."
- You should state your reasons for requesting an extension, which must show good cause .
- Your request should include an affidavit, a declaration under penalty of perjury, or other evidence supporting your request for an extension of time in which to file your brief. See the definition of "affidavit" and "declaration under penalty of perjury" in the GLOSSARY attached at the end of this document.
- When requesting more time in which to file a brief, please use the term "extension," not "continuance."
- Extensions, if granted, are for 21 days *from the original due date*.
- If you do not receive a notice giving you an extended deadline, you must properly file your brief on or before the *original* due date.
- Extension requests will be rejected if they are not accompanied by a properly completed Proof of Service. See Questions #20 and #21 and the SAMPLE PROOF OF SERVICE.
- Requests for more than 21 days are rarely granted.

Extension requests filed after the original due date will not be granted.

WARNING: If you request an extension of time to file a brief, and then do not file a brief, the Board may summarily dismiss your case.

WARNING!
Unless you receive a notice from the Board extending your briefing deadline, your brief is still due on the date set on your original briefing schedule.

58. What if, during the briefing period, I get a new attorney or my attorney no longer wants to represent me?

If you get a new attorney or representative during the briefing period, he or she should file a Notice of Entry of Appearance (Form EOIR-27), on yellow or white paper. A new attorney or representative who files a completed Notice of Entry of Appearance may request an extension of time for briefing as long as it is filed prior to the original deadline. See Question #57.

If your attorney or representative submits a motion to withdraw as your attorney or representative, he or she should advise you of the existing briefing schedule at your last known address. See Question #38. You or your new attorney or representative may request an extension of the briefing schedule, as long as the request is filed on time. See Question #57 and Questions #29 through #39.

59. What should I say in my brief?

It depends on whether you filed the appeal or DHS filed the appeal.

<u>If you filed the appeal</u>, you should first read the Immigration Judge's decision and the transcript, if any. Then you should tell the Board why you disagree with the Immigration Judge and what mistakes you believe the Immigration Judge made in your case. Make sure to point out anything that was said at the hearing or any documents submitted (or tried to submit) at the hearing that you think the Immigration Judge failed to consider or did not correctly understand. In your brief, you should address one or more of the following questions:

- Are there any important facts presented to the Immigration Judge that were not considered by the Immigration Judge in making his or her decision? Tell the Board what the facts were, and how those facts should change the decision in your case. Describe any documents submitted to the Immigration Judge and transcript page numbers that include these facts.

- Are there any facts presented to the Immigration Judge that you believe the Immigration Judge did not correctly understand in making the decision?

- Are there any facts presented to the Immigration Judge that you believe were given too much importance or not enough importance? Tell the Board what the facts are and what you believe their importance should be.

- Do you disagree with how the Immigration Judge applied the law to your case? If you know, please tell the Board of any legal authority that supports your claim. Please provide citations to statutes, regulations, or case law, if you have them.

- Are there any other parts of the Immigration Judge's decision you disagree with? Explain what parts and why you disagree.

- Are there any reasons you were not able to tell your whole story to the Immigration Judge? Describe what information you were not able to present to the Immigration Judge and explain what stopped you from presenting the information.

If DHS filed the appeal, you should first read the appeal and the Immigration Judge's decision. If there is a DHS brief and a transcript of proceedings, you should read them also. Then, explain in your brief why you disagree with the DHS appeal.

60. How long should my brief or statement be?

The Board prefers that a brief be from 1 to 25 pages long. If you feel that you need additional pages to explain your concerns, it may be longer than 25 pages. Please put page numbers at the bottom of each page.

61. How do I submit a brief?

On top of your brief, attach a cover page with the following information on it:

- your name
- your "A Number"
- the title "BRIEF FOR RESPONDENT"

The Board prefers that the brief be on white, letter-size (8½" x 11") paper, typewritten or word-processed. If you do not have access to a typewriter or word-processor, you may submit a handwritten brief. Make sure the brief is in English or is accompanied by a certified translation.

Staple one copy of the briefing schedule to the front of your brief.

Follow the directions given at Questions #10 and #11. Also see the SAMPLE COVER PAGE that comes with these questions.

62. If I am appealing a decision made by the DHS officer, not an Immigration Judge, where should I file my brief?

The DHS decision will state where you should file your appeal and brief.

63. If I file a brief on time, can I add to it later?

If you filed a brief prior to your briefing deadline, but you wish to submit an additional brief after the deadline, you must submit a "MOTION TO ACCEPT SUPPLEMENTAL BRIEF." Your motion must explain why you are filing an additional brief, and you must attach your supplemental brief to the motion. The Board will then decide whether or not to accept your supplemental brief.

64. What if I want to file a brief, but the deadline has passed?

If you submit a brief late, you should attach a motion with the title "MOTION TO ACCEPT LATE-FILED BRIEF." Your motion should explain why your brief is late. It should also explain why the Board should consider your brief anyway.

Your motion must be attached to the brief. It cannot be part of the brief. You should submit evidence about why your brief was late (for example, an affidavit or declaration under penalty of perjury). Only one Motion to Accept Late-filed Brief will be considered by the Board in each case. Any briefs received after the briefing deadline without a Motion to Accept Late-Filed Brief will be rejected and returned to you.

CAUTION: The Board usually does not grant motions to accept late-filed briefs, so it is important to file your brief on time.

Be sure to read the definition of "affidavit" and "declaration under penalty of perjury" in the GLOSSARY attached at the end of this document.

65. What if the immigration law changes or a new legal case is decided after I filed my brief?

You can send a letter to the Board, with a cover page with the title "MOTION TO ACCEPT SUPPLEMENTAL BRIEF." In your letter, you should list the law change or new legal case, and explain why it is important to your case.

TRANSCRIPTS

66. What is a transcript?

A transcript is a printed version of the tape recording of a hearing.

67. Will I automatically receive a transcript of my immigration hearing?

Generally, yes. If you have filed an appeal, the transcript will be mailed to you with the briefing schedule. However, the Board does *not* prepare a transcript of your case if you are appealing a bond or a motion to reopen a decision of an Immigration Judge.

68. What if I want a transcript of my bond hearing or the Immigration Judge's denial of my motion to reopen?

The Board generally does not prepare a transcript in such cases.

- Bond proceedings usually are not tape recorded.
- If a recording *was* made, you may contact the Immigration Court to listen to it.
- If, after listening to the tape, you still believe a transcript of your case is necessary, you should state your reasons in your brief to the Board. You must still file your brief by the due date.

69. What do I do with my transcript?

You should read the transcript to refresh your memory of exactly what happened at your hearing. You may then write your arguments in your brief and state why you disagree with the Immigration Judge's decision.

You should refer to the page number in the transcript where facts or law were stated and where you believe errors were made.

> Example: If you wish to refer to page 15 of the transcript, write "(Tr. at 15)" at the end of your sentence. If you wish to refer to page 6 of the Immigration Judge's decision, write "(I..J. at 6)" at the end of your sentence.

70. What if the transcript has errors?

It depends on what the error is.

- If there is a problem with the *copy* of the transcript you receive, for example, if it is missing pages or you cannot read the copy or if significant portions of the hearing are missing (for example, a hearing

held on a specific date was not transcribed), please inform the Clerk's Office of the Board in writing, describing the problem, and include a copy of any defective pages. If you wish, you may request an extension of time in which to file your brief. See Question #57 for instructions. You will be mailed a corrected copy of the transcript (unless circumstances prevent correction), and you might be granted additional time in which to file your brief if you requested additional time. However, do not assume that you will be granted an extension. The Board will inform you if you have more time. Otherwise, the original deadline still applies to you.

- If you believe there is a problem with the *contents* of the transcription, for example errors in the typing or in the translation, you should address these in your brief, describing the problems and referring to the transcript pages where you believe errors were made. You will not be granted additional time in which to file your brief with the Board.

  If you have concerns about the transcription of the proceedings, you may listen to the hearing tapes at the local Immigration Court. You must contact the Immigration Court ahead of time to arrange to listen to the tapes.

WARNING!
Unless you receive a notice from the Board extending your briefing deadline, your brief is still due on the date set in your original briefing schedule.

PART 3: MOTIONS PROCEDURES

MOTIONS

71. What is a motion?

A motion is a formal request for the Board to do something in your case. The most common kinds of motions are:

- motion to reopen
- motion to reconsider
- motion to remand

72. What is a motion to reopen?

A motion to reopen is filed after the Board has made a decision in your case. You may use it to ask the Board to open your case again and look at something new, for example where you have new evidence or your situation has changed. It *must* state new facts, and must be supported by affidavits or a declaration under penalty of perjury or other evidence, as well as appropriate application forms. Be sure to read the definition of "affidavit" and "declaration under penalty of perjury" in the GLOSSARY attached at the end of this document. You must explain how the new evidence would make a difference in your case. You must also explain why you did not present this new evidence to the Immigration Judge at the hearing. There is a fee. See Questions #89 through #91. There are strict time and number limits on filing motions to reopen. See Questions #75 through #83.

73. What is a motion to reconsider?

A motion to reconsider is filed after the Board has made a decision in your case. You may use it to ask the Board to look at your case again and consider making a different decision. A motion to reconsider does *not* present new evidence. It simply points out mistakes you believe exist in the Board's earlier decision. There is a fee. See Questions #89 through #91. There are strict time and number limits on filing motions to reconsider. See Questions #75 through #83.

74. What is a motion to remand?

A motion to remand is filed *before* the Board has made a decision on your appeal. You may use it to ask the Board to look at something new while you are waiting for the Board to make a decision on your appeal,

for example, where you have new evidence or your situation has changed. It *must* state new facts, and must be supported by affidavits or a declaration under penalty of perjury or other evidence, as well as appropriate application forms. Be sure to read the definition of "affidavit" and "declaration under penalty of perjury" in the GLOSSARY attached at the end of this document. You must explain how the new evidence would make a difference in your case. You must also explain why you did not present this evidence to the Immigration Judge at the hearing. There is no fee for a motion to remand filed with the Board, and there are no time or number limits.

The Board generally cannot remand cases to DHS, unless the decision appealed from was made by a DHS official (for example, a visa petition case). The Board generally can only remand a case to an Immigration Judge. Note that a motion to remand is different from a request to remand made in an appeal, because a motion to remand is filed after an appeal has *already* been filed at the Board, and it is based on *new* evidence or a changed situation that did not exist at the time of your hearing before the Immigration Judge.

TIME AND NUMBER LIMITS ON SOME MOTIONS

75. Can I file as many motions as I want?

It depends on what kind of motion it is. You must be careful, because there are time and number limits on some kinds of motions.

- There are time and number limits on "motions to reopen" and "motions to reconsider."
- For all other kinds of motions, there are no time or number limits, so you can file as many as you want.

76. Can DHS file as many motions as it wants?

The regulations allow DHS to file motions to reopen and motions to reconsider outside of the time and number limits in certain cases.

77. What are the limits on motions to reopen?

There are two kinds of limits on motions to reopen: time and number.

Time: There is a limit on *when* you may file your motion to reopen. You must file your motion to reopen within *90 days* of the final

WARNING!

Your motion to reopen is not properly filed unless it is actually received at the Board within 90 calendar days of the Board's decision.

decision of the Board. If the Board decided your case before July 1, 1996, your motion to reopen was due September 30, 1996. There are certain exceptions discussed below.

Number: There is a limit on *how many* motions to reopen you may file. You may file only *one* motion to reopen in each case after a final decision by the Board. The exceptions are discussed below.

78. Are there exceptions to the time and number limits for motions to reopen?

Yes. There are a few exceptions to the time and number limits on motions to reopen filed with the Board. The most common situations are:

- Asylum claim based on changed country conditions. If there have been recent changes in your country and those changes are serious enough that you have a legitimate fear of returning home, you may be able to file a motion to reopen to apply (or re-apply) for asylum.

- Jointly filed motion. If DHS agrees with you that your case should be reopened, you and DHS can file a "joint" motion at any time.

- In absentia situations. There are also special rules for motions that are filed after you have missed your hearing before the Immigration Judge. The rules are especially complicated, and you may want to consult an attorney or Accredited Representative.

79. What are the limits on motions to reconsider?

Time: There is a limit on *when* you may file your motion to reconsider. You must file your motion to reconsider *within 30 days* of the decision of the Board. If the Board decided your case before July 1, 1996, your motion to reconsider was due July 31, 1996.

Number: There is a limit on *how many* motions to reconsider you may file. You may file only *one* motion to reconsider in each case after a final decision by the Board.

Other: You may not file a motion to reconsider based only on an argument that the case should not have been affirmed without opinion by a single Board Member, or by a three-Member panel.

WARNING!
Your motion to reconsider is not properly filed
unless it is actually received at the Board
within 30 calendar days of the Board's decision.

80. Are there exceptions to the time and number limits on motions to reconsider?

No. There are no exceptions to the time and number restrictions on motions to reconsider.

81. Can the Board consider a late-filed motion, even if it does not fall within the exceptions?

Yes. In *exceptional circumstances*, the Board can reopen or reconsider a case on its own ("*sua sponte*"). The regulations do not *require* the Board to reopen or reconsider *sua sponte*. The Board rarely does so.

82. Can I file a motion to reopen <u>and</u> file a separate motion to reconsider?

Yes. You are allowed to file one motion to reopen *and* one motion to reconsider. You may file them at different times if you wish.

83. Can I file <u>one</u> motion requesting <u>both</u> reopening and reconsideration?

Yes, but it may count as one motion to reopen *and* as one motion to reconsider.

FILING A MOTION

84. Is there a form for filing a motion?

No, but you should use a cover page. See Question #85. Never use a Notice of Appeal (Form EOIR-26) to file a motion.

85. How do I file a motion?

Follow these steps:

- Make sure the motion is in English or is accompanied by a certified translation.
- Put your motion on white, letter-size (8½" x 11") paper, typewritten or word-processed. If you do not have access to a typewriter or word-processor, you may submit a handwritten motion.

- Include your name and your "A Number". Please make sure that the name and "A Number" are correct. If these are incorrect, your motion may be rejected.

- Title your submission correctly, for example "MOTION TO EXPEDITE" or "MOTION TO REOPEN" or "MOTION TO REMAND."

- State the reasons for your request.

- Attach all necessary supporting documentation. See Question #86.

- Sign the motion, with your typewritten or hand-printed name appearing below your signature.

- Mail or deliver a copy to DHS.

- Complete a Proof of Service, showing that you delivered or mailed a copy of your motion to DHS. See Questions #20 and #21 and the SAMPLE PROOF OF SERVICE.

- If a fee is required for the type of motion you are filing, attach the fee, or a Fee Waiver Request (Form EOIR-26A), on tan or white paper, to your motion. Only a motion to reopen or a motion to reconsider requires a fee. See Questions #89 through #91, and Questions #12 through #18.

- Make and keep a copy of every document you submit, for your own records.

- File your motion directly with the Board.

NOTE: Make sure you followed all the instructions in Questions #10 and #11. See the SAMPLE COVER PAGE.

CAUTION: Motions to reopen and motions to reconsider have strict deadlines. See Questions #75 through #83.

86. What should I file with a motion to reopen?

A "motion to reopen" is a special kind of motion. See Question #72. When you file a motion to reopen, it should include:

- the motion. See Question #85 about how to file the motion.

- the fee or a Fee Waiver Request (Form EOIR-26A) for the motion. See Questions #89 through #91.

- a copy of any application involved. Read the instructions on the application form and include copies of the supporting documents needed for that application. You need *not* submit a filing receipt or fee for these applications. See Questions #89 through #91. Some examples of applications that might be appropriate in your case are:

  – adjustment of status (Form I-485)
  – asylum (Form I-589)
  – cancellation of removal (Form EOIR-42)

- photocopies of all documents that support your motion. Some examples are:

  – a notice of approval of visa petition
  – proof of residence
  – police certificates
  – photographs
  – marriage certificates
  – birth certificates
  – newspaper articles
  – letters

  Do *not* send *originals* of these documents to the Board. They cannot be returned to you.

WARNING!

You must give the Board all of the documents and applications which are needed to prove that your motion to reopen should be granted.

If you do not, the Board may deny your motion because you did not provide the needed documents.

- any statements that support your motion. You should submit original signed and dated affidavits or declarations under penalty of perjury by you or other identified persons. See the definition of "affidavit" and "declaration under penalty of perjury" in the GLOSSARY attached at the end of this document.

- a photocopy of the previous Board decision you seek to have reopened or reconsidered.

- a completed Proof of Service. See Questions #20 and #21 and the SAMPLE PROOF OF SERVICE.

- a Notice of Entry of Appearance (Form EOIR-27) for your attorney or Accredited Representative, if you have one.

87. May I file a brief supporting my motion?

Yes. But you should file your brief *with* your motion. The Board does not set briefing schedules for motions. A copy of your motion must be properly served on DHS. See Questions #20 and #21. DHS has 13 days from the date of service of your motion in which to file a brief in response.

88. What if DHS files a motion?

DHS should mail or give a copy to you.

- You should respond in writing to the motion.
- You are expected to file your response with the Board within 13 calendar days following the date on the DHS Proof of Service for the motion.
- You should title your response "RESPONSE TO DHS MOTION." See Questions #53 through #65.
- If you are unable to file your response within 13 days, you should still file your response as soon as possible. The Board will decide whether or not to consider the response.

WARNING!
If you do not respond, the Board may grant the DHS motion because you did not respond to it.

FEES FOR MOTIONS

89. How much does it cost to file a motion?

There is a $110 filing fee required for three types of motions:

- a motion to reopen
- a motion to reconsider
- a motion that combines a motion to reopen and a motion to reconsider

There is no $110 filing fee if:

- the motion is *not* a motion to reopen or a motion to reconsider,

- you already have an appeal or motion to reopen or motion to reconsider pending at the Board,
- you cannot afford it *and* you submit a Fee Waiver Request Form (Form EOIR-26A), *or*
- you file the motion jointly with DHS.

Be sure to follow the instructions in Questions #12 through #18.

90. If I am submitting an application with my motion, do I need to pay a filing fee for that application?

No. The only fees the Board accepts are fees for appeals, motions to reopen, and motions to reconsider. If the Board grants your motion, your case will go back to the Immigration Judge for another hearing, and you will be required to pay the fee for the application then.

91. Do I have to pay a fee to file a motion to reopen to apply for asylum?

It depends. If your motion is based *only* on an asylum claim (or the similar forms of relief, withholding of removal and Convention Against Torture), there is no fee. If your motion is based on asylum and any *other* kind of relief (such as adjustment of status or cancellation of removal), you must pay $110 or file a Fee Waiver Request (Form EOIR-26A).

MORE MOTIONS FILING INSTRUCTIONS

92. What if I call my motion by the wrong name?

You should put the correct title on your motion. However, no matter what you call your motion, the Board will look at the contents and treat it as what it really is.

> Example: You file a motion with the title "Motion to Reopen" and later realize that you should have titled it a "Motion to Reconsider." This is not a problem. The Board will look at your motion and decide, based on the contents of your motion, whether it is a motion to reopen, a motion to reconsider, or some other type of motion. The Board will also check whether it is timely and properly filed under the correct filing deadline.

93. Will a motion be accepted if it is not in English?

No. All documents, including motions, must be in English or have a certified English translation. See Question #9.

94. If I file a motion, can DHS deport me while I am waiting for a decision from the Board?

In most cases, filing a motion does *not* prevent DHS from deporting you from the United States. If you do not want to be deported from the United States while you have a motion pending at the Board, make sure to follow the procedures described in Questions #27 and #28.

95. Does an attorney or representative have to file a Notice of Entry of Appearance if he or she files a motion for me?

Yes. An attorney or representative must submit a Notice of Entry of Appearance (Form EOIR-27) in order to receive documents and correspondence regarding a motion filed with the Board.

96. What if I file a motion to reopen while I am waiting for a decision on my appeal?

Your motion will be treated as a motion to remand. The Board will consider your motion together with the appeal. A fee is not required for a motion to remand, and it will not count toward the number limit on motions to reopen or motions to reconsider. See Questions #75 through #83.

97. Where do I file a motion if I waived appeal or if I did not appeal my case?

If you waived your right to appeal or did not appeal the decision of the Immigration Judge, you should file any motions with the Immigration Court having administrative control over the Record of Proceeding. If you have questions, contact your local Immigration Court.

98. Where do I file a motion if I appealed my case but the Board ruled that my appeal was untimely?

If you want to argue that your appeal was filed on time, file your motion with the Board.

If you want to argue anything else or present new evidence in your case, file your motion with the Immigration Court.

PART 4: AFTER AN APPEAL OR MOTION IS FILED

URGENT NEED FOR BOARD DECISION

99. May I ask the Board to decide my case especially quickly?

Yes. If you need your case decided quickly, you should file a motion called "MOTION TO EXPEDITE." Highlight the title with a colored pen or marker, so that it stands out and receives prompt attention. Your motion should explain why you need a Board decision urgently. If you have a document that shows why you need your case decided soon, attach a copy to the motion. There is no fee for a motion to expedite. The Board expedites cases only in the most urgent situations. See Question #85.

WITHDRAWAL AND DEPARTURE

100. What if I do not want to appeal anymore?

If you no longer want to appeal (for example, you decide that you want to return to your country), you may withdraw your appeal.

WARNING!

A withdrawal of appeal ends your appeal, and the Immigration Judge's decision becomes final. You could be removed or deported from the United States.

If you simply want your case sent back to the Immigration Judge (for example, so that a decision can be made on an application for adjustment of status), do *not* withdraw your appeal. Instead, file a "MOTION TO REMAND." See Question #74.

101. How do I file a withdrawal of appeal?

<u>If you wish to file a withdrawal of appeal yourself,</u> follow these steps:

- Make sure the withdrawal is in English or is accompanied by a certified translation.

- Put your withdrawal on white, letter-size (8½" x 11") paper, typewritten or word-processed. If you do not have access to a typewriter or word-processor, you may submit a handwritten withdrawal.
- Include your name and your "A Number." Please make sure that your name and "A Number" are correct. If these are incorrect, your withdrawal may be rejected.
- Place the title "WITHDRAWAL OF APPEAL" on the paper.
- State that you want to withdraw your appeal and your reasons for doing so.
- Sign and date the withdrawal, with your typewritten or hand-printed name appearing below your signature.
- Mail or deliver a copy to DHS.
- Complete a Proof of Service proving that you sent or delivered a copy to DHS. See Questions #20 and #21 and the SAMPLE PROOF OF SERVICE.
- Make and keep a copy of the withdrawal, for your own records.
- File your withdrawal directly with the Board.

<u>If you have an attorney or representative</u>:

- Make sure you have fully discussed your reasons for wanting to withdraw your appeal with your attorney or representative.
- If possible, have your attorney or representative file the Withdrawal of Appeal for you.
- If you are filing the Withdrawal of Appeal yourself, make sure to send a copy of the Withdrawal of Appeal to your attorney or representative and include another Proof of Service proving that you did so.

Be sure to read Question #100 before you withdraw your appeal.

102. What if I leave the United States before the Board sends me a decision on my appeal or motion?

If you leave the United States while your appeal or motion is before the Board, your appeal or motion may end. The Board will view this as if you had withdrawn your appeal or motion. See Question #100.

CAUTION: Be very careful if you are thinking about leaving the United States. You may wish to consult an attorney or Accredited Representative first.

103. What if I am deported from the United States by DHS before the Board sends me a decision on my appeal or motion?

If you are deported from the United States while your appeal or motion is before the Board, your appeal or motion will end.

STATUS CHECKS

104. Can I check on the status of my case?

Yes. You may check the status of your case by calling EOIR's Automated Status Query (ASQ) line. This is a toll-free call.

- Have your "A Number" ready.
- The automated information system is updated every 24 hours.

Want the status of your case?

Call the ASQ line:
1 - 800 - 898 - 7180

If you have further questions or concerns regarding your case, you may call the Clerk's Office of the Board at (703) 605-1007, 8:00 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, except federal holidays.

Board staff cannot give legal advice. If you need legal advice, consult a licensed attorney or an Accredited Representative. See Questions #29 through #39 and Question #108.

105. Can I speak to the Board Members deciding my case?

No. The Board is required by law to make its decision based only on the documents contained in your case file. If you wish to tell the Board something, you may do so by filing a brief or a motion. See Questions #53 through #65.

106. How do I know when the Board has reached a decision on my case?

You will receive a copy of the decision.

If you do not have an attorney or representative, the Board will mail its decision on your appeal or motion to you.

- Be sure to keep the Board informed of your current address at all times, by filling out an Alien's Change of Address Form (Form EOIR-33 / **BIA**), on pink or white paper, within 5 days, *every* time you move. See Questions #23 through #26.

- If you used to have an attorney or representative, but no longer have one, you must notify the Board immediately, stating the name of your former attorney and that you are no longer represented, so that the Board will know to send the decision directly to you. See Questions #36 through #39.

If you have an attorney or representative, the Board will mail its decision on your appeal or motion to your attorney or representative.

- Your attorney or representative should then forward a copy of the decision to you.

- Be sure to immediately inform your attorney or representative (and the Board) of your current address if you move. See Questions #23 through #26.

107. What should I do after I receive a decision on my case?

The Board cannot give you legal advice as to what you should do after you receive a decision in your case. See Questions #29 through #39.

If the Board did not rule in your favor, you may wish to consider the following options:

- You may, if appropriate, file a motion to reopen or a motion to reconsider with the Board. See PART 3: MOTIONS PROCEDURES.

- Under some circumstances, you have the right to appeal or petition to certain federal courts. You should contact the clerk of the appropriate judicial court to find out the proper filing procedures of that court.

- See an attorney or Accredited Representative.

108. What if I still have questions after reading these Questions and Answers?

If you still have questions regarding an appeal of an Immigration Judge's decision or a motion before the Board of Immigration Appeals, you should consult:

- the Board of Immigration Appeals *Practice Manual*, which is available on the EOIR website at www.usdoj.gov/eoir.
- the BIA Telephonic Information and Procedures System (BIA TIPS) for recorded information on how to file an appeal, motion, brief, change of address, and other documents with the Board, and is available 24 hours a day, 7 days a week. See the DIRECTORY and the TELEPHONIC INFORMATION page.
- the Automated Status Query (ASQ) line for recorded information on your case, including your next hearing date, asylum processing, the Immigration Judge's decision, or your case appeal. See the DIRECTORY and the TELEPHONIC INFORMATION page.
- an attorney or Accredited Representative.

PART 5: HELPFUL INFORMATION

GLOSSARY

SAMPLE COVER PAGE

DIRECTORY

SAMPLE PROOF OF SERVICE

TELEPHONIC INFORMATION

GLOSSARY

The following are definitions of some words commonly used in immigration procedures.

Accredited Representative

A person who is approved by the Board to represent aliens before the Board. He or she must work for a specific nonprofit, religious, charitable, social service, or similar organization. The organization must be authorized by the Board to represent aliens.

Affidavit

A document in which a person states facts, swearing that the facts are true and accurate. The person should sign the affidavit under oath and witnessed by an official, such as a notary public.

Affirmance without opinion

Where the Board issues a short order agreeing with the result of the Immigration Judge's decision.

Alien

A person who is not a citizen or national of the United States.

"A Number"

Alien Registration Number, which DHS assigns to each alien. It is an "A" followed by eight numbers. For example, A99 999 999. Cases at the Board are tracked by "A Number."

Applicant

A person in exclusion proceedings is called the "applicant."

BIA

An abbreviation for the Board of Immigration Appeals.

Beneficiary

The alien who benefits from a visa petition. See Question #4.

Board

An abbreviation for the Board of Immigration Appeals.

Board of Immigration Appeals

The Board of Immigration Appeals is like a court of appeals in the United States Department of Justice. It is part of the Executive Office for Immigration Review (EOIR). The Board reviews most types of decisions of Immigration Judges and some types of decisions of DHS officers when one of the parties files an appeal with the Board.

Bond

The amount of money set by DHS as a condition to release a person to return for a hearing at a later date. Bond proceedings are a hearing dealing only with the issue of a bond.

Certificate of Translation

A formal statement in which a translator shows that he or she has accurately translated a foreign-language document into English. See Question #9.

Certification

When the Board considers a case even though it would normally not have jurisdiction over the case, under special circumstances.

C.F.R.

An abbreviation for the Code of Federal Regulations.

Code of Federal Regulations

The official interpretations of laws passed by Congress.

Declaration under penalty of perjury

A statement by a person, in which the person states that the information is true, to support his or her request or application. For example, a declaration may list the facts and then state: "I declare under penalty of perjury (under the laws of the United States of America) that the foregoing is true and correct." This statement should be followed by the date, signature, and printed name of the person signing.

Department of Homeland Security (or "DHS")

The agency responsible for enforcing the United States' immigration laws. DHS replaced the Immigration and Naturalization Service ("INS").

Deportation proceedings

An Immigration Court proceeding begun before April 1, 1997, against a person believed to be in the United States without legal status, which seeks to deport him or her from the United States.

DHS

An abbreviation for the Department of Homeland Security.

Deny *or* **denial**

When the Board issues a decision and the motion has failed.

Dismiss *or* **dismissal**

When the Board issues a decision and the appeal has failed.

"Entry"

A term in immigration law, usually meaning any coming of a person into the United States. Note that under the legal definition of this word, however, an alien can be physically present in the United States without having made an "entry."

EOIR

An abbreviation for the Executive Office for Immigration Review.

Exclusion proceedings

An Immigration Court proceeding begun before April 1, 1997, against a person who is believed not to have "entered" the United States. These proceedings determine whether a person should be allowed to enter the United States.

Executive Office for Immigration Review (or "EOIR")

EOIR is the part of the United States Department of Justice that is responsible for the immigration courts and the Board.

IJ

An abbreviation for Immigration Judge.

"In absentia"

A Latin phrase meaning that a hearing was conducted without the alien being present, because he or she failed to appear at the hearing.

INS

An abbreviation for Immigration and Naturalization Service, which has been replaced by the Department of Homeland Security ("DHS").

Notice to Appear

The document (Form I-862) used by DHS to charge an alien with being removable from the United States.

NTA

An abbreviation for Notice to Appear.

Oral argument

When the Board allows an alien and DHS to argue their case in person before the Board.

Order to Show Cause

The document (Form I-221) used by DHS to charge an alien with being deportable.

OSC

An abbreviation for Order to Show Cause.

Party

In an immigration court or before the Board, the alien and DHS are called the "parties."

Petitioner

A person who files a visa petition. See Question #4.

"Pro se"

A Latin phrase meaning that an alien does not have an attorney or representative.

Proof of Service

A formal statement in which a party shows that he or she has given or mailed a copy of a document or documents in the case to the other party. See Questions #20 and #21.

Record of Proceedings

The official file containing documents relating to an alien's case.

Reject *or* rejected

When an appeal or motion is incomplete in some way and sent back by the Board.

Removal proceedings

An Immigration Court proceeding begun on or after April 1, 1997, seeking to either stop certain aliens from being admitted to the United States or to remove them from the United States.

Respondent

A person in deportation or removal proceedings is called the "respondent."

ROP

An abbreviation for Record of Proceedings, the official file of a case.

Serve

To give, deliver, or mail a document on the opposing party (which, for an alien, is DHS).

Stay

An order by the Board or a rule of law that stops DHS from deporting an alien, or stops some other decision of an Immigration Judge from being carried out, until a decision is made at the Board.

Summary affirmance

Where the Board issues a short order agreeing with the result of the Immigration Judge's decision.

Summary dismissal

Where the Board dismisses an appeal in a short order because of certain defects in the appeal.

Transcript

A printed version of the tape recording of a hearing before an Immigration Judge.

Visa Petition

A visa petition is the first step in asking DHS to give lawful permanent resident status (a "green card") to a person. See Question 4.

SAMPLE COVER PAGE

A. Torney, Esquire
1234 Center Street
Anytown, ST 99999

Filing party. If pro se, the alien should provide his or her own name and address in this location. If a representative, the representative should provide his or her name and complete business address.

DETAINED

Detention status. If the alien is detained, the word "DETAINED" should appear prominently in the top right corner, preferably highlighted.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

Court. The Board prefers that filings be addressed in this way.

In the Matter of:	)	
	)	
Jane Smith	)	**File Nos.:** **A 12 345 678**
John Smith	)	**A 12 345 679**
Jill Smith	)	**A 12 345 680**
	)	
In removal proceedings	)	
	)	

A numbers. The alien registration number of <u>every</u> person included in the appeal or motion should be listed.

Names and type of proceeding. The full name of <u>every</u> alien included in the appeal or motion should be listed.

RESPONDENTS' MOTION TO REOPEN

Filing title. The Board prefers that the title of the brief or motion be placed in the middle and bottom of the page.

DIRECTORY

Automated Status Query (ASQ) System . . . . . (800) 898-7180
24 hours
7 days a week

BIA Telephonic Instructions and Procedures System (TIPS) . . . . . (703) 605-1007
24 hours
7 days a week

Clerk's Office . . . . . (703) 605-1007
8:00 a.m. to 4:30 p.m.
Monday - Friday, except holidays

Emergency Stay Information . . . . . (703) 605-1007
24 hours
7 days a week

Oral Argument Coordinator . . . . . (703) 605-1007
8:00 a.m. to 4:30 p.m.
Monday - Friday, except holidays

Law Library and Immigration Research Center (LLIRC) . . . . . (703) 605-1103
9:00 a.m. to 4:00 p.m.
Monday - Friday, except holidays

Office of General Counsel, EOIR . . . . . (703) 305-0470
9:00 a.m. to 5:30 p.m.
Monday - Friday, except holidays

Public Affairs Office, EOIR . . . . . (703) 305-0289
9:00 a.m. to 5:00 p.m.
Monday - Friday, except holidays

Internet Address . . . . . www.usdoj.gov/eoir

All times indicated are Eastern time.

SAMPLE PROOF OF SERVICE

_____
(Name of alien or aliens)

_____
("A number" of alien or aliens)

PROOF OF SERVICE

On _____, I, _____
(date of mailing or delivery) (printed name of person signing below)

mailed or delivered a copy of this _____
(name of document being served)

and any attached pages to _____
(name of party served)

at the following address: _____

_____
(address of party served)

by _____
(method of delivery, for example: overnight courier, hand-delivery, first class mail)

_____ _____
(signature) (date)

TELEPHONIC INFORMATION

Do you want to know the status of your case before an Immigration Judge or the Board of Immigration Appeals?

All you have to do is

ASQ

(800) 898-7180

The Automated Status Query System contains information regarding your case, including your next hearing date, asylum processing, the Immigration Judge's decision, or your case appeal.

This service is available 24 hours a day, 7 days a week.

Need information on how to file an appeal, motion, or anything else with the Board of Immigration Appeals?

Let us give you some

BIA TIPS

(703) 605-1007

Call the Board of Immigration Appeals Telephonic Instructions and Procedures System for recorded information on how to file an appeal, motion, brief, change of address, and other documents with the Board.

This service is available 24 hours a day, 7 days a week.