

# What if You Disagree with the Judge's Decision?

## An Overview of the Appeals Process

The information in this packet was prepared by the U.S. Department of Justice's Executive Office for Immigration Review (EOIR). It is not intended, nor should it be construed in any way, as legal advice. The information does not extend or limit the jurisdiction of the Immigration Courts or the Board of Immigration Appeals as established by law and regulation. Nothing in this packet shall limit the discretion of Immigration Judges or Board Members to act in accordance with law and regulation.

If you disagree with the Immigration Judge's decision, you can ask the Board of Immigration Appeals ("Board") to review the decision to make sure the Immigration Judge did not make a mistake. This is called an "appeal." The Board must receive your appeal within 30 days from the Judge's decision in your case. Below is a summary of the process:

- 1) **Tell the Immigration Judge that you want to appeal.** When the Judge issues the decision, the Judge will ask if you want to "reserve" (keep) your right to appeal. If you want to appeal, you must tell the Judge that you "reserve" your right to appeal. The government will not remove you from the U.S. while you wait for a decision on your appeal. However, if you "waive" (give up) your right to appeal, the Judge's decision becomes final and you could be removed from the U.S. immediately. If the Judge's decision was issued in writing and mailed to you, appeal was automatically reserved and you do not need to tell the Judge that you want to appeal. However, you still must send a Notice of Appeal to the Board as described below.
- 2) **Fill out the Notice of Appeal (Form EOIR-26) (included in this packet) in English.** Where the form asks for the reasons for your appeal, give specific details and explain why you want to appeal the Immigration Judge's decision. Attach a check or money order payable to the United States Department of Justice to the Notice of Appeal for exactly \$110. If you cannot pay this fee, attach a Fee Waiver Request (Form EOIR-26A) to the Notice of Appeal.<sup>1</sup>
- 3) **Send the original signed forms to the Board of Immigration Appeals.** Send a copy of everything you send to the Board to the Department of Homeland Security and keep a copy for yourself.
- 4) **The Board must receive your Notice of Appeal within 30 days of the Immigration Judge's decision.** If the Board does not receive an appeal by this deadline, the Judge's decision becomes FINAL and you may be removed from the United States.

You are allowed to file a written brief or statement to support your appeal. A brief is a document that states the facts and legal points of your case. The Board will send you a copy of the transcript (a written copy of what everyone said at your hearing), the Judge's decision, and the deadline for you and the Department of Homeland Security to file briefs and statements. You **MUST** send your brief to the Board by the deadline. You **MAY** respond to the Department of Homeland Security's brief if you want to.

The Board will mail you a decision when it decides your case.

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<sup>1</sup> Detailed instructions on how to file a Form EOIR-26, Notice of Appeal from an Immigration Judge, are available online at [www.justice.gov/eoir/list-downloadable-eoir-forms](http://www.justice.gov/eoir/list-downloadable-eoir-forms).

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. The names and "A" numbers listed will be the only ones considered to be the subjects of the appeal.

2. I am \_\_\_\_\_ the Respondent/Applicant DHS-ICE (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 \_\_\_\_\_ . (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court?  Yes.  No.)

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 that you are appealing.)*

6. State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and “A” number(s) on every sheet.

*(Attach additional sheets if necessary)*



**WARNING:** You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge’s decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals?      Yes      No
8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal?      Yes      No



**WARNING:** If you mark “Yes” in item #7, you should also include in your statement above why you believe your case warrants review by a three-member panel. The Board ordinarily will not grant a request for oral argument unless you also file a brief.

If you mark “Yes” in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule..

- 9.

Sign  
Here



X

\_\_\_\_\_  
Signature of Person Appealing  
(or attorney or representative)

\_\_\_\_\_  
Date

10.

Mailing Address of Respondent(s)/Applicant(s)
_____
(Name)
_____
(Street Address)
_____
(Apartment or Room Number)
_____
(City, State, Zip Code)
_____
(Telephone Number)


11.

Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s)
_____
(Name)
_____
(Street Address)
_____
(Suite or Room Number)
_____
(City, State, Zip Code)
_____
(Telephone Number)

**NOTE:** You must notify the Board within five (5) working days if you move to a new address or change your telephone number. You must use the Change of Address Form/Board of Immigration Appeals (Form EOIR-33/BIA).

**NOTE:** If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

12.

<b>PROOF OF SERVICE (You Must Complete This)</b>	
I _____	mailed or delivered a copy of this Notice of Appeal
(Name)	
on _____	to _____
(Date)	(Opposing Party)
at _____	
(Number and Street, City, State, Zip Code)	
<b>SIGN HERE</b> 	<b>X</b> _____
	Signature
<b>NOTE:</b> If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS - ICE.	
<b>WARNING:</b> If you do not complete this section properly, your appeal will be rejected or dismissed.	
<b>WARNING:</b> If you do not attach the fee or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.	

**HAVE YOU?**

- Read all of the General Instructions
- Provided all of the requested information
- Completed this form in English
- Provided a certified English translation for all non-English attachments
- Signed the form

- Served a copy of this form and all attachments on the opposing party
- Completed and signed the Proof of Service
- Attached the required fee or Fee Waiver Request
- If represented by attorney or representative, attach a completed and signed EOIR-27