

§ 1003.7

8 CFR Ch. V (1–1–21 Edition)

alien during the pendency of the removal proceedings. If DHS has submitted such a motion and the Board is unable to resolve the custody appeal within the period of the automatic stay, the Board will issue an order granting or denying a motion for discretionary stay pending its decision on the custody appeal. The Board shall issue guidance to ensure prompt adjudication of motions for discretionary stays. If the Board fails to adjudicate a previously-filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary stay.

(d) If the Board authorizes an alien's release (on bond or otherwise), denies a motion for discretionary stay, or fails to act on such a motion before the automatic stay period expires, the alien's release shall be automatically stayed for five business days. If, within that five-day period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 CFR 1003.1(h)(1), the alien's release shall continue to be stayed pending the Attorney General's consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General. DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General. For purposes of this paragraph and 8 CFR 1003.1(h)(1), decisions of the Board shall include those cases where the Board fails to act on a motion for discretionary stay. The Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board.

[61 FR 18907, Apr. 29, 1996; 61 FR 21065, May 9, 1996, as amended at 63 FR 27448, May 19, 1998; 71 FR 57884, Oct. 2, 2006]

§ 1003.7 Notice of certification.

Whenever, in accordance with the provisions of §1003.1(c), a case is certified to the Board, the alien or other party affected shall be given notice of certification. An Immigration Judge or Service officer may certify a case only after an initial decision has been made

and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is rendered that the case will be certified, the office of the Service or the Immigration Court having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice shall inform the parties that the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of the Service or the Immigration Court having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in §1003.3(c). The case shall be certified and forwarded to the Board by the office of the Service or Immigration Court having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date the Board declined to accept the case.

[61 FR 18907, Apr. 29, 1996]

EFFECTIVE DATE NOTE: At 85 FR 81655, Dec. 16, 2020, §1003.7 was amended by removing "Service" and "the Service" each place they appear and adding in their place the acronym "DHS", effective Jan. 15, 2021.

§ 1003.8 Fees before the Board.

(a) *Appeals and motions before the Board—(1) When a fee is required.* Except as provided in paragraph (a)(2) of this section, a filing fee prescribed in 8 CFR 1103.7, or a fee waiver request pursuant to paragraph (a)(3) of this section, is required in connection with the filing

of an appeal, a motion to reopen, or a motion to reconsider before the Board.

(2) *When a fee is not required.* A filing fee is not required in the following instances:

(i) A custody bond appeal filed pursuant to §1003.1(b)(7);

(ii) A motion to reopen that is based exclusively on an application for relief that does not require a fee;

(iii) A motion to reconsider that is based exclusively on a prior application for relief that did not require a fee;

(iv) A motion filed while an appeal, a motion to reopen, or a motion to reconsider is already pending before the Board;

(v) A motion requesting only a stay of removal, deportation, or exclusion;

(vi) Any appeal or motion filed by the Department of Homeland Security;

(vii) A motion that is agreed upon by all parties and is jointly filed; or

(viii) An appeal or motion filed under a law, regulation, or directive that specifically does not require a filing fee.

(3) *When a fee may be waived.* The Board has the discretion to waive a fee for an appeal, motion to reconsider, or motion to reopen upon a showing that the filing party is unable to pay the fee. Fee waivers shall be requested through the filing of a Fee Waiver Request (Form EOIR-26A), including the declaration to be signed under penalty of perjury substantiating the filing party's inability to pay the fee. The fee waiver request shall be filed along with the Notice of Appeal or the motion. If the fee waiver request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed.

(4) *Method of payment.* When a fee is required for an appeal or motion, the fee shall accompany the appeal or motion.

(i) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, the fee for filing an appeal or motion with the Board shall be paid by check, money order, or electronic payment in a manner and form authorized by the Executive Office for Immigration Review. When paid by check or money order, the fee shall be payable to the "United States Department of Justice," drawn on a bank or other insti-

tution that is located within the United States, and payable in United States currency. The check or money order shall bear the full name and alien registration number of the alien. A payment that is uncollectible does not satisfy a fee requirement.

(ii) *Appeals from Department of Homeland Security decisions.* The fee for filing an appeal, within the jurisdiction of the Board, from the decision of a Department of Homeland Security officer shall be paid to the Department of Homeland Security in accordance with 8 CFR 103.7(a).

(b) *Applications for relief.* Fees for applications for relief are not collected by the Board, but instead are paid to the Department of Homeland Security in accordance with 8 CFR 103.7. When a motion before the Board is based upon an application for relief, only the fee for the motion to reopen shall be paid to the Board, and payment of the fee for the application for relief shall not accompany the motion. If the motion is granted and proceedings are remanded to the immigration judge, the application fee shall be paid in the manner specified in 8 CFR 1003.24(c)(1).

[69 FR 44906, July 28, 2004]

EFFECTIVE DATE NOTES: 1. At 85 FR 81750, Dec. 16, 2020, §1003.8 was amended by revising paragraph (a)(1), effective Jan. 15, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 1003.8 Fees before the Board.

(a) * * *

(1) *When a fee is required.* Except as provided in paragraph (a)(2) of this section and 8 CFR 1208.4(d)(3), a filing fee prescribed in 8 CFR 1103.7, or a fee waiver request pursuant to paragraph (a)(3) of this section, is required in connection with the filing of an appeal, a motion to reopen, or a motion to reconsider before the Board.

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2. At 85 FR 82793, Dec. 18, 2020, §1003.8 was amended in paragraph (a)(4)(ii) by removing "8 CFR 103.7(a)" and adding in its place "§1103.7(b)", effective Jan. 19, 2021.

**Subpart B—Office of the Chief
Immigration Judge**

SOURCE: 62 FR 10331, Mar. 6, 1997, unless otherwise noted.