

(3) *Recognition and accreditation.* The Assistant Director for Policy, in consultation with the Director, shall maintain a division within the Office of Policy to develop and administer a program to recognize organizations and accredit representatives to provide representation before the Immigration Courts, the Board, and DHS, or DHS alone. The Assistant Director for Policy shall determine whether an organization and its representatives meet the eligibility requirements for recognition and accreditation in accordance with this chapter. The Assistant Director for Policy shall also have the authority to administratively terminate the recognition of an organization and the accreditation of a representative and to maintain the roster of recognized organizations and their accredited representatives. The Assistant Director for Policy, in consultation with the Director, may also delegate authority established in 8 CFR 1292.6 and 8 CFR 1292.11 through 1292.20 within the Office of Policy.

(f) *General Counsel.* Subject to the supervision of the Director, the General Counsel shall serve as the chief legal counsel of EOIR on matters of ethics, records management, release of information pursuant to the Freedom of Information Act, employee performance and discipline (except in matters related to the discipline of adjudicators for decisions made in the adjudication of cases under the Act), practitioner discipline, and other related areas not inconsistent with the law. Subject to the supervision of the Director, the General Counsel shall supervise all legal activities and provide legal advice and assistance to the Director, Deputy Director, and other component heads in accordance with this section. In consultation with other EOIR components as appropriate, the General Counsel may also advise the Director or Deputy Director on other legal matters, including matters related to immigration law or policy and related to adjudicator discipline, provided that the General Counsel shall have no authority, directly or indirectly, to direct or influence the adjudication of any cases under the Act.

(1) *Professional standards.* The General Counsel shall administer programs to

protect the integrity of legal representation in immigration proceedings before EOIR, including administering the disciplinary program for practitioners and recognized organizations under subpart G of this part.

(2) *Fraud issues.* The General Counsel shall designate an anti-fraud officer who shall—

(i) Serve as a point of contact relating to concerns about possible fraud upon EOIR, particularly with respect to matters relating to fraudulent applications or documents affecting multiple removal proceedings, applications for relief from removal, appeals, or other proceedings before EOIR;

(ii) Coordinate with investigative authorities of the Department of Homeland Security, the Department of Justice, and other appropriate agencies with respect to the identification of and response to such fraud; and

(iii) Notify the EOIR disciplinary counsel and other appropriate authorities with respect to instances of fraud, misrepresentation, or abuse pertaining to an attorney or accredited representative.

(g) *Citizenship Requirement for Employment.* (1) An application to work at EOIR, either as an employee or a volunteer, must include a signed affirmation from the applicant that he or she is a citizen of the United States of America. If requested, the applicant must document United States citizenship.

(2) The Director of EOIR may, by explicit written determination and to the extent permitted by law, authorize the appointment of an alien to an EOIR position when necessary to accomplish the work of EOIR.

[72 FR 53676, Sept. 20, 2007, as amended at 81 FR 92361, Dec. 19, 2016; 84 FR 44541, Aug. 26, 2019; 85 FR 69482, Nov. 3, 2020]

## Subpart A—Board of Immigration Appeals

### § 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review

(EOIR). The Board members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them. The Board shall consist of 23 members. A vacancy, or the absence or unavailability of a Board member, shall not impair the right of the remaining members to exercise all the powers of the Board. The Board members shall also be known as Appellate Immigration Judges.

(2) *Chairman.* The Attorney General shall designate one of the Board members to serve as Chairman. The Attorney General may designate one or two Vice Chairmen to assist the Chairman in the performance of his duties and to exercise all of the powers and duties of the Chairman in the absence or unavailability of the Chairman. The Chairman of the Board of Immigration Appeals shall also be known as the Chief Appellate Immigration Judge, and a Vice Chairman of the Board of Immigration Appeals shall also be known as a Deputy Chief Appellate Immigration Judge.

(i) The Chairman, subject to the supervision of the Director, shall direct, supervise, and establish internal operating procedures and policies of the Board. The Chairman shall have authority to:

(A) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(B) Provide for appropriate training of Board members and staff on the conduct of their powers and duties;

(C) Direct the conduct of all employees assigned to the Board to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred, to regulate the assignment of Board members to cases, and otherwise to manage the docket of matters to be decided by the Board;

(D) Evaluate the performance of the Board by making appropriate reports and inspections, and take corrective action where needed;

(E) Adjudicate cases as a Board member; and

(F) Exercise such other authorities as the Director may provide.

(ii) The Chairman shall have no authority to direct the result of an adjudication assigned to another Board member or to a panel; provided, however, that nothing in this section shall be construed to limit the management authority of the Chairman under paragraph (a)(2)(i) of this section.

(3) *Panels.* The Chairman shall divide the Board into three-member panels and designate a presiding member of each panel if the Chairman or Vice Chairman is not assigned to the panel. The Chairman may from time to time make changes in the composition of such panels and of presiding members. Each three-member panel shall be empowered to decide cases by majority vote, and a majority of the Board members assigned to the panel shall constitute a quorum for such panel. In addition, the Chairman shall assign any number of Board members, as needed, to serve on the screening panel to implement the case management process as provided in paragraph (e) of this section.

(4) *Temporary Board members.* The Director may in his discretion designate immigration judges, retired Board members, retired immigration judges, and administrative law judges employed within, or retired from, EOIR to act as temporary Board members for terms not to exceed six months. In addition, with the approval of the Deputy Attorney General, the Director may designate one or more senior EOIR attorneys with at least ten years of experience in the field of immigration law to act as temporary Board members for terms not to exceed six months. A temporary Board member shall have the authority of a Board member to adjudicate assigned cases, except that temporary Board members shall not have the authority to vote on any matter decided by the Board *en banc*. Temporary Board members shall also be known as temporary Appellate Immigration Judges.

(5) *En banc process.* A majority of the permanent Board members shall constitute a quorum for purposes of convening the Board *en banc*. The Board may on its own motion by a majority vote of the permanent Board members,

or by direction of the Chairman, consider any case *en banc*, or reconsider as the Board *en banc* any case that has been considered or decided by a three-member panel. *En banc* proceedings are not favored, and shall ordinarily be ordered only where necessary to address an issue of particular importance or to secure or maintain consistency of the Board's decisions.

(6) *Board staff.* There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

(7) [Reserved]

(b) *Appellate jurisdiction.* Appeals may be filed with the Board of Immigration Appeals from the following:

(1) Decisions of Immigration Judges in exclusion cases, as provided in 8 CFR part 240, subpart D.

(2) Decisions of Immigration Judges in deportation cases, as provided in 8 CFR part 1240, subpart E, except that no appeal shall lie seeking review of a length of a period of voluntary departure granted by an Immigration Judge under section 244E of the Act as it existed prior to April 1, 1997.

(3) Decisions of Immigration Judges in removal proceedings, as provided in 8 CFR part 1240, except that no appeal shall lie seeking review of the length of a period of voluntary departure granted by an immigration judge under section 240B of the Act or part 240 of this chapter.

(4) Decisions involving administrative fines and penalties, including mitigation thereof, as provided in part 280 of this chapter.

(5) Decisions on petitions filed in accordance with section 204 of the act (except petitions to accord preference classifications under section 203(a)(3) or section 203(a)(6) of the act, or a petition on behalf of a child described in section 101(b)(1)(F) of the act), and decisions on requests for revalidation and decisions revoking the approval of such petitions, in accordance with section 205 of the act, as provided in parts 204 and 205, respectively, of 8 CFR chapter I or parts 1204 and 1205, respectively, of this chapter.

(6) Decisions on applications for the exercise of the discretionary authority

contained in section 212(d)(3) of the act as provided in part 1212 of this chapter.

(7) Determinations relating to bond, parole, or detention of an alien as provided in 8 CFR part 1236, subpart A.

(8) Decisions of Immigration Judges in rescission of adjustment of status cases, as provided in part 1246 of this chapter.

(9) Decisions of Immigration Judges in asylum proceedings pursuant to § 1208.2(b) and (c) of this chapter.

(10) Decisions of Immigration Judges relating to Temporary Protected Status as provided in 8 CFR part 1244.

(11) [Reserved]

(12) Decisions of Immigration Judges on applications for adjustment of status referred on a Notice of Certification (Form I-290C) to the Immigration Court in accordance with §§ 1245.13(n)(2) and 1245.15(n)(3) of this chapter or remanded to the Immigration Court in accordance with §§ 1245.13(d)(2) and 1245.15(e)(2) of this chapter.

(13) Decisions of adjudicating officials in disciplinary proceedings involving practitioners or recognized organizations as provided in subpart G of this part.

(14) Decisions of immigration judges regarding custody of aliens subject to a final order of removal made pursuant to § 1241.14 of this chapter.

(c) *Jurisdiction by certification.* The Secretary, or any other duly authorized officer of DHS, or an immigration judge may in any case arising under paragraph (b) of this section certify such case to the Board for adjudication.

(d) *Powers of the Board—(1) Generally.* The Board shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign to it. The Board shall resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations. In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to the Service, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations.

(i) The Board shall be governed by the provisions and limitations prescribed by applicable law, regulations, and procedures, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

(ii) Subject to the governing standards set forth in paragraph (d)(1)(i) of this section, Board members shall exercise their independent judgment and discretion in considering and determining the cases coming before the Board, and a panel or Board member to whom a case is assigned may take any action consistent with their authorities under the Act and the regulations as is appropriate and necessary for the disposition of the case. Nothing in this paragraph (d)(1)(ii) shall be construed as authorizing the Board to administratively close or otherwise defer adjudication of a case unless a regulation promulgated by the Department of Justice or a previous judicially approved settlement expressly authorizes such an action. Only the Director or Chief Appellate Immigration Judge may direct the deferral of adjudication of any case or cases by the Board.

(2) *Summary dismissal of appeals*—(i) *Standards*. A single Board member or panel may summarily dismiss any appeal or portion of any appeal in any case in which:

(A) The party concerned fails to specify the reasons for the appeal on Form EOIR-26 or Form EOIR-29 (Notices of Appeal) or other document filed therewith;

(B) The only reason for the appeal specified by the party concerned involves a finding of fact or a conclusion of law that was conceded by that party at a prior proceeding;

(C) The appeal is from an order that granted the party concerned the relief that had been requested;

(D) The Board is satisfied, from a review of the record, that the appeal is filed for an improper purpose, such as to cause unnecessary delay, or that the appeal lacks an arguable basis in fact or in law unless the Board determines that it is supported by a good faith argument for extension, modification, or reversal of existing law;

(E) The party concerned indicates on Form EOIR-26 or Form EOIR-29 that he or she will file a brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his or her failure to do so, within the time set for filing;

(F) The appeal does not fall within the Board's jurisdiction, or lies with the Immigration Judge rather than the Board;

(G) The appeal is untimely, or barred by an affirmative waiver of the right of appeal that is clear on the record; or

(H) The appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

(ii) *Action by the Board*. The Board's case management screening plan shall promptly identify cases that are subject to summary dismissal pursuant to this paragraph. An order dismissing any appeal pursuant to this paragraph (d)(2) shall constitute the final decision of the Board.

(iii) *Disciplinary consequences*. The filing by a practitioner, as defined in § 1003.101(b), of an appeal that is summarily dismissed under paragraph (d)(2)(i) of this section, may constitute frivolous behavior under § 1003.102(j). Summary dismissal of an appeal under paragraph (d)(2)(i) of this section does not limit the other grounds and procedures for disciplinary action against attorneys or representatives.

(3) *Scope of review*. (i) The Board will not engage in *de novo* review of findings of fact determined by an immigration judge. Facts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous.

(ii) The Board may review questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges *de novo*.

(iii) The Board may review all questions arising in appeals from decisions issued by Service officers *de novo*.

(iv)(A) The Board will not engage in factfinding in the course of deciding cases, except that the Board may take administrative notice of facts that are

not reasonably subject to dispute, such as:

- (1) Current events;
- (2) The contents of official documents outside the record;
- (3) Facts that can be accurately and readily determined from official government sources and whose accuracy is not disputed; or
- (4) Undisputed facts contained in the record.

(B) If the Board intends to rely on an administratively noticed fact outside of the record, such as those indicated in paragraphs (d)(3)(iv)(A)(1) through (3) of this section, as the basis for reversing an immigration judge's grant of relief or protection from removal, it must provide notice to the parties of its intent and afford them an opportunity of not less than 14 days to respond to the notice.

(C) The Board shall not *sua sponte* remand a case for further factfinding unless the factfinding is necessary to determine whether the immigration judge had jurisdiction over the case.

(D) Except as provided in paragraph (d)(6)(iii) or (d)(7)(v)(B) of this section, the Board shall not remand a direct appeal from an immigration judge's decision for additional factfinding unless:

- (1) The party seeking remand preserved the issue by presenting it before the immigration judge;
- (2) The party seeking remand, if it bore the burden of proof before the immigration judge, attempted to adduce the additional facts before the immigration judge;
- (3) The additional factfinding would alter the outcome or disposition of the case;
- (4) The additional factfinding would not be cumulative of the evidence already presented or contained in the record; and
- (5) One of the following circumstances is present in the case:
  - (i) The immigration judge's factual findings were clearly erroneous;
  - (ii) The immigration judge's factual findings were not clearly erroneous, but the immigration judge committed an error of law that requires additional factfinding on remand; or
  - (iii) Remand to DHS is warranted following *de novo* review.

(v) The Board may affirm the decision of the immigration judge or the Department of Homeland Security on any basis supported by the record, including a basis supported by facts that are not reasonably subject to dispute, such as undisputed facts in the record.

(4) *Rules of practice.* The Board shall have authority, with the approval of the Director, EOIR, to prescribe procedures governing proceedings before it.

(5) *Discipline of practitioners and recognized organizations.* The Board shall have the authority pursuant to § 1003.101 *et seq.* to impose sanctions upon practitioners who appear in a representative capacity before the Board, the Immigration Courts, or DHS, and upon recognized organizations. The Board shall also have the authority pursuant to § 1003.107 to reinstate disciplined practitioners to appear in a representative capacity before the Board and the Immigration Courts, or DHS, or all three authorities.

(6) *Identity, law enforcement, or security investigations or examinations.* (i) The Board shall not issue a decision affirming or granting to an alien an immigration status, relief or protection from removal, or other immigration benefit, as provided in 8 CFR 1003.47(b), that requires completion of identity, law enforcement, or security investigations or examinations if:

(A) Identity, law enforcement, or security investigations or examinations have not been completed during the proceedings;

(B) DHS reports to the Board that the results of prior identity, law enforcement, or security investigations or examinations are no longer current under the standards established by DHS and must be updated; or

(C) Identity, law enforcement, or security investigations or examinations have uncovered new information bearing on the merits of the alien's application for relief.

(ii) Except as provided in paragraph (d)(6)(iv) of this section, if identity, law enforcement, or security investigations or examinations have not been completed or DHS reports that the results of prior investigations or examinations

are no longer current under the standards established by DHS, and the completion of the investigations or examinations is necessary for the Board to complete its adjudication of the appeal, the Board will provide notice to both parties that, in order to complete adjudication of the appeal, the case is being placed on hold until such time as all identity, law enforcement, or security investigations or examinations are completed or updated and the results have been reported to the Board. Unless DHS advises the Board that such information is no longer necessary in the particular case, the Board's notice will notify the alien that DHS will contact the alien to take additional steps to complete or update the identity, law enforcement, or security investigations or examinations only if DHS is unable to independently update the necessary investigations or examinations. If DHS is unable to independently update the necessary investigations or examinations, DHS shall send the alien instructions that comply with the requirements of § 1003.47(d) regarding the necessary procedures and contemporaneously serve a copy of the instructions with the Board. The Board's notice will also advise the alien of the consequences for failing to comply with the requirements of this section. DHS is responsible for obtaining biometrics and other biographical information to complete or update the identity, law enforcement, or security investigations or examinations with respect to any alien in detention.

(iii) In any case placed on hold under paragraph (d)(6)(ii) of this section, DHS shall report to the Board promptly when the identity, law enforcement, or security investigations or examinations have been completed or updated. If a non-detained alien fails to comply with necessary procedures for collecting biometrics or other biographical information within 90 days of the DHS's instruction notice under paragraph (d)(6)(ii) of this section, if applicable, the Board shall deem the application abandoned unless the alien shows good cause before the 90-day period has elapsed, in which case the alien should be given no more than an additional 30 days to comply with the procedures. If the Board deems an ap-

plication abandoned under this section, it shall adjudicate the remainder of the appeal within 30 days and shall enter an order of removal or a grant of voluntary departure, as appropriate. If DHS obtains relevant information as a result of the identity, law enforcement, or security investigations or examinations, including civil or criminal investigations of immigration fraud, DHS may move the Board to remand the record to the immigration judge for consideration of whether, in view of the new information, any pending applications for immigration relief or protection should be denied, either on grounds of eligibility or, where applicable, as a matter of discretion. If DHS fails to report the results of timely completed or updated identity, law enforcement, or security investigations or examinations within 180 days of the Board's notice under paragraph (d)(6)(ii) of this section, the Board shall remand the case to the immigration judge for further proceedings under § 1003.47(h).

(iv) The Board is not required to hold a case pursuant to paragraph (d)(6)(ii) of this section if the Board decides to dismiss the respondent's appeal or deny the relief or protection sought.

(v) The immigration relief described in 8 CFR 1003.47(b) and granted by the Board shall take effect as provided in 8 CFR 1003.47(i).

(7) *Finality of decision*—(i) *In general.* The decision of the Board shall be final except in those cases reviewed by the Attorney General in accordance with paragraph (h) of this section. In adjudicating an appeal, the Board possesses authority to issue an order of removal, an order granting relief from removal, an order granting protection from removal combined with an order of removal as appropriate, an order granting voluntary departure with an alternate order of removal, and an order terminating or dismissing proceedings, provided that the issuance of any order is consistent with applicable law. The Board may affirm the decision of the immigration judge or DHS on any basis supported by the record. In no case shall the Board order a remand for an immigration judge to issue an order that the Board itself could issue.

(ii) *Remands*. In addition to the possibility of remands regarding information obtained as a result of the identity, law enforcement, or security investigations or examinations under paragraph (d)(6)(iii) of this section, after applying the appropriate standard of review on appeal, the Board may issue an order remanding a case to an immigration judge or DHS for further consideration based on an error of law or fact, subject to any applicable statutory or regulatory limitations, including paragraph (d)(3)(iv)(D) of this section and the following:

(A) The Board shall not remand a case for further action without identifying the standard of review it applied and the specific error or errors made by the adjudicator in paragraphs (d)(7)(ii)(B) through (E) of this section.

(B) The Board shall not remand a case based on the application of a “totality of the circumstances” standard of review.

(C) The Board shall not remand a case based on a legal argument not presented in paragraphs (d)(7)(ii)(D) through (E) of this section unless that argument pertains to an issue of jurisdiction over an application or the proceedings, or to a material change in fact or law underlying a removability ground or grounds specified in section 212 or 237 of the Act that occurred after the date of the immigration judge’s decision, and substantial evidence indicates that change has vitiated all grounds of removability applicable to the alien.

(D) The Board shall not *sua sponte* remand a case unless the basis for such a remand is solely a question of jurisdiction over an application or the proceedings.

(E) The Board shall not remand a case to an immigration judge solely to consider or reconsider a request for voluntary departure nor solely due to the failure of the immigration judge to provide advisals following a grant of voluntary departure. In such situations, the Board shall follow the procedures in §1240.26(k) of this chapter.

(iii) *Scope of the remand*. Where the Board remands a case to an immigration judge, it divests itself of jurisdiction of that case, unless the Board remands a case due to the court’s failure

to forward the administrative record in response to the Board’s request. The Board may qualify or limit the scope or purpose of a remand order without retaining jurisdiction over the case following the remand. In any case in which the Board has qualified or limited the scope or purpose of the remand, the immigration judge shall not consider any issues outside the scope or purpose of that order, unless such an issue calls into question the immigration judge’s continuing jurisdiction over the case.

(iv) *Voluntary departure*. The Board may issue an order of voluntary departure under section 240B of the Act, with an alternate order of removal, if the alien requested voluntary departure before an immigration judge, the alien’s notice of appeal specified that the alien is appealing the immigration judge’s denial of voluntary departure and identified the specific factual and legal findings that the alien is challenging, and the Board finds that the alien is otherwise eligible for voluntary departure, as provided in §1240.26(k) of this chapter. In order to grant voluntary departure, the Board must find that all applicable statutory and regulatory criteria have been met, based on the record and within the scope of its review authority on appeal, and that the alien merits voluntary departure as a matter of discretion. If the Board does not grant the request for voluntary departure, it must deny the request.

(v) *New evidence on appeal*. (A) Subject to paragraph (d)(7)(v)(B), the Board shall not receive or review new evidence submitted on appeal, shall not remand a case for consideration of new evidence received on appeal, and shall not consider a motion to remand based on new evidence. A party seeking to submit new evidence shall file a motion to reopen in accordance with applicable law.

(B) Nothing in paragraph (d)(7)(v)(A) of this section shall preclude the Board from remanding a case based on new evidence or information obtained after the date of the immigration judge’s decision as a result of identity, law enforcement, or security investigations or examinations, including civil or criminal investigations of immigration

fraud, regardless of whether the investigations or examinations were conducted pursuant to §1003.47(h) or paragraph (d)(6) of this section, nor from remanding a case to address a question of jurisdiction over an application or the proceedings or a question regarding a ground or grounds of removability specified in section 212 or 237 of the Act.

(e) *Case management system.* The Chairman shall establish a case management system to screen all cases and to manage the Board's caseload. Unless a case meets the standards for assignment to a three-member panel under paragraph (e)(6) of this section, all cases shall be assigned to a single Board member for disposition. The Chairman, under the supervision of the Director, shall be responsible for the success of the case management system. The Chairman shall designate, from time to time, a screening panel comprising a sufficient number of Board members who are authorized, acting alone, to adjudicate appeals as provided in this paragraph (e). The provisions of this paragraph (e) shall apply to all cases before the Board, regardless of whether they were initiated by filing a Notice of Appeal, filing a motion, or receipt of a remand from Federal court, the Attorney General, or the Director.

(1) *Initial screening.* All cases shall be referred to the screening panel for review upon the filing of a Notice of Appeal or a motion or upon receipt of a remand from a Federal court, the Attorney General, or the Director. Screening panel review shall be completed within 14 days of the filing or receipt. Appeals subject to summary dismissal as provided in paragraph (d)(2) of this section, except for those subject to summary dismissal as provided in paragraph (d)(2)(i)(E) of this section, shall be promptly dismissed no later than 30 days after the Notice of Appeal was filed. Unless referred for a three-member panel decision pursuant to paragraph (e)(6) of this section, an interlocutory appeal shall be adjudicated within 30 days of the filing of the appeal.

(2) *Miscellaneous dispositions.* A single Board member may grant an unopposed motion or a motion to withdraw an ap-

peal pending before the Board. In addition, a single Board member may adjudicate a Service motion to remand any appeal from the decision of a Service officer where the Service requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal; a case where remand is required because of a defective or missing transcript; and other procedural or ministerial issues as provided by the case management plan.

(3) *Merits review.* In any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceedings and transcript, and the issuance of a briefing schedule. A single Board member assigned under the case management system shall determine the appeal on the merits as provided in paragraph (e)(4) or (e)(5) of this section, unless the Board member determines that the case is appropriate for review and decision by a three-member panel under the standards of paragraph (e)(6) of this section. The Board member may summarily dismiss an appeal after completion of the record of proceeding.

(4) *Affirmance without opinion.* (i) The Board member to whom a case is assigned shall affirm the decision of the Service or the immigration judge, without opinion, if the Board member determines that the result reached in the decision under review was correct; that any errors in the decision under review were harmless or nonmaterial; and that

(A) The issues on appeal are squarely controlled by existing Board or federal court precedent and do not involve the application of precedent to a novel factual situation; or

(B) The factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion in the case.

(ii) If the Board member determines that the decision should be affirmed without opinion, the Board shall issue an order that reads as follows: "The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. See 8 CFR 3.1(e)(4)." An order affirming without opinion, issued



under authority of this provision, shall not include further explanation or reasoning. Such an order approves the result reached in the decision below; it does not necessarily imply approval of all of the reasoning of that decision, but does signify the Board's conclusion that any errors in the decision of the immigration judge or the Service were harmless or nonmaterial.

(5) *Other decisions on the merits by single Board member.* If the Board member to whom an appeal is assigned determines, upon consideration of the merits, that the decision is not appropriate for affirmance without opinion, the Board member shall issue a brief order affirming, modifying, or remanding the decision under review, unless the Board member designates the case for decision by a three-member panel under paragraph (e)(6) of this section under the standards of the case management plan. A single Board member may reverse the decision under review if such reversal is plainly consistent with and required by intervening Board or judicial precedent, by an intervening Act of Congress, or by an intervening final regulation. A motion to reconsider or to reopen a decision that was rendered by a single Board member may be adjudicated by that Board member unless the case is reassigned to a three-member panel as provided under the standards of the case management plan.

(6) *Panel decisions.* Cases may only be assigned for review by a three-member panel if the case presents one of these circumstances:

- (i) The need to settle inconsistencies among the rulings of different immigration judges;
- (ii) The need to establish a precedent construing the meaning of laws, regulations, or procedures;
- (iii) The need to review a decision by an immigration judge or DHS that is not in conformity with the law or with applicable precedents;
- (iv) The need to resolve a case or controversy of major national import;
- (v) The need to review a clearly erroneous factual determination by an immigration judge;
- (vi) The need to reverse the decision of an immigration judge or DHS, other than a reversal under § 1003.1(e)(5); or

(vii) The need to resolve a complex, novel, unusual, or recurring issue of law or fact.

(7) *Oral argument.* When an appeal has been taken, a request for oral argument if desired shall be included in the Notice of Appeal. A three-member panel or the Board *en banc* may hear oral argument, as a matter of discretion, at such date and time as is established under the Board's case management plan. Oral argument shall be held at the offices of the Board unless the Deputy Attorney General or his designee authorizes oral argument to be held elsewhere. The Service may be represented before the Board by an officer of the Service designated by the Service. No oral argument will be allowed in a case that is assigned for disposition by a single Board member.

(8) *Timeliness.* The Board shall promptly enter orders of summary dismissal, or other miscellaneous dispositions, in appropriate cases consistent with paragraph (e)(1) of this section. In all other cases, the Board shall promptly order a transcript, if appropriate, within seven days after the screening panel completes its review and shall issue a briefing schedule within seven days after the transcript is provided. If no transcript may be ordered due to a lack of available funding or a lack of vendor capacity, the Chairman shall so certify that fact in writing to the Director. The Chairman shall also maintain a record of all such cases in which transcription cannot be ordered and provide that record to the Director. If no transcript is required, the Board shall issue a briefing schedule within seven days after the screening panel completes its review. The case shall be assigned to a single Board member for merits review under paragraph (e)(3) of this section within seven days of the completion of the record on appeal, including any briefs or motions. The single Board member shall then determine whether to adjudicate the appeal or to designate the case for decision by a three-member panel under paragraphs (e)(5) and (6) of this section within 14 days of being assigned the case. The single Board member or three-member panel to which the case is assigned shall issue a decision on the merits consistent with this section and with a

priority for cases or custody appeals involving detained aliens.

(i) Except in exigent circumstances as determined by the Chairman, subject to concurrence by the Director, or as provided in paragraph (d)(6) of this section or as provided in §§1003.6(c) and 1003.19(i), the Board shall dispose of all cases assigned to a single Board member within 90 days of completion of the record, or within 180 days of completion of the record for all cases assigned to a three-member panel (including any additional opinion by a member of the panel).

(ii) In exigent circumstances, the Chairman may grant an extension in particular cases of up to 60 days as a matter of discretion. Except as provided in paragraph (e)(8)(iii) or (iv) of this section, in those cases where the panel is unable to issue a decision within the established time limits, as extended, the Chairman shall either assign the case to himself or a Vice Chairman for final decision within 14 days or shall refer the case to the Director for decision. If a dissenting or concurring panel member fails to complete his or her opinion by the end of the extension period, the decision of the majority will be issued without the separate opinion. For a case referred to the Director under this paragraph, the Director shall exercise delegated authority from the Attorney General identical to that of the Board as described in this section, including the authority to issue a precedent decision and the authority to refer the case to the Attorney General for review, either on his own or at the direction of the Attorney General.

(iii) In rare circumstances, when an impending decision by the United States Supreme Court or an impending *en banc* Board decision may substantially determine the outcome of a group of cases pending before the Board, the Chairman, subject to concurrence by the Director, may hold the cases until such decision is rendered, temporarily suspending the time limits described in this paragraph (e)(8). The length of such a hold shall not exceed 120 days.

(iv) [Reserved]

(v) The Chairman shall notify the Director of EOIR and the Attorney Gen-

eral if a Board member consistently fails to meet the assigned deadlines for the disposition of appeals, or otherwise fails to adhere to the standards of the case management system. The Chairman shall also prepare a report assessing the timeliness of the disposition of cases by each Board member on an annual basis. The Chairman shall notify the Director of all cases in which an extension under paragraph (e)(8)(ii) of this section, a hold under paragraph (e)(8)(iii) of this section, or any other delay in meeting the requirements of paragraph (e)(8) of this section occurs. For any case still pending adjudication by the Board more than 335 days after the appeal was filed, the motion was filed, or the remand was received and not described in paragraphs (e)(8)(v)(A) through (E) of this section, the Chairman shall refer that case to the Director for decision. For a case referred to the Director under this paragraph (e)(8)(v), the Director shall exercise delegated authority from the Attorney General identical to that of the Board as described in this section, including the authority to issue a precedential decision and the authority to refer the case to the Attorney General for review, either on his own or at the direction of the Attorney General. The Director may not further delegate this authority. For purposes of this paragraph (e)(8)(v), the following categories of cases pending adjudication by the Board more than 335 days after the appeal was filed, the motion was filed, or the remand was received will not be referred by the Chairman to the Director:

(A) Cases subject to a hold under paragraph (d)(6)(ii) of this section;

(B) Cases subject to an extension under paragraph (e)(8)(ii) of this section;

(C) Cases subject to a hold under paragraph (e)(8)(iii) of this section;

(D) Cases whose adjudication has been deferred by the Director pursuant to §1003.0(b)(1)(ii);

(E) Cases remanded by the Director under paragraph (k) of this section in which 335 days have elapsed following the remand; and,

(F) Cases that have been administratively closed prior to the elapse of 335 days after the appeal was filed pursuant to a regulation promulgated by the

Department of Justice or a previous judicially approved settlement that expressly authorizes such an action and the administrative closure causes the pendency of the appeal to exceed 335 days.

(vi) The provisions of this paragraph (e)(8) establishing time limits for the adjudication of appeals reflect an internal management directive in favor of timely dispositions, but do not affect the validity of any decision issued by the Board and do not, and shall not be interpreted to, create any substantive or procedural rights enforceable before any immigration judge or the Board, or in any court of law or equity.

(9) The provisions of paragraphs (e)(4)(i) and (e)(5) and (6) of this section are internal agency directives for the purpose of efficient management and disposition of cases pending before the Board and are not intended to create any substantive or procedural rights to a particular form of Board decision. A decision by the Board under paragraph (e)(4), (5), or (6) of this section carries the presumption that the Board properly and thoroughly considered all issues, arguments, and claims raised or presented by the parties on appeal or in a motion that were deemed appropriate to the disposition of the appeal or motion, whether or not specifically mentioned in the decision. A decision by the Board under paragraph (e)(4), (5), or (6) also carries the presumption that the Board did not need to consider any issue, argument, or claim not raised or presented by the parties on appeal or in a motion to the Board. In any decision under paragraph (e)(5) or (6) of this section, the Board may rule, in the exercise of its discretion as provided under this part, on any issue, argument, or claim not raised by the parties, and the Board may solicit supplemental briefing from the parties on the issues to be considered before rendering a decision.

(f) *Service of Board decisions.* The decision of the Board shall be in writing. The Board shall transmit a copy to DHS and serve a copy upon the alien or the alien's representative, as provided in part 1292 of this chapter.

(g) *Decisions as precedents—(1) In general.* Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the

Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.

(2) *Precedent decisions.* Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security as provided in paragraph (h)(2)(i) of this section will be published and serve as precedents in all proceedings involving the same issue or issues.

(3) *Designation of precedents.* By majority vote of the permanent Board members, or as directed by the Attorney General or his designee, selected decisions of the Board issued by a three-member panel or by the Board *en banc* may be designated to be published and to serve as precedents in all proceedings involving the same issue or issues. In determining whether to publish a precedent decision, the Board may take into account relevant considerations, in the exercise of discretion, including among other matters:

(i) Whether the case involves a substantial issue of first impression;

(ii) Whether the case involves a legal, factual, procedural, or discretionary issue that can be expected to arise frequently in immigration cases;

(iii) Whether the issuance of a precedent decision is needed because the decision announces a new rule of law, or modifies, clarifies, or distinguishes a rule of law or prior precedent;

(iv) Whether the case involves a conflict in decisions by immigration judges, the Board, or the federal courts;

(v) Whether there is a need to achieve, maintain, or restore national uniformity of interpretation of issues under the immigration laws or regulations; and

(vi) Whether the case warrants publication in light of other factors that give it general public interest.

(h) *Referral of cases to the Attorney General.* (1) The Board shall refer to the Attorney General for review of its decision all cases that:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, refers to the Attorney General for review.

(2) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board or Secretary, as appropriate, for transmittal and service as provided in paragraph (f) of this section.

(i) *Publication of Secretary's precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and, upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General.

(j) *Continuation of jurisdiction and procedure.* The jurisdiction of, and procedures before, the Board of Immigration Appeals in exclusion, deportation, removal, rescission, asylum-only, and any other proceedings, shall remain in effect as in effect on February 28, 2003, until the regulations in this chapter are further modified by the Attorney General. Where a decision of an officer of the Immigration and Naturalization Service was, before March 1, 2003, appealable to the Board or to an immigration judge, or an application denied could be renewed in proceedings before an immigration judge, the same authority and procedures shall be followed until further modified by the Attorney General.

(k) *Quality assurance certification.* (1) In any case in which the Board remands a case to an immigration judge or reopens and remands a case to an immigration judge, the immigration

judge may forward that case by certification to the Director for further review only in the following circumstances:

(i) The Board decision contains a typographical or clerical error affecting the outcome of the case;

(ii) The Board decision is clearly contrary to a provision of the Act, any other immigration law or statute, any applicable regulation, or a published, binding precedent;

(iii) The Board decision is vague, ambiguous, internally inconsistent, or otherwise did not resolve the basis for the appeal; or

(iv) A material factor pertinent to the issue(s) before the immigration judge was clearly not considered in the decision.

(2) In order to certify a decision under paragraph (k)(1) of this section, an immigration judge must:

(i) Issue an order of certification within 30 days of the Board decision if the alien is not detained and within 15 days of the Board decision if the alien is detained;

(ii) In the order of certification, specify the regulatory basis for the certification and summarize the underlying procedural, factual, or legal basis; and

(iii) Provide notice of the certification to both parties.

(3) For a case certified to the Director under this paragraph (k), the Director shall exercise delegated authority from the Attorney General identical to that of the Board as described in this section, except as otherwise provided in this paragraph (k), including the authority to request briefing or additional filings from the parties at the sole discretion of the Director, the authority to issue a precedent decision, and the authority to refer the case to the Attorney General for review, either on the Director's own or at the direction of the Attorney General. For a case certified to the Director under this paragraph (k), the Director may dismiss the certification and return the case to the immigration judge or the Director may remand the case back to the Board for further proceedings. In a case certified to the Director under this paragraph (k), the Director may not issue an order of removal, grant a

## § 1003.2

## 8 CFR Ch. V (1–1–23 Edition)

request for voluntary departure, or grant or deny an application for relief or protection from removal.

(4) The quality assurance certification process shall not be used as a basis solely to express disapproval of or disagreement with the outcome of a Board decision unless that decision is alleged to reflect an error described in paragraph (k)(1) of this section.

[23 FR 9117, Nov. 26, 1958]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1003.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 1003.2 Reopening or reconsideration before the Board of Immigration Appeals.

(a) *General.* The Board may at any time reopen or reconsider a case in which it has rendered a decision on its own motion solely in order to correct a ministerial mistake or typographical error in that decision or to reissue the decision to correct a defect in service. In all other cases, the Board may only reopen or reconsider any case in which it has rendered a decision solely pursuant to a motion filed by one or both parties. A request to reopen or reconsider any case in which a decision has been made by the Board, which request is made by the Service, or by the party affected by the decision, must be in the form of a written motion to the Board. The decision to grant or deny a motion to reopen or reconsider is within the discretion of the Board, subject to the restrictions of this section. The Board has discretion to deny a motion to reopen even if the party moving has made out a *prima facie* case for relief.

(b) *Motion to reconsider.* (1) A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority.

(2) A motion to reconsider a decision must be filed with the Board within 30 days after the mailing of the Board decision or on or before July 31, 1996, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider. In removal

proceedings pursuant to section 240 of the Act, an alien may file only one motion to reconsider a decision that the alien is removable from the United States.

(3) A motion to reconsider based solely on an argument that the case should not have been affirmed without opinion by a single Board Member, or by a three-Member panel, is barred.

(c) *Motion to reopen.* (1) A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material. A motion to reopen proceedings for the purpose of submitting an application for relief must be accompanied by the appropriate application for relief and all supporting documentation. A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing; nor shall any motion to reopen for the purpose of affording the alien an opportunity to apply for any form of discretionary relief be granted if it appears that the alien's right to apply for such relief was fully explained to him or her and an opportunity to apply therefore was afforded at the former hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Subject to the other requirements and restrictions of this section, and notwithstanding the provisions in § 1001.1(p) of this chapter, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act (8 U.S.C. 1182(c)) may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(2) Except as provided in paragraph (c)(3) of this section, a party may file only one motion to reopen deportation or exclusion proceedings (whether before the Board or the Immigration Judge) and that motion must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought