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*.

§ 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

to be reopened, or on or before September 30, 1996, whichever is later. Except as provided in paragraph (c)(3) of this section, an alien may file only one motion to reopen removal 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 to be reopened.

(3) In removal proceedings pursuant to section 240 of the Act, the time limitation set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen filed pursuant to the provisions of §1003.23(b)(4)(ii). The time and numerical limitations set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen proceedings:

(i) Filed pursuant to the provisions of §1003.23(b)(4)(iii)(A)(*1*) or §1003.23(b)(4)(iii)(A)(*2*);

(ii) To apply or reapply for asylum or withholding of deportation based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing;

(iii) Agreed upon by all parties and jointly filed. Notwithstanding such agreement, the parties may contest the issues in a reopened proceeding;

(iv) Filed by the Service in exclusion or deportation proceedings when the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum in accordance with §1208.22(f) of this chapter;

(v) For which a three-member panel of the Board agrees that reopening is warranted when the following circumstances are present, provided that a respondent may file only one motion to reopen pursuant to this paragraph (c)(3):

(A) 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 entry of an administratively final order that vitiates all grounds of removability applicable to the alien; and

(B) The movant exercised diligence in pursuing the motion to reopen;

(vi) Filed based on specific allegations, supported by evidence, that the respondent is a United States citizen or national; or

(vii) Filed by DHS in removal proceedings pursuant to section 240 of the Act or in proceedings initiated pursuant to §1208.2(c) of this chapter.

(d) *Departure, deportation, or removal.* A motion to reopen or a motion to reconsider shall not be made by or on behalf of a person who is the subject of exclusion, deportation, or removal proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation or removal of a person who is the subject of exclusion, deportation, or removal proceedings, occurring after the filing of a motion to reopen or a motion to reconsider, shall constitute a withdrawal of such motion.

(e) *Judicial proceedings.* Motions to reopen or reconsider shall state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which an exclusion, deportation, or removal order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject of any pending criminal proceeding under the Act, and, if so, the current status of that proceeding. If a motion to reopen or reconsider seeks discretionary relief, the motion shall include a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is being filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution.

(f) *Stay of deportation.* Except where a motion is filed pursuant to the provisions of §§1003.23(b)(4)(ii) and 1003.23(b)(4)(iii)(A), the filing of a motion to reopen or a motion to reconsider shall not stay the execution of

any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board, the Immigration Judge, or an authorized officer of the Service.

(g) *Filing procedures.* This paragraph applies to the filing of documents related to reopening and reconsideration before the Board.

(1) *English language, entry of appearance, and proof of service requirements.* A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If a party other than DHS is represented, any motion or related filing by that party must be accompanied by a Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, pursuant to 8 CFR 1003.38(g)(1). If a party other than DHS is pro se and receives document assistance from a practitioner with a motion or related filing pursuant to 8 CFR 1003.38(g)(2), a Form EOIR–60 must be filed with the motion or related filing. In all cases, the motion must include proof of service on the opposing party of the motion and all attachments. If the moving party is not DHS, service of the motion must be made upon the DHS office in which the case was completed before the immigration judge.

(2) *Distribution of motion papers.* (i) A motion to reopen or motion to reconsider a decision of the Board pertaining to proceedings before an immigration judge shall be filed directly with the Board. Such motion must be accompanied by a payment in a manner authorized by EOIR or fee waiver request in satisfaction of the fee requirements of § 1003.8. The record of proceeding pertaining to such a motion shall be forwarded to the Board upon the request or order of the Board.

(ii) A motion to reopen or a motion to reconsider a decision of the Board pertaining to a matter initially adjudicated by an officer of DHS shall be filed with the officer of DHS having administrative control over the record of proceeding.

(iii) If the motion is made by DHS in proceedings in which DHS has administrative control over the record of proceedings, the record of proceedings in the case and the motion shall be filed directly with the Board. If such motion is filed directly with an office of DHS, the entire record of proceeding shall be forwarded to the Board by the DHS officer promptly upon receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs.

(3) *Briefs and response.* The moving party may file a brief if it is included with the motion. If the motion is filed directly with the Board pursuant to paragraph (g)(2)(i) of this section, the opposing party shall have 13 days from the date of service of the motion to file a brief in opposition to the motion directly with the Board. If the motion is filed with an office of the Service pursuant to paragraph (g)(2)(ii) of this section, the opposing party shall have 13 days from the date of filing of the motion to file a brief in opposition to the motion directly with the office of the Service. In all cases, briefs and any other filings made in conjunction with a motion shall include proof of service on the opposing party. The Board, in its discretion, may extend the time within which such brief is to be submitted and may authorize the filing of a brief directly with the Board. A motion shall be deemed unopposed unless a timely response is made. The Board may, in its discretion, consider a brief filed out of time.

(4) *Filing parties.* DHS and all attorneys and accredited representatives of record for respondents, applicants, or petitioners are required to electronically file all documents with the Board through EOIR's electronic filing application in all cases eligible for electronic filing. Although not required, unrepresented respondents, applicants, or petitioners; reputable individuals and accredited officials who are the representatives of record; other authorized individuals; and practitioners filing an EOIR–60, may electronically file documents with the Board through EOIR's electronic filing application in cases eligible for electronic filing. An unrepresented respondent, applicant, or petitioner; reputable individual; accredited official; other authorized individual; or practitioner filing an EOIR–60, who elects to use EOIR's electronic filing application shall be required to

register with EOIR as a condition of using that application. If a party not required to file electronically opts to use EOIR's electronic filing application for a case, the individual must electronically file all documents with the Board for that case unless the Board, only upon a motion filed by the individual with good cause shown, grants leave to opt out of using the electronic filing application. Such an individual who has been granted leave to opt out of using EOIR's electronic filing application for a case may not subsequently opt in again to use that application for the same case.

(5) *Filing requirements.* Parties must make the originals of all filed documents available upon request to the Board or the opposing party for review. If EOIR's electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, then the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday. For planned system outages, parties must electronically file documents during system availability within the applicable filing deadline or paper file documents within the applicable filing deadline. EOIR will issue public communications for planned system outages ahead of the scheduled outage. Any planned system outage announced five or fewer business days prior to the start of the outage will be treated as an unplanned outage. The Board retains discretion to accept paper filings in all cases.

(6) *Classified information.* Notwithstanding any other provision of this chapter, classified information is never allowed to be electronically filed.

(7) *Sealed medical documents.* Notwithstanding any other provision of this chapter, parties are not permitted to file electronically any sealed medical documents.

(8) *Signatures.* All documents filed with the Board that require a signature must have an original, handwritten ink signature, an encrypted digital signature, or an electronic signature. Electronic filings submitted through EOIR's electronic filing application that require the user's signature may have a conformed signature. This paragraph (g)(8) is subject to the requirements of the application or document being submitted.

(9) *Service.* The service of filings with the Board depends on whether the documents are filed through EOIR's electronic filing application or in paper.

(i) *Service of electronic filings.* If all parties are using EOIR's electronic filing application in a specific case, the parties do not need to serve a document that is filed through EOIR's electronic filing application on the opposing party. EOIR's electronic filing application will effectuate service by providing a notification of all electronically filed documents on all parties by email. Upon successful upload by one of the parties, EOIR will email a notification to the email addresses provided in paragraph (g)(9)(ii) of this section. If one or more parties are not filing through EOIR's electronic filing application in a specific case, the parties must follow the service procedures in paragraph (g)(9)(iii) of this section.

(ii) *Valid email address.* Use of EOIR's electronic filing application requires a valid email address for electronic service. The Board will use the email address provided through eRegistry for electronic service on participating parties. Users must immediately update their eRegistry account if their email address changes. Representatives must additionally file a new Form EOIR–27 with the Board if their email address changes. EOIR will consider service completed when the electronic notification is delivered to the last email address on file provided by the user.

(iii) *Service of paper filings.* If electronic filing is not being used in a particular case, the party filing with the Board must serve a copy of the filing on the opposing party and include a certificate of service showing service on the opposing party with their filing. If the moving party is not DHS, service of the motion shall be made upon the ICE Office of the Principal Legal Advisor for the field location in which the case was completed before the immigration judge.

(h) *Oral argument.* A request for oral argument, if desired, shall be incorporated in the motion to reopen or reconsider. The Board, in its discretion,

may grant or deny requests for oral argument.

(i) *Ruling on motion.* Rulings upon motions to reopen or motions to reconsider shall be by written order. Any motion for reconsideration or reopening of a decision issued by a single Board member will be referred to the screening panel for disposition by a single Board member, unless the screening panel member determines, in the exercise of judgment, that the motion for reconsideration or reopening should be assigned to a three-member panel under the standards of §1003.1(e)(6). If the order directs a reopening and further proceedings are necessary, the record shall be returned to the Immigration Court or the officer of the Service having administrative control over the place where the reopened proceedings are to be conducted. If the motion to reconsider is granted, the decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

[61 FR 18904, Apr. 29, 1996; 61 FR 32924, June 26, 1996, as amended at 62 FR 10330, Mar. 6, 1997; 64 FR 56142, Oct. 18, 1999; 67 FR 54904, Aug. 26, 2002; 85 FR 81654, Dec. 16, 2020; 86 FR 70719, Dec. 13, 2021; 87 FR 56257, Sept. 14, 2022]

§1003.3 Notice of appeal.

(a) *Filing*—(1) *Appeal from decision of an immigration judge.* A party affected by a decision of an immigration judge which may be appealed to the Board under this chapter shall be given notice of the opportunity for filing an appeal. An appeal from a decision of an immigration judge shall be taken by filing a Notice of Appeal from a Decision of an Immigration Judge (Form EOIR–26) directly with the Board, within the time specified in §1003.38. The appealing parties are only those parties who are covered by the decision of an immigration judge and who are specifically named on the Notice of Appeal. The appeal must reflect proof of service of a copy of the appeal and all attachments on the opposing party. An appeal is not properly filed unless it is received at the Board, along with all required documents, fees or fee waiver requests, and proof of service, within the time specified in the governing sections of this chapter. A Notice of Appeal may not be filed by any party who has waived appeal pursuant to §1003.39.

(2) *Appeal from decision of a DHS officer.* A party affected by a decision of a DHS officer that may be appealed to the Board under this chapter shall be given notice of the opportunity to file an appeal. An appeal from a decision of a DHS officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer (Form EOIR–29) directly with the DHS office having administrative control over the record of proceeding within 30 days of the service of the decision being appealed. An appeal is not properly filed until it is received at the appropriate DHS office, together with all required documents, and the fee provisions of §1003.8 are satisfied.

(3) *General requirements for all appeals.* The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of §1003.8. If the respondent or applicant is represented, pursuant to 8 CFR 1003.38(g)(1), a Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, must be filed with the Notice of Appeal. If the respondent or applicant receives document assistance from a practitioner with the appeal, pursuant to 8 CFR 1003.38(g)(2), a Form EOIR–60 must be filed with the Notice of Appeal. The appeal and all attachments must be in English or accompanied by a certified English translation.

(b) *Statement of the basis of appeal.* The party taking the appeal must identify the reasons for the appeal in the Notice of Appeal (Form EOIR–26 or Form EOIR–29) or in any attachments thereto, in order to avoid summary dismissal pursuant to §1003.1(d)(2)(i). The statement must specifically identify the findings of fact, the conclusions of law, or both, that are being challenged. If a question of law is presented, supporting authority must be cited. If the dispute is over the findings of fact, the specific facts contested must be identified. Where the appeal concerns discretionary relief, the appellant must state whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion and must identify the specific factual and legal