

§ 1003.3

8 CFR Ch. V (1–1–23 Edition)

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

finding or findings that are being challenged. The appellant must also indicate in the Notice of Appeal (Form EOIR-26 or Form EOIR-29) whether he or she desires oral argument before the Board and whether he or she will be filing a separate written brief or statement in support of the appeal. An appellant who asserts that the appeal may warrant review by a three-member panel under the standards of §1003.1(e)(6) may identify in the Notice of Appeal the specific factual or legal basis for that contention.

(c) *Briefs*—(1) *Appeal from decision of an immigration judge*. Briefs in support of or in opposition to an appeal from a decision of an immigration judge shall be filed directly with the Board. In those cases that are transcribed, the briefing schedule shall be set by the Board after the transcript is available. In all cases, the parties shall be provided 21 days in which to file simultaneous briefs unless a shorter period is specified by the Board. Reply briefs shall be permitted only by leave of the Board and only if filed within 14 days of the deadline for the initial briefs. The Board, upon written motion and a maximum of one time per case, may extend the period for filing a brief or, if permitted, a reply brief for up to 14 days for good cause shown. If an extension is granted, it is granted to both parties, and neither party may request a further extension. Nothing in this paragraph (c)(1) shall be construed as creating a right to a briefing extension for any party in any case, and the Board shall not adopt a policy of granting all extension requests without individualized consideration of good cause. In its discretion, the Board may consider a brief that has been filed out of time. In its discretion, the Board may request supplemental briefing from the parties after the expiration of the briefing deadline. All briefs, filings, and motions filed in conjunction with an appeal shall include proof of service on the opposing party.

(2) *Appeal from decision of a DHS officer*. Briefs in support of or in opposition to an appeal from a decision of a DHS officer shall be filed directly with the DHS office having administrative control over the file. The alien and DHS shall be provided 21 days in which

to file a brief, unless a shorter period is specified by the DHS officer from whose decision the appeal is taken, and reply briefs shall be permitted only by leave of the Board. Upon written request of the alien, the DHS officer from whose decision the appeal is taken or the Board may extend the period for filing a brief for good cause shown. The Board may authorize the filing of briefs directly with the Board. In its discretion, the Board may consider a brief that has been filed out of time. All briefs and other documents filed in conjunction with an appeal, unless filed by an alien directly with a DHS office, shall include proof of service on the opposing party.

(d) *Effect of certification*. The certification of a case, as provided in this part, shall not relieve the party affected from compliance with the provisions of this section in the event that he or she is entitled and desires to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal.

(e) *Effect of departure from the United States*. Departure from the United States of a person who is the subject of deportation proceedings, prior to the taking of an appeal from a decision in his or her case, shall constitute a waiver of his or her right to appeal.

(f) *Application on effective date*. All cases and motions pending on September 25, 2002, shall be adjudicated according to the rules in effect on or after that date, except that §1003.1(d)(3)(i) shall not apply to appeals filed before September 25, 2002. A party to an appeal or motion pending on August 26, 2002, may, until September 25, 2002, or the expiration of any briefing schedule set by the Board, whichever is later, submit a brief or statement limited to explaining why the appeal or motion does or does not meet the criteria for three-member review under §1003.1(e)(6).

(g) *Filing*. This paragraph applies to the filing of documents related to appeals before the Board.

(1) *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 to use that application for the same case.

(2) *Filing requirements.* Parties must make the originals of all filed documents available upon request to the Board or to 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 re-

tains discretion to accept paper filings in all cases.

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

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

(5) *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 is subject to the requirements of the application or document being submitted.

(6) *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)(6)(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)(6)(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.

[61 FR 18906, Apr. 29, 1996, as amended at 66 FR 6445, Jan. 22, 2001; 67 FR 54904, Aug. 26, 2002; 85 FR 81654, Dec. 16, 2020; 86 FR 70720, Dec. 13, 2021; 87 FR 56258, Sept. 14, 2022]

§ 1003.4 Withdrawal of appeal.

In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office at which the notice of appeal was filed. If the record in the case has not been forwarded to the Board on appeal in accordance with § 1003.5, the decision made in the case shall be final to the same extent as if no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned and the initial decision shall be final to the same extent as if no appeal had been taken. If a decision on the appeal has been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject of deportation proceedings subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken. Departure from the United States of a person who is the subject of deportation or removal proceedings, except for arriving aliens as defined in § 1001.1(q) of this chapter, subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

[61 FR 18907, Apr. 29, 1996, as amended at 62 FR 10331, Mar. 6, 1997]

§ 1003.5 Forwarding of record on appeal.

(a) *Appeal from decision of an immigration judge.* If an appeal is taken from a decision of an immigration judge, the record of proceeding shall be promptly forwarded to the Board upon the request or the order of the Board, unless the Board already has access to the record of proceeding in electronic format. The Director, in consultation with the Chairman and the Chief Immigration Judge, shall determine the most effective and expeditious way to transcribe proceedings before the immigration judges. The Chairman and the Chief Immigration Judge shall take such steps as necessary to reduce the time required to produce transcripts of those proceedings and to ensure their quality.

(b) *Appeal from decision of a DHS officer.* If an appeal is taken from a decision of a DHS officer, the 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, unless the DHS officer reopens and approves the petition.

[85 FR 81654, Dec. 16, 2020]

§ 1003.6 Stay of execution of decision.

(a) Except as provided under § 236.1 of this chapter, § 1003.19(i), and paragraph (b) of this section, the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

(b) The provisions of paragraph (a) of this section shall not apply to an order of an Immigration Judge under § 1003.23 or § 242.22 of 8 CFR chapter I denying a motion to reopen or reconsider or to stay deportation, except where such order expressly grants a stay or where the motion was filed pursuant to the provisions of § 1003.23(b)(4)(iii). The Board may, in its discretion, stay deportation while an appeal is pending from any such order if no stay has been