of Immigration Appeals. An electronic filing that is accepted by the Board or an immigration court will be deemed filed on the date it was submitted. A paper filing that is accepted by the Board or an immigration court will be deemed filed on the date it was received by the Board or the immigration court. A filing that is rejected by the Board or the immigration court as an improper filing will not be deemed filed on the date it was submitted or received.

(ee) The term *service* means physically presenting, mailing, or electronically providing a document to the appropriate party or parties; except that an Order to Show Cause or Notice of Deportation Hearing shall be served in person to the alien, or by certified mail to the alien or the alien's attorney, and a Notice to Appear shall be served to the alien in person, or if personal service is not practicable, shall be served by regular mail to the alien or the alien's attorney of record.

(ff) The term *practitioner* means an attorney as defined in paragraph (f) of this section who does not represent the Federal Government, or a representative as defined in paragraph (j) of this section.

(gg) The term *noncitizen* means ''alien,'' as defined in section 101(a)(3) of the Act.

(hh) The term *unaccompanied child* means ''unaccompanied alien child,'' as defined in 6 U.S.C. 279(g)(2).

[23 FR 9115, Nov. 26, 1958]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1001.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Sec.

AUTHORITY: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

SOURCE: Redesignated at 68 FR 9830, Feb. 28, 2003.

EDITORIAL NOTE: Nomenclature changes to part 1003 appear at 68 FR 9846, Feb. 28, 2003, and at 68 FR 10350, Mar. 5, 2003.

§ 1003.0 Executive Office for Immigration Review.

(a) *Organization.* Within the Department of Justice, there shall be an Executive Office for Immigration Review (EOIR), headed by a Director who is appointed by the Attorney General. The Director shall be assisted by a Deputy Director and the heads of EOIR's other components, who shall report to the Director and Deputy Director. EOIR shall include the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, the Office of Policy, the Office of the General Counsel, and such other components and staff as the Attorney General or the Director may provide.

(b) *Powers of the Director*—(1) *In general.* The Director shall manage EOIR and its employees and shall be responsible for the direction and supervision of each EOIR component in the execution of its respective duties pursuant to the Act and the provisions of this chapter. Unless otherwise provided by the Attorney General, the Director shall report to the Deputy Attorney General and the Attorney General. The Director shall have the authority to:

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

(ii) Direct the conduct of all EOIR employees 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 adjudicators to cases; and otherwise to manage the docket of matters to be decided by the Board, the immigration judges, the Chief Administrative Hearing Officer, or the administrative law judges;

(iii) Provide for appropriate administrative coordination with the other components of the Department of Justice, with the Department of Homeland Security, with the Department of Health and Human Services, and with the Department of State;

(iv) Evaluate the performance of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, and other EOIR activities, make appropriate reports and inspections, and take corrective action where needed;

(v) Provide for performance appraisals for immigration judges and Board members while fully respecting their roles as adjudicators, including a process for reporting adjudications that reflect temperament problems or poor decisional quality;

(vi) Administer an examination for newly-appointed immigration judges and Board members with respect to their familiarity with key principles of immigration law before they begin to adjudicate matters, and evaluate the temperament and skills of each new immigration judge or Board member within 2 years of appointment;

(vii) Provide for comprehensive, continuing training and support for Board members, immigration judges, and EOIR staff in order to promote the quality and consistency of adjudications;

(viii) Implement a process for receiving, evaluating, and responding to complaints of inappropriate conduct by EOIR adjudicators; and

(ix) Exercise such other authorities as the Attorney General may provide.

(2) *Delegations.* (i) Except as provided in paragraph (b)(2)(ii) of this section, the Director may delegate the authority given to him by this part or otherwise by the Attorney General to the Deputy Director, the Chairman of the Board of Immigration Appeals, the Chief Immigration Judge, the Chief Administrative Hearing Officer, the Assistant Director for Policy, the General Counsel, or any other EOIR employee.

(ii) The Director may not delegate the authority assigned to the Director in §1292.18 of this chapter and may not delegate any other authority to adjudicate cases arising under the Act or regulations of this chapter unless expressly authorized to do so.

(c) *Limit on the authority of the Director.* Except as provided by statute, regulation, or delegation of authority from the Attorney General, or when acting as a designee of the Attorney General, the Director shall have no authority to adjudicate cases arising under the Act or regulations or to direct the result of an adjudication assigned to the Board, an immigration judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge. When acting under authority described in this paragraph (c), the Director shall exercise independent judgment and discretion in considering and determining the cases and may take any action consistent with the Director's authority as is appropriate and necessary for the disposition of the case. Nothing in this part, however, shall be construed to limit the authority of the Director under paragraph (a) or (b) of this section.

(d) *Deputy Director.* The Deputy Director shall advise and assist the Director in the supervision and management of EOIR and the formulation of policy and guidelines. Unless otherwise limited by law or by order of the Director, the Deputy Director shall exercise the full authority of the Director in the discharge of his or her duties.

(e) *Office of Policy.* Within EOIR, there shall be an Office of Policy consisting of an Assistant Director for Policy and other such staff as the Director deems necessary. Subject to the supervision of the Director, the Office of Policy shall provide assistance to the Director and heads of the other components within EOIR.

(1) *In general.* In coordination with the Director and subject to the Director's supervision, the Assistant Director for Policy shall supervise all policy activities of EOIR. Subject to the supervision of the Director and in coordination with other components as appropriate, the Assistant Director for Policy shall also oversee EOIR's regulatory development and implementation process, shall supervise and coordinate EOIR's internal development, dissemination, and implementation of policy guidance, shall supervise and administer EOIR's *pro bono* and legal orientation program activities, shall supervise the provision of legal and policy training to all components within EOIR on all relevant matters under its supervision, and shall perform other such duties or exercise other such authorities as the Director may provide.

(2) *Limit on the Authority of the Assistant Director for Policy.* The Assistant Director for Policy shall have no authority to adjudicate cases arising under the Act or regulations, except under paragraph (e)(3) of this section, and shall not direct the result of an adjudication assigned to the Board, an

immigration judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge; provided, however, that nothing in this part shall be construed to limit the authority of the Assistant Director for Policy under paragraph (e)(1) of this section.

(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; 89 FR 46787, May 29, 2024]

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 28 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, including the authorities described in paragraph (d)(1)(ii) of this section; 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.* Upon the recommendation of the Director, the Attorney General may in his discretion appoint immigration judges, retired Board members, retired immigration judges, and administrative law judges employed within, or retired from, EOIR to serve as temporary Board members for renewable terms not to exceed six months. In addition, upon the recommendation of the Director and with the approval of the Deputy Attorney General, the Attorney General may in his discretion appoint one or more senior EOIR attorneys with at least ten years of experience in the field of immigration law to serve as

temporary Board members for renewable 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, an immigration judge, or the Board may in any case arising under paragraph (b) of this section certify such case to the Board for

adjudication. The Board, in its discretion, may review any such case by certification without regard to the provisions of §1003.7 if it determines that the parties have already been given a fair opportunity to make representations before the Board regarding the case, including the opportunity to request oral argument and to submit a brief.

(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 DHS, 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 necessary or appropriate for the disposition or alternative resolution of the case. Such actions include administrative closure, termination of proceedings, and dismissal of proceedings. The standards for the administrative closure, dismissal, and termination of cases are set forth in paragraph (l) of this section, 8 CFR 1239.2(c), and paragraph (m) of this section, respectively.

(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 de novo all questions arising in appeals from decisions issued by DHS officers.

(iv) Except for taking administrative notice of commonly known facts such as current events or the contents of official documents, the Board will not engage in factfinding in the course of deciding cases. A party asserting that the Board cannot properly resolve an appeal without further factfinding must file a motion for remand. If new evidence is submitted on appeal, that submission may be deemed a motion to remand and considered accordingly. If further factfinding is needed in a particular case, the Board may remand the proceeding to the immigration judge or, as appropriate, to DHS.

(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 are necessary in order to adjudicate the appeal or motion, the Board will provide notice to both parties that 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. The Board's notice will notify the noncitizen that DHS will contact the noncitizen with instructions, consistent with §1003.47(d), to take any additional steps necessary to complete or update the identity, law enforcement, or security investigations or examinations only if DHS is unable to independently update the necessary identity, law enforcement, or security investigations or examinations. The Board's notice will also advise the noncitizen 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 noncitizen 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 DHS obtains relevant information as

a result of the identity, law enforcement, or security investigations or examinations, or if the noncitizen fails to comply with the necessary procedures for collecting biometrics or other biographical information after receiving instructions from DHS under paragraph (d)(6)(ii) of this section, DHS may move the Board to remand the record to the immigration judge for consideration of whether, in view of the new information, or the noncitizen's failure to comply with the necessary procedures for collecting biometrics or other biographical information after receiving instructions from DHS under paragraph (d)(6)(ii) of this section, immigration relief or protection should be denied, either on grounds of ineligibility as a matter of law or 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 from the date of the Board's notice under paragraph (d)(6)(ii) of this section, the Board may continue to hold the case under paragraph (d)(6)(ii) of this section, as needed, or 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 or protection described in § 1003.47(b) and granted by the Board shall take effect as provided in § 1003.47(i).

(7) *Finality of decision.* (i) 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. The Board may return a case to DHS or an immigration judge for such further action as may be appropriate without entering a final decision on the merits of the case.

(ii) In cases involving 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 noncitizen requested voluntary departure before an immigration judge, the noncitizen's notice of appeal specified that the noncitizen is appealing the immigration judge's denial of voluntary departure and identified the specific factual and legal findings that the noncitizen is challenging, and the Board finds that the noncitizen is otherwise eligible for voluntary departure, as provided in 8 CFR 1240.26(k). 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 noncitizen merits voluntary departure as a matter of discretion. If the record does not contain sufficient factual findings regarding eligibility for voluntary departure, the Board may remand the decision to the immigration judge for further factfinding.

(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 or the Attorney General.

(1) *Initial screening.* All cases shall be referred to the screening panel for review. Appeals subject to summary dismissal as provided in paragraph (d)(2) of this section should be promptly dismissed.

(2) *Miscellaneous dispositions.* A single Board member may grant an unopposed motion or a motion to withdraw an appeal pending before the Board. In addition, a single Board member may adjudicate a DHS motion to remand any appeal from the decision of a DHS officer where DHS requests that the matter be remanded to DHS 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 proceeding and transcript, and the issuance of a briefing schedule, as appropriate. A single Board member assigned under the case management system shall determine the appeal on the merits as provided in paragraph (e)(4) or (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 DHS officer 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 1003.1(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 DHS 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 the Deputy Attorney General's designee authorizes oral argument to be held elsewhere. DHS may be represented before the Board by an officer or counsel of DHS designated by DHS. No oral argument will be allowed in a case that is assigned for disposition by a single Board member.

(8) *Timeliness.* As provided under the case management system, 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, after completion of the record on appeal, including any briefs, motions, or other submissions on appeal, the Board member or panel to which the case is assigned shall issue a decision on the merits as soon as practicable, with a priority for cases or custody appeals involving detained noncitizens.

(i) Except in exigent circumstances as determined by the Chairman, or as provided in paragraph (d)(6) of this section, 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 after a case is 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 self-assign the case or assign the case to a Vice Chairman for final decision within 14 days or shall refer the case to the Attorney General for decision. If a dissenting or concurring panel member fails to complete the member's opinion by the end of the extension period, the decision of the majority will be issued without the separate opinion.

(iii) In rare circumstances, such as when an impending decision by the United States Supreme Court or a United States Court of Appeals, or impending Department regulatory amendments, or an impending en banc Board decision may substantially determine the outcome of a case or group of cases pending before the Board, the Chairman may hold the case or cases until such decision is rendered, temporarily suspending the time limits described in this paragraph (e)(8).

(iv) [Reserved]

(v) The Chairman shall notify the Director of EOIR and the Attorney General 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.

(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 noncitizen or the noncitizen's representative, as provided in 8 CFR part 1292.

(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) [Reserved]

(l) *Administrative closure and recalendaring.* Administrative closure is the temporary suspension of a case. Administrative closure removes a case from the Board's docket until the case is recalendared. Recalendaring places a case back on the Board's docket.

(1) *Administrative closure before the Board.* Board Members may, in the exercise of discretion, administratively close a case upon the motion of a party, after applying the standard set forth at paragraph (l)(3) of this section. The administrative closure authority described in this section is not limited by the authority provided in any other provisions in this title that separately authorize or require administrative closure in certain circumstances, including 8 CFR 214.15(l), 245.15(p)(4), 1214.2(a), 1214.3, 1240.62(b), 1240.70(f) through (h), 1245.13, 1245.15(p)(4)(i), and 1245.21(c).

(2) *Recalendaring before the Board.* At any time after a case has been administratively closed under paragraph (l)(1) of this section, the Board may, in the exercise of discretion, recalendar the case pursuant to a party's motion to recalendar. In deciding whether to grant such a motion, the Board shall apply the standard set forth at paragraph (l)(3) of this section.

(3) *Standard for administrative closure and recalendaring.* The Board shall grant a motion to administratively close or recalendar filed jointly by both parties, or filed by one party where the other party has affirmatively indicated its non-opposition, unless the Board articulates unusual, clearly identified, and supported reasons for denying the motion. In all other cases, in deciding whether to administratively close or to recalendar a case, the Board shall consider the totality of the circumstances, including as many of the factors listed under paragraphs (l)(3)(i) and (ii) of this section as are relevant to the particular case. The Board may also consider other factors where appropriate. No single factor is dispositive. The Board, having considered the totality of the circumstances, may grant a motion to administratively close or to recalendar a particular case over the objection of a party. Although administrative closure may be appropriate where a petition, application, or other action is pending outside of proceedings before the Board, such a pending petition, application, or other action is not required for a case to be administratively closed.

(i) As the circumstances of the case warrant, the factors relevant to a decision to administratively close a case include:

(A) The reason administrative closure is sought;

(B) The basis for any opposition to administrative closure;

(C) Any requirement that a case be administratively closed in order for a petition, application, or other action to be filed with, or granted by, DHS;

(D) The likelihood the noncitizen will succeed on any petition, application, or other action that the noncitizen is pursuing, or that the noncitizen states in writing or on the record at a hearing that they plan to pursue, outside of proceedings before the Board;

(E) The anticipated duration of the administrative closure;

(F) The responsibility of either party, if any, in contributing to any current or anticipated delay;

(G) The ultimate anticipated outcome of the case pending before the Board; and

(H) The ICE detention status of the noncitizen.

(ii) As the circumstances of the case warrant, the factors relevant to a decision to recalendar a case include:

(A) The reason recalendaring is sought;

(B) The basis for any opposition to recalendaring;

(C) The length of time elapsed since the case was administratively closed;

(D) If the case was administratively closed to allow the noncitizen to file a

petition, application, or other action outside of proceedings before the Board, whether the noncitizen filed the petition, application, or other action and, if so, the length of time that elapsed between when the case was administratively closed and when the noncitizen filed the petition, application, or other action;

(E) If a petition, application, or other action that was pending outside of proceedings before the Board has been adjudicated, the result of that adjudication;

(F) If a petition, application, or other action remains pending outside of proceedings before the Board, the likelihood the noncitizen will succeed on that petition, application, or other action;

(G) The ultimate anticipated outcome if the case is recalendared; and

(H) The ICE detention status of the noncitizen.

(m) *Termination.* The Board shall have the authority to terminate cases before it as set forth in paragraphs (m)(1) and (2) of this section. A motion to dismiss a case in removal proceedings before the Board for a reason other than authorized by 8 CFR 1239.2(c) shall be deemed a motion to terminate under paragraph (m)(1) of this section.

(1) *Removal, deportation, and exclusion proceedings*—(i) *Mandatory termination.* In removal, deportation, and exclusion proceedings, the Board shall terminate the case where at least one of the requirements in paragraphs (m)(1)(i)(A) through (G) of this section is met.

(A) No charge of deportability, inadmissibility, or excludability can be sustained.

(B) Fundamentally fair proceedings are not possible because the noncitizen is mentally incompetent and adequate safeguards are unavailable.

(C) The noncitizen has, since the initiation of proceedings, obtained United States citizenship.

(D) The noncitizen has, since the initiation of proceedings, obtained at least one status listed in paragraphs (m)(1)(i)(D)(*1*) through (*4*) of this section, provided that the status has not been revoked or terminated, and the noncitizen would not have been deportable, inadmissible, or excludable as charged if the noncitizen had obtained such status before the initiation of proceedings.

(*1*) Lawful permanent resident status.

(*2*) Refugee status.

(*3*) Asylee status.

(*4*) Nonimmigrant status as defined in section 101(a)(15)(S), (T), or (U) of the Act.

(E) Termination is required under 8 CFR 1245.13(l).

(F) Termination is otherwise required by law.

(G) The parties jointly filed a motion to terminate, or one party filed a motion to terminate and the other party affirmatively indicated its non-opposition, unless the Board articulates unusual, clearly identified, and supported reasons for denying the motion.

(ii) *Discretionary termination.* In removal, deportation, or exclusion proceedings, the Board may, in the exercise of discretion, terminate the case upon the motion of a party where at least one of the requirements listed in paragraphs (m)(1)(ii)(A) through (F) of this section is met. The Board shall consider the reason termination is sought and the basis for any opposition to termination when adjudicating the motion to terminate.

(A) The noncitizen has filed an asylum application with USCIS pursuant to section 208(b)(3)(C) of the Act pertaining to unaccompanied children, as defined in 8 CFR 1001.1(hh).

(B) The noncitizen is prima facie eligible for naturalization, relief from removal, or a lawful status; USCIS has jurisdiction to adjudicate the associated petition, application, or other action if the noncitizen were not in proceedings; and the noncitizen has filed the petition, application, or other action with USCIS. However, no filing is required where the noncitizen is prima facie eligible for adjustment of status or naturalization. Where the basis of a noncitizen's motion for termination is that the noncitizen is prima facie eligible for naturalization, the Board shall not grant the motion if it is opposed by DHS. The Board shall not terminate a case for the noncitizen to pursue an asylum application before USCIS, except as provided for in paragraph (m)(1)(ii)(A) of this section.

(C) The noncitizen is a beneficiary of Temporary Protected Status, deferred action, or Deferred Enforced Departure.

(D) USCIS has granted the noncitizen's application for a provisional unlawful presence waiver pursuant to 8 CFR 212.7(e).

(E) Termination is authorized by 8 CFR 1216.4(a)(6) or 1238.1(e).

(F) Due to circumstances comparable to those described in paragraphs (m)(1)(ii)(A) through (E) of this section, termination is similarly necessary or appropriate for the disposition or alternative resolution of the case. However, the Board may not terminate a case for purely humanitarian reasons, unless DHS expressly consents to such termination, joins in a motion to terminate, or affirmatively indicates its non-opposition to a noncitizen's motion.

(2) *Other proceedings*—(i) *Mandatory termination*. In proceedings other than removal, deportation, or exclusion proceedings, the Board shall terminate the case where the parties have jointly filed a motion to terminate, or one party has filed a motion to terminate and the other party has affirmatively indicated its non-opposition, unless the Board articulates unusual, clearly identified, and supported reasons for denying the motion. In addition, the Board shall terminate such a case where required by law.

(ii) *Discretionary termination*. In proceedings other than removal, deportation, or exclusion proceedings, the Board may, in the exercise of discretion, terminate the case upon the motion of a party where terminating the case is necessary or appropriate for the disposition or alternative resolution of the case. However, the Board may not terminate a case for purely humanitarian reasons, unless DHS expressly consents to such termination, joins in a motion to terminate, or affirmatively indicates its non-opposition to a noncitizen's motion.

(iii) *Limitation on termination*. Nothing in paragraphs (m)(2)(i) and (ii) of this section authorizes the Board to terminate a case where prohibited by another regulatory provision. Further, nothing in paragraphs (m)(2)(i) and (ii) of this section authorizes the Board to terminate a case for the noncitizen to pursue an asylum application before USCIS, unless the noncitizen has filed an asylum application with USCIS pursuant to section 208(b)(3)(C) of the Act pertaining to unaccompanied children, as defined in 8 CFR 1001.1(hh).

[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 on its own motion any case in which it has rendered a decision. A request by DHS or by the party affected by the decision to reopen or reconsider a case the Board has decided 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 moving party 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. When a motion to reconsider the decision of an immigration judge or of a DHS officer is pending at the time an appeal is filed with the Board, or when such motion is filed subsequent to the filing with the Board of an appeal from the decision sought to be reconsidered, the motion may be deemed a motion to remand the decision for further proceedings before the immigration judge or the DHS officer from whose decision the appeal was taken. Such motion may be consolidated with and considered by the Board in connection with the appeal to the Board.

(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, a noncitizen may file only one motion to reconsider a decision that the noncitizen 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 noncitizen an opportunity to apply for any form of discretionary relief be granted if it appears that the noncitizen'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 noncitizen 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, a noncitizen 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; or

(iv) Filed by DHS 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 8 CFR 1208.24.

(4) A motion to reopen a decision rendered by an immigration judge or DHS officer that is pending when an appeal is filed, or that is filed while an appeal is pending before the Board, may be deemed a motion to remand for further proceedings before the immigration judge or the DHS officer from whose decision the appeal was taken. Such motion may be consolidated with, and considered by the Board in connection with, the appeal to the Board.

(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 noncitizen 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 (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 DHS officer.

(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 21 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 a DHS office pursuant to paragraph (g)(2)(ii) of this section, the opposing party shall have 21 days from the date of filing of the motion to file a brief in opposition to the motion directly with DHS. 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 DHS officer 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; 89 FR 46790, May 29, 2024]

§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 cases involving noncitizens in custody, 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 21 days of the deadline for the initial briefs. In cases involving noncitizens who are not in custody, the appellant shall be provided 21 days in which to file a brief, unless a shorter period is specified by the Board. The appellee shall have the same period of time in which to file a reply brief that was initially granted to the appellant to file their brief. The time to file a reply brief commences from the date upon which the appellant's brief was due, as originally set or extended by the Board. The Board, upon written motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown. 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 DHS in accordance with the instructions in the decision of the DHS officer. The applicant or petitioner 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 noncitizen, 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 a noncitizen 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 retains 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; 89 FR 46791, May 29, 2024]

§ 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. Where

transcription of an oral decision is required, the immigration judge shall review the transcript and approve the decision within 14 days of receipt, or within 7 days after the immigration judge returns to their duty station if the immigration judge was on leave or detailed to another location. The Chairman and the Chief Immigration Judge shall determine the most effective and expeditious way to transcribe proceedings before the immigration judges, and 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. A DHS officer need not forward such an appeal to the Board, but may reopen and reconsider any decision made by the officer if the new decision will grant the benefit that has been requested in the appeal. The new decision must be served on the appealing party within 45 days of receipt of any briefs or upon expiration of the time allowed for the submission of any briefs. If the new decision is not served within these time limits or the appealing party does not agree that the new decision disposes of the matter, the record of proceeding shall be immediately forwarded to the Board.

[89 FR 46791, May 29, 2024]

§ 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 granted by the Immigration Judge or a Service officer.

(c) The following procedures shall be applicable with respect to custody appeals in which DHS has invoked an automatic stay pursuant to 8 CFR 1003.19(i)(2).

(1) The stay shall lapse if DHS fails to file a notice of appeal with the Board within ten business days of the issuance of the order of the immigration judge. DHS should identify the appeal as an automatic stay case. To preserve the automatic stay, the attorney for DHS shall file with the notice of appeal a certification by a senior legal official that—

(i) The official has approved the filing of the notice of appeal according to review procedures established by DHS; and

(ii) The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent.

(2) The immigration judge shall prepare a written decision explaining the custody determination within five business days after the immigration judge is advised that DHS has filed a notice of appeal, or, with the approval of the Board in exigent circumstances, as soon as practicable thereafter (not to exceed five additional business days). The immigration court shall prepare and submit the record of proceedings without delay.

(3) The Board will track the progress of each custody appeal which is subject to an automatic stay in order to avoid unnecessary delays in completing the record for decision. Each order issued by the Board should identify the appeal as an automatic stay case. The Board shall notify the parties in a timely

manner of the date the automatic stay is scheduled to expire.

(4) If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal. However, if the Board grants a motion by the alien for an enlargement of the 21-day briefing schedule provided in §1003.3(c), the Board's order shall also toll the 90-day period of the automatic stay for the same number of days.

(5) DHS may seek a discretionary stay pursuant to 8 CFR 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay. DHS may submit a motion for discretionary stay at any time after the filing of its notice of appeal of the custody decision, and at a reasonable time before the expiration of the period of the automatic stay, and the motion may incorporate by reference the arguments presented in its brief in support of the need for continued detention of the alien during the pendency of the removal proceedings. If DHS has submitted such a motion and the Board is unable to resolve the custody appeal within the period of the automatic stay, the Board will issue an order granting or denying a motion for discretionary stay pending its decision on the custody appeal. The Board shall issue guidance to ensure prompt adjudication of motions for discretionary stays. If the Board fails to adjudicate a previously-filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary stay.

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

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

§1003.7 Notice of certification.

Whenever, in accordance with the provisions of §1003.1(c), a case is certified to the Board, the noncitizen or other party affected shall be given notice of certification. An immigration judge or DHS officer may certify a case only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is rendered that the case will be certified, the office of DHS or the Immigration Court having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice shall inform the parties that the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of DHS or the Immigration Court having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in §1003.3(c). The case shall be certified and forwarded to the Board by the office of DHS or Immigration Court having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the

time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date the Board declined to accept the case.

[61 FR 18907, Apr. 29, 1996, as amended at 85 FR 81655, Dec. 16, 2020; 89 FR 46791, May 29, 2024]

§ 1003.8 Fees before the Board.

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

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

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

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

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

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

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

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

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

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

(3) *When a fee may be waived.* The Board has the discretion to waive a fee for an appeal, motion to reconsider, or motion to reopen upon a showing that the filing party is unable to pay the fee. Fee waivers shall be requested through the filing of a Fee Waiver Request (Form EOIR–26A), including the declaration to be signed under penalty of perjury substantiating the filing party's inability to pay the fee. The fee waiver request shall be filed along with the Notice of Appeal or the motion. If the fee waiver request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed, provided the Board grants 15 days to re-file the rejected document with the filing fee or new fee waiver request and tolls any applicable filing deadline during the 15-day cure period.

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

(i) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, the fee for filing an appeal or motion with the Board shall be paid by check, money order, or electronic payment in a manner and form authorized by the Executive Office for Immigration Review. When paid by check or money order, the fee shall be payable to the ''United States Department of Justice,'' drawn on a bank or other institution that is located within the United States, and payable in United States currency. The check or money order shall bear the full name and alien registration number of the alien. A payment that is uncollectible does not satisfy a fee requirement.

(ii) *Appeals from Department of Homeland Security decisions.* The fee for filing an appeal, within the jurisdiction of the Board, from the decision of a Department of Homeland Security officer shall be paid to the Department of Homeland Security in accordance with § 1103.7(b).

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

application fee shall be paid in the manner specified in 8 CFR 1003.24(c)(1).

[69 FR 44906, July 28, 2004, as amended at 85 FR 81750, Dec. 16, 2020; 85 FR 82793, Dec. 18, 2020; 86 FR 70721, Dec. 13, 2021]

Subpart B—Office of the Chief Immigration Judge

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

§ 1003.9 Office of the Chief Immigration Judge.

(a) *Organization.* Within the Executive Office for Immigration Review, there shall be an Office of the Chief Immigration Judge (OCIJ), consisting of the Chief Immigration Judge, the immigration judges, and such other staff as the Director deems necessary. The Attorney General shall appoint the Chief Immigration Judge. The Director may designate immigration judges to serve as Deputy and Assistant Chief Immigration Judges as may be necessary to assist the Chief Immigration Judge in the management of the OCIJ.

(b) *Powers of the Chief Immigration Judge.* Subject to the supervision of the Director, the Chief Immigration Judge shall be responsible for the supervision, direction, and scheduling of the immigration judges in the conduct of the hearings and duties assigned to them. The Chief Immigration Judge shall have the authority to:

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

(2) Provide for appropriate training of the immigration judges and other OCIJ staff on the conduct of their powers and duties;

(3) Direct the conduct of all employees assigned to OCIJ 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 immigration judges to cases, and otherwise to manage the docket of matters to be decided by the immigration judges;

(4) Evaluate the performance of the Immigration Courts and other OCIJ activities by making appropriate reports and inspections, and take corrective action where needed;

(5) Adjudicate cases as an immigration judge, including the authorities described in § 1003.10(b); and

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

(c) *Limit on the Authority of the Chief Immigration Judge.* The Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to another immigration judge, provided, however, that nothing in this part shall be construed to limit the authority of the Chief Immigration Judge in paragraph (b) of this section.

(d) *Immigration Court.* The term Immigration Court shall refer to the local sites of the OCIJ where proceedings are held before immigration judges and where the records of those proceedings are created and maintained.

[72 FR 53677, Sept. 20, 2007, as amended at 89 FR 46792, May 29, 2024]

§ 1003.10 Immigration judges.

(a) *Appointment.* The immigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them.

(b) *Powers and duties.* In conducting hearings under section 240 of the Act and such other proceedings the Attorney General may assign to them, immigration judges shall exercise the powers and duties delegated to them by the Act and by the Attorney General through regulation. In deciding the individual cases before them, and subject to the applicable governing standards set forth in paragraph (d) of this section, immigration judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is necessary or appropriate for the disposition or alternative resolution of such cases. Such actions include administrative closure, termination of proceedings,

and dismissal of proceedings. The standards for the administrative closure, dismissal, and termination of cases are set forth in § 1003.18(c), 8 CFR 1239.2(c), and § 1003.18(d), respectively. Immigration judges shall administer oaths, receive evidence, and interrogate, examine, and cross-examine noncitizens and any witnesses. Subject to §§ 1003.35 and 1287.4 of this chapter, they may issue administrative subpoenas for the attendance of witnesses and the presentation of evidence. In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations. In the absence of exceptional circumstances, an immigration judge shall complete administrative adjudication of an asylum application within 180 days after the date an application is filed. For purposes of this paragraph (b) and of §§ 1003.29 and 1240.6 of this chapter, the term *exceptional circumstances* refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the party or immigration judge, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the parties or the immigration court. A finding of good cause does not necessarily mean that an exceptional circumstance has also been established.

(c) *Review.* Decisions of immigration judges are subject to review by the Board of Immigration Appeals in any case in which the Board has jurisdiction as provided in 8 CFR 1003.1.

(d) *Governing standards.* Immigration judges shall be governed by the provisions and limitations prescribed by the Act and this chapter, by the decisions of the Board, and by 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).

(e) *Temporary immigration judges*—(1) *Designation.* The Director is authorized to designate or select temporary immigration judges as provided in this paragraph (e).

(i) The Director may designate or select, with the approval of the Attorney General, former Board members, former immigration judges, administrative law judges employed within or retired from EOIR, and administrative law judges from other Executive Branch agencies to serve as temporary immigration judges for renewable terms not to exceed six months. Administrative law judges from other Executive Branch agencies must have the consent of their agencies to be designated as temporary immigration judges.

(ii) In addition, the Director may designate, with the approval of the Attorney General, Department of Justice attorneys with at least 10 years of legal experience in the field of immigration law to serve as temporary immigration judges for renewable terms not to exceed six months.

(2) *Authority.* A temporary immigration judge shall have the authority of an immigration judge to adjudicate assigned cases and administer immigration court matters, as provided in the immigration laws and regulations, subject to paragraph (e)(3) of this section.

(3) *Assignment of temporary immigration judges.* The Chief Immigration Judge is responsible for the overall oversight and management of the utilization of temporary immigration judges and for evaluating the results of the process. The Chief Immigration Judge shall ensure that each temporary immigration judge has received a suitable level of training to enable the temporary immigration judge to carry out the duties assigned.

[72 FR 53677, Sept. 20, 2007, as amended at 79 FR 39956, July 11, 2014; 85 FR 81655, 81750, Dec. 16, 2020; 89 FR 46792, May 29, 2024]

§ 1003.11 Administrative control Immigration Courts.

An administrative control Immigration Court is one that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area. All documents and correspondence pertaining to a Record of Proceeding shall be filed with the Immigration Court having administrative control over that Record of Proceeding and shall not be filed with any other Immigration Court. A list of the administrative control Immigration

Courts with their assigned geographical areas will be made available to the public at any Immigration Court.

Subpart C—Immigration Court—Rules of Procedure

§ 1003.12 Scope of rules.

These rules are promulgated to assist in the expeditious, fair, and proper resolution of matters coming before Immigration Judges. Except where specifically stated, the rules in this subpart apply to matters before Immigration Judges, including, but not limited to, deportation, exclusion, removal, bond, rescission, departure control, asylum proceedings, and disciplinary proceedings under this part 3. The sole procedures for review of credible fear determinations by Immigration Judges are provided for in § 1003.42.

[57 FR 11571, Apr. 6, 1992, as amended at 62 FR 10331, Mar. 6, 1997; 65 FR 39526, June 27, 2000]

§ 1003.13 Definitions.

As used in this subpart:

Administrative control means custodial responsibility for the Record of Proceeding as specified in § 1003.11.

Charging document means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien. For proceedings initiated after April 1, 1997, these documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

[62 FR 10332, Mar. 6, 1997, as amended at 86 FR 70722, Dec. 13, 2021]

§ 1003.14 Jurisdiction and commencement of proceedings.

(a) Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service. The charging document must include a certificate showing service on the opposing party pursuant to § 1003.32 which indicates the Immigration Court in which the charging document is filed. However, no charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to §§ 1003.19, 1236.1(d) and 1240.2(b) of this chapter.

(b) When an Immigration Judge has jurisdiction over an underlying proceeding, sole jurisdiction over applications for asylum shall lie with the Immigration Judge.

(c) Immigration Judges have jurisdiction to administer the oath of allegiance in administrative naturalization ceremonies conducted by the Service in accordance with § 1337.2(b) of this chapter.

(d) The jurisdiction of, and procedures before, immigration judges in exclusion, deportation and removal, rescission, asylum-only, and any other proceedings shall remain in effect as it was 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 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.

[57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995; 62 FR 10332, Mar. 6, 1997. Redesignated and amended at 68 FR 9830, 9832, Feb. 28, 2003]

§ 1003.15 Contents of the order to show cause and notice to appear and notification of change of address.

(a) In the Order to Show Cause, the Service shall provide the following administrative information to the Executive Office for Immigration Review. Omission of any of these items shall not provide the alien with any substantive or procedural rights:

(1) The alien's names and any known aliases;

(2) The alien's address;

(3) The alien's registration number, with any lead alien registration number with which the alien is associated;

(4) The alien's alleged nationality and citizenship;

(5) The language that the alien understands;

(b) The Order to Show Cause and Notice to Appear must also include the following information:

(1) The nature of the proceedings against the alien;

(2) The legal authority under which the proceedings are conducted;

(3) The acts or conduct alleged to be in violation of law;

(4) The charges against the alien and the statutory provisions alleged to have been violated;

(5) Notice that the alien may be represented, at no cost to the government, by counsel or other representative authorized to appear pursuant to 8 CFR 1292.1;

(6) The address of the Immigration Court where the Service will file the Order to Show Cause and Notice to Appear; and

(7) A statement that the alien must advise the Immigration Court having administrative control over the Record of Proceeding of his or her current address and telephone number and a statement that failure to provide such information may result in an *in absentia* hearing in accordance with §1003.26.

(c) *Contents of the Notice to Appear for removal proceedings.* In the Notice to Appear for removal proceedings, the Service shall provide the following administrative information to the Immigration Court. Failure to provide any of these items shall not be construed as affording the alien any substantive or procedural rights.

(1) The alien's names and any known aliases;

(2) The alien's address;

(3) The alien's registration number, with any lead alien registration number with which the alien is associated;

(4) The alien's alleged nationality and citizenship; and

(5) The language that the alien understands.

(d) *Address and telephone number.* (1) If the alien's address is not provided on the Order to Show Cause or Notice to Appear, or if the address on the Order to Show Cause or Notice to Appear is incorrect, the alien must provide to the Immigration Court where the charging document has been filed, within five days of service of that document, a written notice of an address and telephone number at which the alien can be contacted. The alien may satisfy this requirement by completing and filing Form EOIR–33.

(2) Within five days of any change of address, the alien must provide written notice of the change of address on Form EOIR–33 to the Immigration Court where the charging document has been filed, or if venue has been changed, to the Immigration Court to which venue has been changed.

[57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995; 62 FR 10332, Mar. 6, 1997]

§1003.16 Representation.

(a) The government may be represented in proceedings before an Immigration Judge.

(b) The alien may be represented in proceedings before an Immigration Judge by an attorney or other representative of his or her choice in accordance with 8 CFR part 1292, at no expense to the government.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 62 FR 10332, Mar. 6, 1997]

§1003.17 Entry of appearance.

(a) *Entering an appearance using Form EOIR–28.* A practitioner must enter an appearance in proceedings before an immigration court using Form EOIR–28 to perform the functions of and become the practitioner of record. The practitioner of record is authorized and required to appear in immigration court on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings. The practitioner may enter an appearance to be the practitioner of record for all proceedings before the immigration court, or for custody and bond proceedings only, or for all proceedings other than custody and bond proceedings. A practitioner's entry of appearance in only a custody or bond proceeding shall be separate and apart

from an entry of appearance in any proceeding other than custody or bond before the immigration court. The Form EOIR–28 must indicate whether the practitioner's entry of appearance is for all proceedings, for custody and bond proceedings only, or for all proceedings other than custody and bond proceedings.

(1) *Filing Form EOIR–28.* The practitioner must file a copy of the Form EOIR–28 with the immigration court and serve a copy on DHS as required by 8 CFR 1003.32. The practitioner must file and serve a Form EOIR–28 even if the practitioner has previously filed a separate Notice of Entry of Appearance with DHS for appearances before DHS or previously entered a limited appearance using Form EOIR–61 in connection with document assistance under paragraph (b) of this section.

(2) *Effect of Filing Form EOIR–28.* A practitioner who enters an appearance using Form EOIR–28 is the practitioner of record and must appear in immigration court on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5. Filing a Form EOIR–28 provides the practitioner with access to the record of proceedings during the course of proceedings. A respondent shall be considered represented for the proceedings in which an EOIR–28 has been filed.

(3) *Withdrawal or substitution.* A practitioner who enters an appearance on behalf of a respondent before the immigration court by filing a Form EOIR–28 remains the practitioner of record unless an immigration judge permits withdrawal or substitution during proceedings upon oral or written motion submitted without fee.

(b) *Entering a limited appearance for document assistance using Form EOIR–61.* A practitioner who provides assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed with the immigration court, regardless of whether such assistance is considered ''practice'' or ''preparation'' as defined in 8 CFR 1001.1, must disclose such limited assistance to the immigration court using Form EOIR–61, unless pursuant to paragraph (a) the practitioner has filed a Form EOIR–28 to become the practitioner of record.

(1) *Filing Form EOIR–61.* A Form EOIR–61 must not be filed as a standalone document. The single Form EOIR–61 must be filed with the immigration court at the same time as the document or set of documents with which the practitioner assisted. Any subsequent filing of a document or set of documents with which a practitioner assisted must be accompanied by a new Form EOIR–61.

(2) *Effect of Filing Form EOIR–61.* A practitioner who enters a limited appearance using Form EOIR–61 is not the practitioner of record, is not required to appear on behalf of respondent before the immigration court, and is not required to submit a motion to withdraw or substitute. The submission of a Form EOIR–61 does not create additional ongoing obligations between the practitioner, the respondent, and EOIR. An appearance through Form EOIR–61 does not provide the practitioner with access to the record of proceedings. A respondent who received assistance pursuant to this paragraph is not represented, remains pro se, and is subject to service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5.

(c) *Completing an appearance form, proof of qualification, disclosure requirements, and identification.* The practitioner must properly complete and sign any Form EOIR–28 or Form EOIR–61, as required by the form instructions. A practitioner's personal appearance or signature on the Form EOIR–28 or Form EOIR–61 constitutes an attestation that the person is authorized and qualified to appear as a practitioner in accordance with §1292.1. Further proof that the practitioner meets the qualifications of a practitioner as defined in §1292.1 may be required. The completion of a Form EOIR–28 or Form EOIR–61 in connection with an application or form that requires disclosure of the preparer does not relieve a practitioner from complying with the particular disclosure requirements of the application or form. Notwithstanding the completion of a Form EOIR–28 or Form

EOIR–61, the practitioner must identify themselves by name, accompanied by their signature, on any document filed or intended to be filed with the immigration court pursuant to an appearance under paragraph (a) or (b).

[87 FR 56258, Sept. 14, 2022]

§ 1003.18 Docket management.

(a) *Scheduling.* The Immigration Court shall be responsible for scheduling cases and providing notice to the government and the alien of the time, place, and date of hearings.

(b) *Notice.* In removal proceedings pursuant to section 240 of the Act, the Service shall provide in the Notice to Appear, the time, place and date of the initial removal hearing, where practicable. If that information is not contained in the Notice to Appear, the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice to the government and the alien of the time, place, and date of hearing. In the case of any change or postponement in the time and place of such proceeding, the Immigration Court shall provide written notice to the alien specifying the new time and place of the proceeding and the consequences under section 240(b)(5) of the Act of failing, except under exceptional circumstances as defined in section 240(e)(1) of the Act, to attend such proceeding. No such notice shall be required for an alien not in detention if the alien has failed to provide the address required in section 239(a)(1)(F) of the Act.

(c) *Administrative closure and recalendaring.* Administrative closure is the temporary suspension of a case. Administrative closure removes a case from the immigration court's active calendar until the case is recalendared. Recalendaring places a case back on the immigration court's active calendar.

(1) *Administrative closure before immigration judges.* An immigration judge may, in the exercise of discretion, administratively close a case upon the motion of a party, after applying the standard set forth at paragraph (c)(3) of this section. The administrative closure authority described in this section is not limited by the authority provided in any other provisions in this title that separately authorize or require administrative closure in certain circumstances, including 8 CFR 214.15(l), 245.15(p)(4), 1214.2(a), 1214.3, 1240.62(b), 1240.70(f) through (h), 1245.13, 1245.15(p)(4)(i), and 1245.21(c).

(2) *Recalendaring before immigration judges.* At any time after a case has been administratively closed under paragraph (c)(1) of this section, an immigration judge may, in the exercise of discretion, recalendar the case pursuant to a party's motion to recalendar. In deciding whether to grant such a motion, the immigration judge shall apply the standard set forth at paragraph (c)(3) of this section.

(3) *Standard for administrative closure and recalendaring.* An immigration judge shall grant a motion to administratively close or recalendar filed jointly by both parties, or filed by one party where the other party has affirmatively indicated its non-opposition, unless the immigration judge articulates unusual, clearly identified, and supported reasons for denying the motion. In all other cases, in deciding whether to administratively close or to recalendar a case, an immigration judge shall consider the totality of the circumstances, including as many of the factors listed under paragraphs (c)(3)(i) and (ii) of this section as are relevant to the particular case. The immigration judge may also consider other factors where appropriate. No single factor is dispositive. The immigration judge, having considered the totality of the circumstances, may grant a motion to administratively close or to recalendar a particular case over the objection of a party. Although administrative closure may be appropriate where a petition, application, or other action is pending outside of proceedings before the immigration judge, such a pending petition, application, or other action is not required for a case to be administratively closed.

(i) As the circumstances of the case warrant, the factors relevant to a decision to administratively close a case include:

(A) The reason administrative closure is sought;

(B) The basis for any opposition to administrative closure;

(C) Any requirement that a case be administratively closed in order for a petition, application, or other action to be filed with, or granted by, DHS;

(D) The likelihood the noncitizen will succeed on any petition, application, or other action that the noncitizen is pursuing, or that the noncitizen states in writing or on the record at a hearing that they plan to pursue, outside of proceedings before the immigration judge;

(E) The anticipated duration of the administrative closure;

(F) The responsibility of either party, if any, in contributing to any current or anticipated delay;

(G) The ultimate anticipated outcome of the case pending before the immigration judge; and

(H) The ICE detention status of the noncitizen.

(ii) As the circumstances of the case warrant, the factors relevant to a decision to recalendar a case include:

(A) The reason recalendaring is sought;

(B) The basis for any opposition to recalendaring;

(C) The length of time elapsed since the case was administratively closed;

(D) If the case was administratively closed to allow the noncitizen to file a petition, application, or other action outside of proceedings before the immigration judge, whether the noncitizen filed the petition, application, or other action and, if so, the length of time that elapsed between when the case was administratively closed and when the noncitizen filed the petition, application, or other action;

(E) If a petition, application, or other action that was pending outside of proceedings before the immigration judge has been adjudicated, the result of that adjudication;

(F) If a petition, application, or other action remains pending outside of proceedings before the immigration judge, the likelihood the noncitizen will succeed on that petition, application, or other action;

(G) The ultimate anticipated outcome if the case is recalendared; and

(H) The ICE detention status of the noncitizen.

(d) *Termination.* Immigration judges shall have the authority to terminate cases before them as set forth in paragraphs (d)(1) and (2) of this section. A motion to dismiss a case in removal proceedings before an immigration judge for a reason other than authorized by 8 CFR 1239.2(c) shall be deemed a motion to terminate under paragraph (d)(1) of this section.

(1) *Removal, deportation, and exclusion proceedings*—(i) *Mandatory termination.* In removal, deportation, and exclusion proceedings, immigration judges shall terminate the case where at least one of the requirements in paragraphs (d)(1)(i)(A) through (G) of this section is met.

(A) No charge of deportability, inadmissibility, or excludability can be sustained.

(B) Fundamentally fair proceedings are not possible because the noncitizen is mentally incompetent and adequate safeguards are unavailable.

(C) The noncitizen has, since the initiation of proceedings, obtained United States citizenship.

(D) The noncitizen has, since the initiation of proceedings, obtained at least one status listed in paragraphs (d)(1)(i)(D)(*1*) through (*4*) of this section, provided that the status has not been revoked or terminated, and the noncitizen would not have been deportable, inadmissible, or excludable as charged if the noncitizen had obtained such status before the initiation of proceedings.

(*1*) Lawful permanent resident status.

(*2*) Refugee status.

(*3*) Asylee status.

(*4*) Nonimmigrant status as defined in section 101(a)(15)(S), (T), or (U) of the Act.

(E) Termination is required under 8 CFR 1245.13(l).

(F) Termination is otherwise required by law.

(G) The parties jointly filed a motion to terminate, or one party filed a motion to terminate and the other party affirmatively indicated its non-opposition, unless the immigration judge articulates unusual, clearly identified, and supported reasons for denying the motion.

(ii) *Discretionary termination.* In removal, deportation, or exclusion proceedings, immigration judges may, in the exercise of discretion, terminate

the case upon the motion of a party where at least one of the requirements listed in paragraphs (d)(1)(ii)(A) through (F) of this section is met. The immigration judge shall consider the reason termination is sought and the basis for any opposition to termination when adjudicating the motion to terminate.

(A) The noncitizen has filed an asylum application with USCIS pursuant to section 208(b)(3)(C) of the Act pertaining to unaccompanied children, as defined in 8 CFR 1001.1(hh).

(B) The noncitizen is prima facie eligible for naturalization, relief from removal, or lawful status; USCIS has jurisdiction to adjudicate the associated petition, application, or other action if the noncitizen were not in proceedings; and the noncitizen has filed the petition, application, or other action with USCIS. However, no filing is required where the noncitizen is prima facie eligible for adjustment of status or naturalization. Where the basis of a noncitizen's motion for termination is that the noncitizen is prima facie eligible for naturalization, the immigration judge shall not grant the motion if it is opposed by DHS. Immigration judges shall not terminate a case for the noncitizen to pursue an asylum application before USCIS, except as provided for in paragraph (d)(1)(ii)(A) of this section.

(C) The noncitizen is a beneficiary of Temporary Protected Status, deferred action, or Deferred Enforced Departure.

(D) USCIS has granted the noncitizen's application for a provisional unlawful presence waiver pursuant to 8 CFR 212.7(e).

(E) Termination is authorized by 8 CFR 1216.4(a)(6) or 1238.1(e).

(F) Due to circumstances comparable to those described in paragraphs (d)(1)(ii)(A) through (E) of this section, termination is similarly necessary or appropriate for the disposition or alternative resolution of the case. However, immigration judges may not terminate a case for purely humanitarian reasons, unless DHS expressly consents to such termination, joins in a motion to terminate, or affirmatively indicates its non-opposition to a noncitizen's motion.

(2) *Other proceedings*—(i) *Mandatory termination.* In proceedings other than removal, deportation, or exclusion proceedings, immigration judges shall terminate the case where the parties have jointly filed a motion to terminate, or one party has filed a motion to terminate and the other party has affirmatively indicated its non-opposition, unless the immigration judge articulates unusual, clearly identified, and supported reasons for denying the motion. In addition, immigration judges shall terminate such a case where required by law.

(ii) *Discretionary termination.* In proceedings other than removal, deportation, or exclusion proceedings, immigration judges may, in the exercise of discretion, terminate the case upon the motion of a party where terminating the case is necessary or appropriate for the disposition or alternative resolution of the case. However, immigration judges may not terminate a case for purely humanitarian reasons, unless DHS expressly consents to such termination, joins in a motion to terminate, or affirmatively indicates its non-opposition to a noncitizen's motion.

(iii) *Limitation on termination.* Nothing in paragraphs (d)(2)(i) and (ii) of this section authorizes immigration judges to terminate a case where prohibited by another regulatory provision. Further, nothing in paragraphs (d)(2)(i) and (ii) of this section authorizes the immigration judge to terminate a case for the noncitizen to pursue an asylum application before USCIS, unless the noncitizen has filed an asylum application with USCIS pursuant to section 208(b)(3)(C) of the Act pertaining to unaccompanied children, as defined in 8 CFR 1001.1(hh).

[62 FR 10332, Mar. 6, 1997, as amended at 89 FR 46792, May 29, 2024]

§ 1003.19 Custody/bond.

(a) Custody and bond determinations made by the service pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge pursuant to 8 CFR part 1236.

(b) Application for an initial bond redetermination by a respondent, or his or her attorney or representative, may be made orally, in writing, or, at the

discretion of the Immigration Judge, by telephone.

(c) Applications for the exercise of authority to review bond determinations shall be made to one of the following offices, in the designated order:

(1) If the respondent is detained, to the Immigration Court having jurisdiction over the place of detention;

(2) To the Immigration Court having administrative control over the case; or

(3) To the Office of the Chief Immigration Judge for designation of an appropriate Immigration Court.

(d) Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding. The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service.

(e) After an initial bond redetermination, an alien's request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination.

(f) The determination of an Immigration Judge with respect to custody status or bond redetermination shall be entered on the appropriate form at the time such decision is made and the parties shall be informed orally or in writing of the reasons for the decision. An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to §1003.38.

(g) While any proceeding is pending before the Executive Office for Immigration Review, the Service shall immediately advise the Immigration Court having administrative control over the Record of Proceeding of a change in the respondent/applicant's custody location or of release from Service custody, or subsequent taking into Service custody, of a respondent/applicant. This notification shall be in writing and shall state the effective date of the change in custody location or status, and the respondent/applicant's current fixed street address, including zip code.

(h)(1)(i) While the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub. L. 104–208 remain in effect, an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens:

(A) Aliens in exclusion proceedings;

(B) Arriving aliens in removal proceedings, including persons paroled after arrival pursuant to section 212(d)(5) of the Act;

(C) Aliens described in section 237(a)(4) of the Act;

(D) Aliens subject to section 303(b)(3)(A) of Pub. L. 104–208 who are not ''lawfully admitted'' (as defined in §1236.1(c)(2) of this chapter); or

(E) Aliens designated in §1236.1(c) of this chapter as ineligible to be considered for release.

(ii) Nothing in this paragraph shall be construed as prohibiting an alien from seeking a redetermination of custody conditions by the Service in accordance with part 1235 or 1236 of this chapter. In addition, with respect to paragraphs (h)(1)(i)(C), (D), and (E) of this section, nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an immigration judge that the alien is not properly included within any of those paragraphs.

(2)(i) Upon expiration of the Transition Period Custody Rules set forth in section 303(b)(3) of Div. C. of Pub. L. 104–208, an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens:

(A) Aliens in exclusion proceedings;

(B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act;

(C) Aliens described in section 237(a)(4) of the Act;

(D) Aliens in removal proceedings subject to section 236(c)(1) of the Act (as in effect after expiration of the Transition Period Custody Rules); and

(E) Aliens in deportation proceedings subject to section 242(a)(2) of the Act (as in effect prior to April 1, 1997, and

as amended by section 440(c) of Pub. L. 104–132).

(ii) Nothing in this paragraph shall be construed as prohibiting an alien from seeking a redetermination of custody conditions by the Service in accordance with part 1235 or 1236 of this chapter. In addition, with respect to paragraphs (h)(2)(i)(C), (D), and (E) of this section, nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an immigration judge that the alien is not properly included within any of those paragraphs.

(3) Except as otherwise provided in paragraph (h)(1) of this section, an alien subject to section 303(b)(3)(A) of Div. C of Pub. L. 104–208 may apply to the Immigration Court, in a manner consistent with paragraphs (c)(1) through (c)(3) of this section, for a redetermination of custody conditions set by the Service. Such an alien must first demonstrate, by clear and convincing evidence, that release would not pose a danger to other persons or to property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding or interview.

(4) *Unremovable aliens.* A determination of a district director (or other official designated by the Commissioner) regarding the exercise of authority under section 303(b)(3)(B)(ii) of Div. C. of Pub. L. 104–208 (concerning release of aliens who cannot be removed because the designated country of removal will not accept their return) is final, and shall not be subject to redetermination by an immigration judge.

(i) *Stay of custody order pending appeal by the government*—(1) *General discretionary stay authority.* The Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion. DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time.

(2) *Automatic stay in certain cases.* In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR–43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR–43 is subject to the discretion of the Secretary.

[57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995; 62 FR 10332, Mar. 6, 1997; 63 FR 27448, May 19, 1998; 66 FR 54911, Oct. 31, 2001; 70 FR 4753, Jan. 31, 2005; 71 FR 57884, Oct. 2, 2006]

§ 1003.20 Change of venue.

(a) Venue shall lie at the Immigration Court where jurisdiction vests pursuant to § 1003.14.

(b) The Immigration Judge, for good cause, may change venue only upon motion by one of the parties, after the charging document has been filed with the Immigration Court. The Immigration Judge may grant a change of venue only after the other party has been given notice and an opportunity to respond to the motion to change venue.

(c) No change of venue shall be granted without identification of a fixed street address, including city, state and ZIP code, where the respondent/applicant may be reached for further hearing notification.

[57 FR 11572, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995; 62 FR 10332, Mar. 6, 1997]

§ 1003.21 Pre-hearing conferences and statement.

(a) Pre-hearing conferences may be scheduled at the discretion of the Immigration Judge. The conference may be held to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding.

(b) The Immigration Judge may order any party to file a pre-hearing

statement of position that may include, but is not limited to: A statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible; a list of proposed witnesses and what they will establish; a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction; the estimated time required to present the case; and, a statement of unresolved issues involved in the proceedings.

(c) If submission of a pre-hearing statement is ordered under paragraph (b) of this section, an Immigration Judge also may require both parties, in writing prior to the hearing, to make any evidentiary objections regarding matters contained in the pre-hearing statement. If objections in writing are required but not received by the date for receipt set by the Immigration Judge, admission of all evidence described in the pre-hearing statement shall be deemed unopposed.

[57 FR 11572, Apr. 6, 1992]

§ 1003.22 Interpreters.

Any person acting as an interpreter in a hearing shall swear or affirm to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath or affirmation shall be required.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]

§ 1003.23 Reopening or reconsideration before the immigration court.

(a) *Pre-decision motions.* Unless otherwise permitted by the immigration judge, motions submitted prior to the final order of an immigration judge shall be in writing and shall state, with particularity the grounds therefor, the relief sought, and the jurisdiction. The immigration judge may set and extend time limits for the making and replying to of motions and replies thereto. A motion shall be deemed unopposed unless timely response is made.

(b) *Before the Immigration Court*—(1) *In general.* An immigration judge may upon the immigration judge's own motion at any time, or upon motion of DHS or the noncitizen, reopen or reconsider any case in which the judge has rendered a decision, unless jurisdiction is vested with the Board of Immigration Appeals. Subject to the exceptions in this paragraph (b)(1) and paragraph (b)(4), a party may file only one motion to reconsider and one motion to reopen proceedings. A motion to reconsider must be filed within 30 days of the date of entry of a final administrative order of removal, deportation, or exclusion, or on or before July 31, 1996, whichever is later. A motion to reopen must be filed within 90 days of the date of entry of a final administrative order of removal, deportation, or exclusion, or on or before September 30, 1996, whichever is later. A motion to reopen or to reconsider shall not be made by or on behalf of a person who is the subject of removal, deportation, or exclusion 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. The time and numerical limitations set forth in this paragraph (b)(1) do not apply to motions by DHS in removal proceedings pursuant to section 240 of the Act. Nor shall such limitations apply to motions by DHS 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(e) of this chapter.

(i) *Form and contents of the motion.* The motion shall be in writing and signed by the affected party or the attorney or representative of record, if any. The motion and any submission made in conjunction with it must be in English or accompanied by a certified English translation. 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.

(ii) *Filing.* Motions to reopen or reconsider a decision of an immigration judge must be filed with the immigration court having administrative control over the Record of Proceeding. If necessary under §1003.32, a motion to reopen or a motion to reconsider shall include a certificate showing service on the opposing party of the motion and all attachments. 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. If the moving party, other than DHS, is represented, a Form EOIR–28, Notice of Appearance as Attorney or Representative Before an Immigration Judge must be filed with the motion. For any motion requiring a fee, that motion must be accompanied by a fee receipt, an alternate proof of payment consistent with §1103.7(a)(3), or a fee waiver request pursuant to §1103.7(c). If filed in paper, the motion must be filed in duplicate with the immigration court.

(iii) *Assignment to an immigration judge.* If the immigration judge is unavailable or unable to adjudicate the motion to reopen or reconsider, the Chief Immigration Judge or a delegate of the Chief Immigration Judge shall reassign such motion to another immigration judge.

(iv) *Replies to motions; decision.* The immigration judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made. The decision to grant or deny a motion to reopen or a motion to reconsider is within the discretion of the immigration judge.

(v) *Stays.* Except in cases involving in absentia orders, 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 immigration judge, the Board, or an authorized DHS officer.

(2) *Motion to reconsider.* A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the immigration judge's prior decision and shall be supported by pertinent authority. Such motion may not seek reconsideration of a decision denying a previous motion to reconsider.

(3) *Motion to reopen.* 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 and other evidentiary material. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. A motion to reopen will not be granted unless the immigration judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing. A motion to reopen for the purpose of providing the noncitizen an opportunity to apply for any form of discretionary relief will not be granted if it appears that the noncitizen's right to apply for such relief was fully explained to them by the immigration judge and an opportunity to apply therefor was afforded at the hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Pursuant to section 240A(d)(1) of the Act, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 240A(a) of the Act (cancellation of removal for certain permanent residents) or 240A(b) of the Act (cancellation of removal and adjustment of status for certain nonpermanent residents) may be granted only upon demonstration that the noncitizen was statutorily eligible for such relief prior to the service of a Notice to Appear, or prior to the commission of an offense referred to in section 212(a)(2) of the Act that renders the noncitizen inadmissible or removable under sections 237(a)(2) or (a)(4) of the Act, whichever is earliest. The immigration judge has discretion to deny a

motion to reopen even if the moving party has established a prima facie case for relief.

(4) *Exceptions to filing deadlines*—(i) *Asylum and withholding of removal.* The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply if the basis of the motion is to apply for asylum under section 208 of the Act or withholding of removal under section 241(b)(3) of the Act or withholding of removal under the Convention Against Torture, and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. The filing of a motion to reopen under this section shall not automatically stay the removal of the noncitizen. However, the noncitizen may request a stay and, if granted by the immigration judge, the noncitizen shall not be removed pending disposition of the motion by the immigration judge. If the original asylum application was denied based upon a finding that it was frivolous, then the noncitizen is ineligible to file either a motion to reopen or reconsider, or for a stay of removal.

(ii) *Order entered in absentia or in removal proceedings.* An order of removal entered in absentia or in removal proceedings pursuant to section 240(b)(5) of the Act may be rescinded only upon a motion to reopen filed within 180 days after the date of the order of removal, if the noncitizen demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act. An order entered in absentia pursuant to section 240(b)(5) may be rescinded upon a motion to reopen filed at any time upon the noncitizen's demonstration of lack of notice in accordance with section 239(a)(1) or (2) of the Act, or upon the noncitizen's demonstration of the noncitizen's Federal or State custody and the failure to appear was through no fault of the noncitizen. However, in accordance with section 240(b)(5)(B) of the Act, no written notice of a change in time or place of proceeding shall be required if the noncitizen has failed to provide the address required under section 239(a)(1)(F) of the Act. The filing of a motion under this paragraph (b)(4)(ii) shall stay the removal of the noncitizen pending disposition of the motion by the immigration judge. A noncitizen may file only one motion pursuant to this paragraph (b)(4)(ii).

(iii) *Order entered in absentia in deportation or exclusion proceedings.* (A) An order entered in absentia in deportation proceedings may be rescinded only upon a motion to reopen filed:

(*1*) Within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances beyond the control of the alien (e.g., serious illness of the alien or serious illness or death of an immediate relative of the alien, but not including less compelling circumstances); or

(*2*) At any time if the alien demonstrates that he or she did not receive notice or if the alien demonstrates that he or she was in federal or state custody and the failure to appear was through no fault of the alien.

(B) A motion to reopen exclusion hearings on the basis that the immigration judge improperly entered an order of exclusion in absentia must be supported by evidence that the noncitizen had reasonable cause for his failure to appear.

(C) The filing of a motion to reopen under paragraph (b)(4)(iii)(A) of this section shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.

(D) The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply to a motion to reopen filed pursuant to the provisions of paragraph (b)(4)(iii)(A) of this section.

(iv) *Jointly filed motions.* The time and numerical limitations set forth in paragraph (b)(1) of this section shall

not apply to a motion to reopen agreed upon by all parties and jointly filed.

[52 FR 2936, Jan. 29, 1987, as amended at 55 FR 30680, July 27, 1990. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995; 61 FR 18908, Apr. 29, 1996; 61 FR 19976, May 3, 1996; 61 FR 21228, May 9, 1996; 62 FR 10332, Mar. 6, 1997; 62 FR 15362, Apr. 1, 1997; 62 FR 17048, Apr. 9, 1997; 64 FR 8487, Feb. 19, 1999; 85 FR 81655, Dec. 16, 2020; 86 FR 70722, Dec. 13, 2021; 89 FR 46793, May 29, 2024]

§ 1003.24 Fees pertaining to matters within the jurisdiction of an immigration judge.

(a) *Generally.* All fees for the filing of motions and applications in connection with proceedings before the immigration judges are paid to the Department of Homeland Security in accordance with 8 CFR 103.7 and 8 CFR part 106, including fees for applications published by the Executive Office for Immigration Review. The immigration court does not collect fees.

(b) *Motions to reopen or reconsider*—(1) *When a fee is required.* Except as provided in paragraph (b)(2) of this section, a filing fee prescribed in 8 CFR 1103.7, or a fee waiver request pursuant to paragraph (d) of this section, is required in connection with the filing of a motion to reopen or a motion to reconsider.

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

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

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

(iii) A motion filed while proceedings are already pending before the immigration court;

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

(v) A motion to reopen a deportation or removal order entered in absentia if the motion is filed pursuant to section 242B(c)(3)(B) of the Act (8 U.S.C. 1252b(c)(3)(B)), as it existed prior to April 1, 1997, or section 240(b)(5)(C)(ii) of the Act (8 U.S.C. 1229a(b)(5)(C)(ii)), as amended;

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

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

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

(c) *Applications for relief*—(1) *When filed during proceedings.* When an application for relief is filed during the course of proceedings, the fee for that application must be paid in advance to the Department of Homeland Security in accordance with 8 CFR 103.7 and 8 CFR part 106. The fee receipt must accompany the application when it is filed with the immigration court except as provided by 8 CFR 1208.4(d)(3).

(2) *When submitted with a motion to reopen.* When a motion to reopen is based upon an application for relief, the fee for the motion to reopen shall be paid to the Department of Homeland Security and the fee receipt shall accompany the motion. Payment of the fee for the application for relief must be paid to the Department of Homeland Security within the time specified by the immigration judge.

(d) *Fee waivers.* The immigration judge has the discretion to waive a fee for a motion or application for relief upon a showing that the filing party is unable to pay the fee. The request for a fee waiver must be accompanied by a properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. 1746 substantiating the filing party's inability to pay the fee. If the request for a fee waiver is denied, the application or motion will not be deemed properly filed, provided the immigration judge grants 15 days to re-file the rejected document with the filing fee or new fee waiver request and tolls any applicable filing deadline during the 15-day cure period.

[69 FR 44906, July 28, 2004, as amended at 85 FR 81750, Dec. 16, 2020; 85 FR 82793, Dec. 18, 2020; 86 FR 70722, Dec. 13, 2021]

§ 1003.25 Form of the proceeding.

(a) *Waiver of presence of the parties.* The Immigration Judge may, for good cause, and consistent with section 240(b) of the Act, waive the presence of the alien at a hearing when the alien is represented or when the alien is a minor child at least one of whose parents or whose legal guardian is present. When it is impracticable by reason of

an alien's mental incompetency for the alien to be present, the presence of the alien may be waived provided that the alien is represented at the hearing by an attorney or legal representative, a near relative, legal guardian, or friend.

(b) *Stipulated request for order; waiver of hearing.* An Immigration Judge may enter an order of deportation, exclusion or removal stipulated to by the alien (or the alien's representative) and the Service. The Immigration Judge may enter such an order without a hearing and in the absence of the parties based on a review of the charging document, the written stipulation, and supporting documents, if any. If the alien is unrepresented, the Immigration Judge must determine that the alien's waiver is voluntary, knowing, and intelligent. The stipulated request and required waivers shall be signed on behalf of the government and by the alien and his or her attorney or representative, if any. The attorney or representative shall file a Notice of Appearance in accordance with §1003.16(b). A stipulated order shall constitute a conclusive determination of the alien's deportability or removability from the United States. The stipulation shall include:

(1) An admission that all factual allegations contained in the charging document are true and correct as written;

(2) A concession of deportability or inadmissibility as charged;

(3) A statement that the alien makes no application for relief under the Act;

(4) A designation of a country for deportation or removal under section 241(b)(2)(A)(i) of the Act;

(5) A concession to the introduction of the written stipulation of the alien as an exhibit to the Record of Proceeding;

(6) A statement that the alien understands the consequences of the stipulated request and that the alien enters the request voluntarily, knowingly, and intelligently;

(7) A statement that the alien will accept a written order for his or her deportation, exclusion or removal as a final disposition of the proceedings; and

(8) A waiver of appeal of the written order of deportation or removal.

(c) *Telephonic or video hearings.* An Immigration Judge may conduct hearings through video conference to the same extent as he or she may conduct hearings in person. An Immigration Judge may also conduct a hearing through a telephone conference, but an evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or, where available, through a video conference, except that credible fear determinations may be reviewed by the Immigration Judge through a telephone conference without the consent of the alien.

[62 FR 10334, Mar. 6, 1997]

§ 1003.26 In absentia hearings.

(a) In any exclusion proceeding before an Immigration Judge in which the applicant fails to appear, the Immigration Judge shall conduct an *in absentia* hearing if the Immigration Judge is satisfied that notice of the time and place of the proceeding was provided to the applicant on the record at a prior hearing or by written notice to the applicant or to the applicant's counsel of record on the charging document or at the most recent address in the Record of Proceeding.

(b) In any deportation proceeding before an Immigration Judge in which the respondent fails to appear, the Immigration Judge shall order the respondent deported *in absentia* if: (1) The Service establishes by clear, unequivocal and convincing evidence that the respondent is deportable; and (2) the Immigration Judge is satisfied that written notice of the time and place of the proceedings and written notice of the consequences of failure to appear, as set forth in section 242B(c) of the Act (8 U.S.C. 1252b(c)), were provided to the respondent in person or were provided to the respondent or the respondent's counsel of record, if any, by certified mail.

(c) In any removal proceeding before an Immigration Judge in which the alien fails to appear, the Immigration Judge shall order the alien removed *in absentia* if:

(1) The Service establishes by clear, unequivocal, and convincing evidence that the alien is removable; and

(2) The Service establishes by clear, unequivocal, and convincing evidence that written notice of the time and place of proceedings and written notice of the consequences of failure to appear were provided to the alien or the alien's counsel of record.

(d) Written notice to the alien shall be considered sufficient for purposes of this section if it was provided at the most recent address provided by the alien. If the respondent fails to provide his or her address as required under §1003.15(d), no written notice shall be required for an Immigration Judge to proceed with an *in absentia* hearing. This paragraph shall not apply in the event that the Immigration Judge waives the appearance of an alien under §1003.25.

[59 FR 1899, Jan. 13, 1994, as amended at 62 FR 10334, Mar. 6, 1997; 62 FR 15362, Apr. 1, 1997]

§1003.27 Public access to hearings.

All hearings, other than exclusion hearings, shall be open to the public except that:

(a) Depending upon physical facilities, the Immigration Judge may place reasonable limitations upon the number in attendance at any one time with priority being given to the press over the general public;

(b) For the purpose of protecting witnesses, parties, or the public interest, the Immigration Judge may limit attendance or hold a closed hearing.

(c) In any proceeding before an Immigration Judge concerning an abused alien spouse, the hearing and the Record of Proceeding shall be closed to the public unless the abused spouse agrees that the hearing and the Record of Proceeding shall be open to the public. In any proceeding before an Immigration Judge concerning an abused alien child, the hearing and the Record of Proceeding shall be closed to the public.

(d) Proceedings before an Immigration Judge shall be closed to the public if information subject to a protective order under §1003.46, which has been filed under seal pursuant to §1003.31(d), may be considered.

[52 FR 2936, Jan. 29, 1987. Redesignated and amended at 57 FR 11571, 11572, Apr. 6, 1992; 62 FR 10334, Mar. 6, 1997; 67 FR 36802, May 28, 2002]

§1003.28 Recording equipment.

The only recording equipment permitted in the proceeding will be the equipment used by the Immigration Judge to create the official record. No other photographic, video, electronic, or similar recording device will be permitted to record any part of the proceeding.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]

§1003.29 Continuances.

The immigration judge may grant a motion for continuance for good cause shown, provided that nothing in this section shall authorize a continuance that causes the adjudication of an asylum application to exceed 180 days in the absence of exceptional circumstances, consistent with section 208(d)(5)(A)(iii) of the Act and §1003.10(b).

[85 FR 81750, Dec. 16, 2020]

§1003.30 Additional charges in deportation or removal hearings.

At any time during deportation or removal proceedings, additional or substituted charges of deportability and/or factual allegations may be lodged by the Service in writing. The alien shall be served with a copy of these additional charges and/or allegations and the Immigration Judge shall read them to the alien. The Immigration Judge shall advise the alien, if he or she is not represented by counsel, that the alien may be so represented. The alien may be given a reasonable continuance to respond to the additional factual allegations and charges. Thereafter, the provision of §1240.10(b) of this chapter relating to pleading shall apply to the additional factual allegations and charges.

[62 FR 10335, Mar. 6, 1997]

§ 1003.31 Filing documents and applications.

This section applies to the filing of all documents, including motions and applications, before the immigration courts.

(a) *Filing parties.* DHS and all attorneys and accredited representatives of record for persons appearing before the immigration courts are required to electronically file all documents, including charging documents, with the immigration courts through EOIR's electronic filing application in all cases eligible for electronic filing. Although not required, unrepresented respondents or applicants; reputable individuals and accredited officials who are representatives of record; other authorized individuals; and practitioners filing an EOIR–61, may electronically file documents with the immigration courts through EOIR's electronic filing application in cases eligible for electronic filing. An unrepresented respondent or applicant; reputable individual; accredited official; other authorized individual; or practitioner filing an EOIR–61, 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 immigration courts for that case unless an immigration judge, 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.

(b) *Filing requirements.* 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. In all other situations in cases eligible for electronic filing, an immigration judge retains the discretion to accept paper filings in all cases.

(c) *Originals.* Parties must make the originals of all filed documents available upon request to the immigration court or the opposing party for review.

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

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

(f) *Where to file.* All documents that are to be considered in a proceeding before an immigration judge must be filed with the immigration court having administrative control over the Record of Proceeding.

(g) *Fees.* Except as provided in §1240.11(f) of this chapter, all documents or applications filed with the immigration courts requiring the payment of a fee must be accompanied by a fee receipt from DHS, alternate proof of payment consistent with §1103.7(a)(3) of this chapter, or a fee waiver request pursuant to §1103.7(c). Except as provided in §1003.8, any fee relating to immigration judge proceedings shall be paid to, and accepted by, any DHS office authorized to accept fees for other purposes pursuant to §1103.7(a).

(h) *Filing deadlines.* The immigration judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any. If an application or document is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived.

(i) *Filing under seal.* DHS may file documents under seal by including a cover sheet identifying the contents of

the submission as containing information which is being filed under seal. Documents filed under seal shall only be examined by persons with authorized access to the administrative record.

(j) *Signatures.* All documents filed with the immigration courts 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.

[86 FR 70722, Dec. 13, 2021]

§ 1003.32 Service and size of documents.

The service of filings with the immigration courts depends on whether the documents are filed through EOIR's electronic filing application or in paper.

(a) *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. If all parties are using EOIR's electronic filing application in a specific case, EOIR's electronic filing application will effectuate service by providing a notification of all electronically filed documents on all parties. Upon successful upload by one of the parties, EOIR will email a notification to the email addresses provided in paragraph (b) 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 (c) of this section.

(b) *Valid email address.* Use of EOIR's electronic filing application requires a valid email address for electronic service. The immigration courts 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–28 with the immigration court 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.

(c) *Service of paper filings.* If electronic filing is not being used in a particular case, the party filing with the immigration court 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. The immigration judge will not consider any documents or applications that do not contain a certificate of service unless service is made on the record during a hearing.

(d) *Size and format of documents.* Unless otherwise permitted by the immigration judge, all written material presented to immigration judges including offers of evidence, correspondence, briefs, memoranda, or other documents must be submitted on 8½″ x 11″ size pages, whether filed electronically or in paper. The immigration judge may require that exhibits and other written material presented be indexed, paginated, and that a table of contents be provided.

[86 FR 70723, Dec. 13, 2021]

§ 1003.33 Translation of documents.

Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities.

[59 FR 1900, Jan. 13, 1994]

§ 1003.34 Testimony.

Testimony of witnesses appearing at the hearing shall be under oath or affirmation.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]

§ 1003.35 Depositions and subpoenas.

(a) *Depositions.* If an Immigration Judge is satisfied that a witness is not reasonably available at the place of

hearing and that said witness' testimony or other evidence is essential, the Immigration Judge may order the taking of deposition either at his or her own instance or upon application of a party. Such order shall designate the official by whom the deposition shall be taken, may prescribe and limit the content, scope, or manner of taking the deposition, and may direct the production of documentary evidence.

(b) *Subpoenas issued subsequent to commencement of proceedings*—(1) *General.* In any proceeding before an Immigration Judge, other than under 8 CFR part 335, the Immigration Judge shall have exclusive jurisdiction to issue subpoenas requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both. An Immigration Judge may issue a subpoena upon his or her own volition or upon application of the Service or the alien.

(2) *Application for subpoena.* A party applying for a subpoena shall be required, as a condition precedent to its issuance, to state in writing or at the proceeding, what he or she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he or she has made diligent effort, without success, to produce the same.

(3) *Issuance of subpoena.* Upon being satisfied that a witness will not appear and testify or produce documentary evidence and that the witness' evidence is essential, the Immigration Judge shall issue a subpoena. The subpoena shall state the title of the proceeding and shall command the person to whom it is directed to attend and to give testimony at a time and place specified. The subpoena may also command the person to whom it is directed to produce the books, papers, or documents specified in the subpoena.

(4) *Appearance of witness.* If the witness is at a distance of more than 100 miles from the place of the proceeding, the subpoena shall provide for the witness' appearance at the Immigration Court nearest to the witness to respond to oral or written interrogatories, unless there is no objection by any party to the witness' appearance at the proceeding.

(5) *Service.* A subpoena issued under this section may be served by any person over 18 years of age not a party to the case.

(6) *Invoking aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him or her in accordance with the provisions of this section, the Immigration Judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers or documents designated in the subpoena.

[62 FR 10335, Mar. 6, 1997]

§ 1003.36 Record of proceeding.

The Immigration Court shall create and control the Record of Proceeding.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995]

§ 1003.37 Decisions.

(a) A decision of the immigration judge may be rendered orally or in writing. If the decision is oral, it shall be stated by the immigration judge in the presence of the parties and a memorandum summarizing the oral decision shall be served on the parties. If the decision is in writing, it shall be served on the parties by personal service, mail, or electronic notification.

(b) A written copy of the decision will not be sent to an alien who has failed to provide a written record of an address.

[57 FR 11573, Apr. 6, 1992, as amended at 59 FR 1900, Jan. 13, 1994; 86 FR 70723, Dec. 13, 2021]

§ 1003.38 Appeals.

(a) Decisions of Immigration Judges may be appealed to the Board of Immigration Appeals as authorized by 8 CFR 3.1(b).

(b) The Notice of Appeal from a Decision of an Immigration Judge (Form EOIR–26) shall be filed directly with the Board of Immigration Appeals

within 30 calendar days after the stating of an immigration judge's oral decision or the mailing or electronic notification of an immigration judge's written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A Notice of Appeal (Form EOIR–26) may not be filed by any party who has waived appeal.

(c) The date of filing of the Notice of Appeal (Form EOIR–26) shall be the date the Notice is received by the Board.

(d) A Notice of Appeal (Form EOIR–26) must be accompanied by the appropriate fee or by an Appeal Fee Waiver Request (Form EOIR–26A). If the fee is not paid or the Appeal Fee Waiver Request (Form EOIR–26A) is not filed within the specified time period indicated in paragraph (b) of this section, the appeal will not be deemed properly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken.

(e) Within five working days of any change of address, an alien must provide written notice of the change of address on Form EOIR–33 to the Board. Where a party is represented, the representative should also provide to the Board written notice of any change in the representative's business mailing address.

(f) Briefs may be filed by both parties pursuant to 8 CFR 3.3(c).

(g) In proceedings before the Board on behalf of a respondent, a practitioner must enter an appearance using Form EOIR–27 or Form EOIR–60.

(1) *Entering an appearance using Form EOIR–27.* In proceedings before the Board, in order to become the practitioner of record, which authorizes and requires the practitioner to appear before the Board on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, a practitioner must enter an appearance using Form EOIR–27.

(i) *Filing Form EOIR–27.* The practitioner must file a copy of the Form EOIR–27 with the Board and serve a copy on DHS as required by 8 CFR 1003.32. The practitioner must file and serve a Form EOIR–27 even if the practitioner has previously filed a separate Notice of Entry of Appearance with DHS for appearances before DHS or a Form EOIR–28 with the immigration court, or has previously entered a limited appearance using a Form EOIR–60 in connection with document assistance under paragraph (g)(2) of this section.

(ii) *Effect of filing Form EOIR–27.* A practitioner who enters an appearance using Form EOIR–27 is the practitioner of record and must appear before the Board on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5. Filing a Form EOIR–27 provides the practitioner with access to the record of proceedings during the course of proceedings. A respondent shall be considered represented for the proceedings in which a Form EOIR–27 has been filed.

(iii) *Withdrawal or substitution.* A practitioner who enters an appearance on behalf of a respondent before the Board by filing a Form EOIR–27 remains the practitioner of record unless the Board permits withdrawal or substitution during proceedings only upon written motion submitted without fee.

(2) *Entering a limited appearance for document assistance using Form EOIR–60.* A practitioner who provides assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a motion, brief, form, or other specific document or set of documents intended to be filed with the Board, regardless of whether such assistance is considered ''practice'' or ''preparation'' as defined in §1001.1, must disclose such limited assistance to the Board using Form EOIR–60, unless pursuant to paragraph (g)(1) the practitioner has filed a Form EOIR–27 to become the practitioner of record.

(i) *Filing Form EOIR–60.* A Form EOIR–60 must not be filed as a standalone document. The single Form EOIR–60 must be filed with the Board at the same time as the document or set of documents with which the practitioner assisted. Any subsequent filing of a document or set of documents with which a practitioner assisted must be accompanied by a new Form EOIR–60.

(ii) *Effect of Filing Form EOIR–60.* A practitioner who enters a limited appearance using Form EOIR–60 is not the practitioner of record, is not required to appear before the Board, and is not required to submit a motion to withdraw or substitute. The submission of a Form EOIR–60 does not create additional ongoing obligations between the practitioner, the respondent, and EOIR. An appearance through Form EOIR–60 does not provide the practitioner with access to the record of proceedings. A respondent who received assistance pursuant to this paragraph is not represented, remains pro se, and is subject to service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5.

(3) *Completing an appearance form, proof of qualification, disclosure requirements, and identification.* The practitioner must properly complete and sign any Form EOIR–27 or Form EOIR–60, as required by the form instructions. A practitioner's personal appearance or signature on the Form EOIR–27 or Form EOIR–60 constitutes a representation that the person is authorized and qualified to appear as a practitioner in accordance with 8 CFR 1292.1. Further proof that the practitioner meets the qualifications of a practitioner as defined in 8 CFR 1292.1 may be required. The completion of a Form EOIR–27 or Form EOIR–60 in connection with an application or form that requires disclosure of the preparer does not relieve a practitioner from complying with the particular disclosure requirements of the application or form. Notwithstanding the filing of a Form EOIR–27 or Form EOIR–60, the practitioner must identify themselves by name, accompanied by their signature, on any document filed or intended to be filed with the Board pursuant to an appearance under paragraph (g)(1) or (2) of this section.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995; 61 FR 18908, Apr. 29, 1996; 86 FR 70723, Dec. 13, 2021; 87 FR 56258, Sept. 14, 2022]

§ 1003.39 Finality of decision.

Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first.

[52 FR 2936, Jan. 29, 1987. Redesignated and amended at 57 FR 11571, 11573, Apr. 6, 1992]

§ 1003.40 Local operating procedures.

An Immigration Court having administrative control over Records of Proceedings may establish local operating procedures, provided that:

(a) Such operating procedure(s) shall not be inconsistent with any provision of this chapter;

(b) A majority of the judges of the local Immigration Court shall concur in writing therein; and

(c) The Chief Immigration Judge has approved the proposed operating procedure(s) in writing.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34090, June 30, 1995]

§ 1003.41 Evidence of criminal conviction.

In any proceeding before an Immigration Judge,

(a) Any of the following documents or records shall be admissible as evidence in proving a criminal conviction:

(1) A record of judgment and conviction;

(2) A record of plea, verdict and sentence;

(3) A docket entry from court records that indicates the existence of a conviction;

(4) Minutes of a court proceeding or a transcript of a hearing that indicates the existence of a conviction;

(5) An abstract of a record of conviction prepared by the court in which the conviction was entered, or by a state official associated with the state's repository of criminal justice records, that indicates the following: The charge or section of law violated, the disposition of the case, the existence and date of conviction, and the sentence;

(6) Any document or record prepared by, or under the direction of, the court in which the conviction was entered that indicates the existence of a conviction.

(b) Any document or record of the types specified in paragraph (a) of this section may be submitted if it complies

with the requirement of §287.6(a) of this chapter, or a copy of any such document or record may be submitted if it is attested in writing by an immigration officer to be a true and correct copy of the original.

(c) Any record of conviction or abstract that has been submitted by electronic means to the Service from a state or court shall be admissible as evidence to prove a criminal conviction if it:

(1) Is certified by a state official associated with the state's repository of criminal justice records as an official record from its repository or by a court official from the court in which conviction was entered as an official record from its repository. Such certification may be by means of a computer-generated signature and statement of authenticity; and,

(2) Is certified in writing by a Service official as having been received electronically from the state's record repository or the court's record repository.

(d) Any other evidence that reasonably indicates the existence of a criminal conviction may be admissible as evidence thereof.

[58 FR 38953, July 21, 1993]

§1003.42 Review of credible fear determinations.

(a) *Referral.* Jurisdiction for an immigration judge to review a negative credible fear determination by an asylum officer pursuant to section 235(b)(1)(B) of the Act shall commence with the filing by DHS of Form I–863, Notice of Referral to Immigration Judge, and a complete copy of the record of determination as defined in section 235(b)(1)(B)(iii)(II) of the Act with the immigration court.

(b) *Record of proceeding.* The immigration court shall create a Record of Proceeding for a review of a negative fear determination. This record shall not be merged with any later proceeding involving the same noncitizen.

(c) *Procedures and evidence.* The immigration judge may receive into evidence any oral or written statement which is material and relevant to any issue in the review. The testimony of the noncitizen shall be under oath or affirmation administered by the immigration judge. If an interpreter is necessary, one will be provided by the immigration court. The immigration judge shall determine whether the review shall be in person, or through telephonic or video connection (where available). The noncitizen may consult with a person or persons of the noncitizen's choosing prior to the review.

(d) *Standard of review.* The immigration judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the noncitizen in support of the noncitizen's claim, and such other facts as are known to the immigration judge, that the noncitizen could establish eligibility for asylum under section 208 of the Act, or could establish eligibility for withholding of removal under section 241(b)(3)(B) of the Act, or withholding or deferral of removal under the Convention Against Torture with respect to the country or countries of removal identified pursuant to section 241(b) of the Act. This determination shall, where relevant, include review of the asylum officer's application of any bars to asylum and withholding of removal pursuant to 8 CFR 208.30(e)(5).

(e) *Timing.* The immigration judge shall conclude the review to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date the supervisory asylum officer has concurred with the asylum officer's negative credible fear determination issued on the Form I–869, Record of Negative Credible Fear Finding and Request for Review.

(f) *Decision.* (1) The decision of the immigration judge shall be rendered in accordance with the provisions of 8 CFR 1208.30(g)(2). In reviewing the negative fear determination by DHS, the immigration judge shall apply relevant precedent issued by the Board of Immigration Appeals, the Attorney General, the Federal circuit court of appeals having jurisdiction over the immigration court where the Request for Review is filed, and the Supreme Court.

(2) No appeal shall lie from a review of a negative fear determination made by an immigration judge, but the Attorney General, in the Attorney General's sole and unreviewable discretion,

may direct that the immigration judge refer a case for the Attorney General's review following the Immigration Judge's review of a negative fear determination.

(3) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board for transmittal and service as provided in 8 CFR 1003.1(f). Such decision by the Attorney General may be designated as precedent as provided in 8 CFR 1003.1(g).

(g) *Custody.* An immigration judge shall have no authority to review a noncitizen's custody status in the course of a review of a negative fear determination made by DHS.

(h) *Asylum cooperative agreement*—(1) *Applicants for admission, 2002 U.S.-Canada Agreement, which includes the Additional Protocol of 2022.* An immigration judge has no jurisdiction to review a determination by an asylum officer that an applicant for admission is not eligible to apply for asylum pursuant to the 2002 U.S.-Canada Agreement, which includes the Additional Protocol of 2022, formed under section 208(a)(2)(A) of the Act and should be returned to Canada to pursue their claims for asylum or other protection under the laws of Canada. See 8 CFR 208.30(e)(6). However, in any case where an asylum officer has found that an applicant for admission qualifies for an exception to that Agreement, which includes the Additional Protocol of 2022, or that the Agreement, which includes the Additional Protocol of 2022, does not apply, an immigration judge does have jurisdiction to review a negative credible fear finding made thereafter by the asylum officer as provided in this section.

(2) *Noncitizens in transit.* An immigration judge has no jurisdiction to review any determination by DHS that a noncitizen being removed from Canada in transit through the United States should be returned to Canada to pursue asylum claims under Canadian law, under the terms of the 2002 U.S.-Canada Agreement, which includes the Additional Protocol of 2022.

(3) *Applicants for admission.* An immigration judge has no jurisdiction to review a determination by an asylum officer that a noncitizen is not eligible to apply for asylum pursuant to a bilateral or multilateral agreement with a third country under section 208(a)(2)(A) of the Act and should be removed to the third country to pursue his or her claims for asylum or other protection under the laws of that country. *See* 8 CFR 208.30(e)(7). However, if the asylum officer has determined that the noncitizen may not or should not be removed to a third country under section 208(a)(2)(A) of the Act and subsequently makes a negative fear determination, an immigration judge has jurisdiction to review the negative fear finding as provided in this section.

(4) *Noncitizens in transit through the United States from countries other than Canada.* An immigration judge has no jurisdiction to review any determination by DHS that a noncitizen being removed from a receiving country in transit through the United States should be returned to pursue asylum claims under the receiving country's law, under the terms of the applicable cooperative agreement. *See* 8 CFR 208.30(e)(7).

(i) *Severability.* The provisions of part 1003 are separate and severable from one another. In the event that any provision in part 1003 is stayed, enjoined, not implemented, or otherwise held invalid, the remaining provisions shall nevertheless be implemented as an independent rule and continue in effect.

[62 FR 10335, Mar. 6, 1997, as amended at 64 FR 8487, Feb. 19, 1999; 69 FR 69496, Nov. 29, 2004; 83 FR 55952, Nov. 9, 2018; 84 FR 33844, July 16, 2019; 84 FR 64009, Nov. 19, 2019; 85 FR 80393, Dec. 11, 2020; 87 FR 18220, Mar. 29, 2022; 88 FR 18240, Mar. 28, 2023; 88 FR 31451, May 16, 2023; 89 FR 105401, Dec. 27, 2024]

EFFECTIVE DATE NOTE: At 85 FR 84196, Dec. 23, 2020, §1003.42 was amended by revising paragraph (d)(1), effective Jan. 22, 2021. The amendment to §1003.42 was delayed until Mar. 22, 2021, at 86 FR 6847, Jan. 25, 2021, further delayed until Dec. 31, 2021, at 86 FR 15069, Mar. 22, 2021, further delayed until Dec. 31, 2022, at 86 FR 73615, Dec. 28, 2021, further delayed until Dec. 31, 2024, at 87 FR 79789, Dec. 28, 2022, and further delayed until Dec. 31, 2025, at 89 FR 105386, Dec. 27, 2024. For the convenience of the user, the revised text is set forth as follows:

§ 1003.42 Review of credible fear determination.

* * * * *

(d) * * *

(1) The immigration judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim, whether the alien is subject to any mandatory bars to applying for asylum or being eligible for asylum under section 208(a)(2)(B)–(D) and (b)(2) of the Act, including any bars established by regulation under section 208(b)(2)(C) of the Act, and such other facts as are known to the immigration judge, that the alien could establish his or her ability to apply for or be granted asylum under section 208 of the Act. The immigration judge shall make a de novo determination as to whether there is a reasonable possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim, whether the alien is subject to any mandatory bars to eligibility for withholding of removal under section 241(b)(3)(B) of the Act, and such other facts as are known to the immigration judge, that the alien would be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or political opinion in the country of removal, consistent with the criteria in 8 CFR 1208.16(b). The immigration judge shall also make de novo determinations as to whether there is a reasonable possibility that the alien would be tortured in the country of removal and whether it is more likely than not that the alien would be tortured in the country of removal, in both instances taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the immigration judge, consistent with the criteria in 8 CFR 1208.16(c), 8 CFR 1208.17, and 8 CFR 1208.18.

* * * * *

§ 1003.43 Motions to reopen for suspension of deportation and cancellation of removal pursuant to section 203(c) of NACARA and section 1505(c) of the LIFE Act Amendments.

(a) *Standard for Adjudication.* Except as provided in this section, a motion to reopen proceedings under section 309(g) or (h) of the Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208) (IIRIRA), as amended by section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105–100) (NACARA) and by section 1505(c) of the Legal Immigration Family Equity Act Amendments (Pub. L. 106–554) (LIFE Act Amendments), respectively, will be adjudicated under applicable statutes and regulations governing motions to reopen.

(b) *Aliens eligible to reopen proceedings under section 203 of NACARA.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or the special rule for cancellation of removal pursuant to section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible:

(i) For suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or

(ii) For cancellation of removal pursuant to section 240A of the Act, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the six classes of aliens described in paragraphs (d)(1) through (d)(6) of this section.

(c) *Aliens eligible to reopen proceedings under section 1505(c) of the LIFE Act Amendments.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(h) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible, by operation of section 241(a)(5) of the Act, for suspension of deportation pursuant to former section 244(a) of the Act (as

in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA, but for enactment of section 1505(c) of the LIFE Act Amendments;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the eight classes of aliens described in paragraph (d) of this section.

(d) *Classes of Eligible Aliens*—(1) *Class 1.* A national of El Salvador who:

(i) First entered the United States on or before September 19, 1990;

(ii) Registered for benefits pursuant to the settlement agreement in *American Baptist Churches, et al.* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991) (ABC) on or before October 31, 1991, or applied for Temporary Protected Status (TPS) on or before October 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(2) *Class 2.* A national of Guatemala who:

(i) First entered the United States on or before October 1, 1990;

(ii) Registered for ABC benefits on or before December 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(3) *Class 3.* A national of Guatemala or El Salvador who applied for asylum with the Service on or before April 1, 1990.

(4) *Class 4.* An alien who:

(i) Entered the United States on or before December 31, 1990;

(ii) Applied for asylum on or before December 31, 1991; and

(iii) At the time of filing such application for asylum was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

(5) *Class 5.* The spouse or child of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA.

(6) *Class 6.* An unmarried son or daughter of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA. If the son or daughter is 21 years of age or older, the son or daughter must have entered the United States on or before October 1, 1990.

(7) *Class 7.* An alien who was issued an Order to Show Cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation as a battered alien under former section 244(a)(3) of the Act (as in effect before September 30, 1996).

(8) *Class 8.* An alien:

(i) Who is or was the spouse or child of a person described in paragraphs (d)(1) through (d)(4) of this section:

(A) At the time a decision is rendered to suspend deportation or cancel removal of that person;

(B) At the time that person filed an application for suspension of deportation or cancellation of removal; or

(C) At the time that person registered for ABC benefits, applied for TPS, or applied for asylum; and

(ii) Who has been battered or subjected to extreme cruelty (or the spouse described in paragraph (d)(8)(i) of this section has a child who has been battered or subjected to extreme cruelty) by the person described in paragraphs (d)(1) through (d)(4) of this section.

(e) *Motion to reopen under section 203 of NACARA.* (1) An alien filing a motion to reopen proceedings pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, may initially file a motion to reopen without an application for suspension of deportation or cancellation of removal and supporting documents, but the motion must be filed no later than September 11, 1998. An alien may file only one motion to reopen pursuant to section 309(g) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (b) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen filed pursuant to paragraph (b) of this section shall be considered complete at the time of submission of an application for suspension of deportation or special rule cancellation of removal and accompanying documents. Such application must be submitted no later than November 18, 1999. Aliens described in paragraphs (d)(5) or (d)(6) of this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court with either the Form EOIR–40 or the Form I–881 application for suspension of deportation or special rule cancellation of removal to respond to that completed motion. If the alien fails to submit the required application on or before November 18, 1999, the motion will be denied as abandoned.

(f) *Motion to reopen under section 1505(c) of the LIFE Act Amendments.* (1) An alien filing a motion to reopen proceedings pursuant to section 309(h) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, must file a motion to reopen with an application for suspension of deportation or cancellation of removal and supporting documents, on or before October 16, 2001. An alien may file only one motion to reopen proceedings pursuant to section 309(h) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (c) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen and the accompanying application and supporting documents filed pursuant to paragraph (c) of this section must be submitted on or before October 16, 2001. Aliens described in paragraphs (d)(5) and (d)(6) of this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court to respond to that motion to reopen.

(g) *Fee for motion to reopen waived.* No filing fee is required for a motion to reopen to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) or (h) of IIRIRA, as amended by section 203(c) of NACARA and by section 1505(c) of the LIFE Act Amendments, respectively.

(h) *Jurisdiction over motions to reopen under section 203 of NACARA and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, shall be filed with the Immigration Court, even if the Board of Immigration Appeals (Board) issued an order in the case. The Immigration Court that last had jurisdiction over the proceedings will adjudicate the motion.

(2) The Board will remand to the Immigration Court any presently pending appeal in which the alien appears eligible to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203 of NACARA, and appears prima facie eligible for that relief. The alien will then have the opportunity to apply for suspension or cancellation under the special rules of NACARA before the Immigration Court.

(i) *Jurisdiction over motions to reopen under section 1505(c) of the LIFE Act Amendments and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to paragraph (f) of this section to apply for suspension of deportation or cancellation of removal under section 1505(c) of the LIFE Act Amendments shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case. Only an alien with a reinstated final order, or an alien with a newly issued final order that was issued based on the alien having reentered the United States illegally after having been removed or having departed voluntarily under a prior order of removal that was subject to reinstatement under section 241(a)(5) of the Act, may file a motion to reopen with the Immigration Court or the Board pursuant to this section. An alien whose final order has not been reinstated and as to whom a newly issued final order, as described in this section,

has not been issued may apply for suspension of deportation or special rule cancellation of removal before the Service pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, according to the jurisdictional provisions for applications before the Service set forth in 8 CFR 240.62(a) or before the Immigration Court as set forth in 8 CFR 240.62(b).

(2) If the Immigration Court has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f) of this section, the scope of the reopened proceeding shall be limited to a determination of the alien's eligibility for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(3) If the Board has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f) of this section, it shall remand the case to the Immigration Court solely for adjudication of the application for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(4) Nothing in this section shall be interpreted to preclude or restrict the applicability of any other exceptions regarding motions to reopen that are provided for in 8 CFR 3.2(c)(3) and 3.23(b).

[66 FR 37123, July 17, 2001]

§ 1003.44 Special motion to seek section 212(c) relief for aliens who pleaded guilty or *nolo contendere* to certain crimes before April 1, 1997.

(a) *Standard for adjudication.* This section applies to certain aliens who formerly were lawful permanent residents, who are subject to an administratively final order of deportation or removal, and who are eligible to apply for relief under former section 212(c) of the Act and 8 CFR 1212.3 with respect to convictions obtained by plea agreements reached prior to a verdict at trial prior to April 1, 1997. A special motion to seek relief under section 212(c) of the Act will be adjudicated under the standards of this section and 8 CFR 1212.3. This section is not applicable with respect to any conviction entered after trial.

(b) *General eligibility.* The alien has the burden of establishing eligibility for relief, including the date on which the alien and the prosecution agreed on the plea of guilt or *nolo contendere.* Generally, a special motion under this section to seek section 212(c) relief must establish that the alien:

(1) Was a lawful permanent resident and is now subject to a final order of deportation or removal;

(2) Agreed to plead guilty or *nolo contendere* to an offense rendering the alien deportable or removable, pursuant to a plea agreement made before April 1, 1997;

(3) Had seven consecutive years of lawful unrelinquished domicile in the United States prior to the date of the final administrative order of deportation or removal; and

(4) Is otherwise eligible to apply for section 212(c) relief under the standards that were in effect at the time the alien's plea was made, regardless of when the plea was entered by the court.

(c) *Aggravated felony definition.* For purposes of eligibility to apply for section 212(c) relief under this section and 8 CFR 1212.3, the definition of aggravated felony in section 101(a)(43) of the Act is that in effect at the time the special motion or the application for section 212(c) relief is adjudicated under this section. An alien shall be deemed to be ineligible for section 212(c) relief if he or she has been charged and found deportable or removable on the basis of a crime that is an aggravated felony, except as provided in 8 CFR 1212.3(f)(4).

(d) *Effect of prior denial of section 212(c) relief.* A motion under this section will not be granted with respect to any conviction where an alien has previously been denied section 212(c) relief by an immigration judge or by the Board on discretionary grounds.

(e) *Scope of proceedings.* Proceedings shall be reopened under this section solely for the purpose of adjudicating the application for section 212(c) relief, but if the immigration judge or the Board grants a motion by the alien to reopen the proceedings on other applicable grounds under 8 CFR 1003.2 or

1003.23 of this chapter, all issues encompassed within the reopened proceedings may be considered together, as appropriate.

(f) *Procedure for filing a special motion to seek section 212(c) relief.* An eligible alien shall file a special motion to seek section 212(c) relief with the immigration judge or the Board, whichever last held jurisdiction over the case. An eligible alien must submit a copy of the Form I–191 application, and supporting documents, with the special motion. The motion must contain the notation ''special motion to seek section 212(c) relief.'' The Department of Homeland Security (DHS) shall have 45 days from the date of filing of the special motion to respond. In the event the DHS does not respond to the motion, the DHS retains the right in the proceedings to contest any and all issues raised.

(g) *Relationship to motions to reopen or reconsider on other grounds*—(1) *Other pending motions to reopen or reconsider.* An alien who has previously filed a motion to reopen or reconsider that is still pending before an immigration judge or the Board, other than a motion for section 212(c) relief, must file a separate special motion to seek section 212(c) relief pursuant to this section. The new motion shall specify any other motions currently pending before an immigration judge or the Board. An alien who has previously filed a motion to reopen under 8 CFR 1003.2 or 1003.23 based on *INS* v. *St. Cyr* is not required to file a new special motion under this section, but he or she may supplement the previous motion if it is still pending. Any motion for section 212(c) relief described in this section pending before the Board or an immigration judge on the effective date of this rule that would be barred by the time or number limitations on motions shall be deemed to be a motion filed pursuant to this section, and shall not count against the number restrictions for other motions to reopen.

(2) *Motions previously filed pursuant to prior provision.* If an alien previously filed a motion to apply for section 212(c) relief with an immigration judge or the Board pursuant to the prior provisions of this section, as in effect before October 28, 2004, and the motion is still pending, the motion will be adjudicated pursuant to the standards of this section, both as revised and as previously in effect, and the alien does not need to file a new special motion pursuant to paragraph (g)(1) of this section. However, if a motion filed under the prior provisions of this section was denied because the alien did not satisfy the requirements contained therein, the alien must file a new special motion pursuant to this section, if eligible, in order to apply for section 212(c) relief based on the requirements established in this section.

(3) *Effect of a prior denial of a motion to reopen or motion to reconsider filed after the St. Cyr decision.* A motion under this section will not be granted where an alien has previously submitted a motion to reopen or motion to reconsider based on the *St. Cyr* decision and that motion was denied by an immigration judge or the Board (except on account of time or number limitations for such motions).

(4) *Limitations for motions.* The filing of a special motion under this section has no effect on the time and number limitations for motions to reopen or reconsider that may be filed on grounds unrelated to section 212(c).

(h) *Deadline to file a special motion to seek section 212(c) relief under this section.* An alien subject to a final administrative order of deportation or removal must file a special motion to seek section 212(c) relief on or before April 26, 2005. An eligible alien may file one special motion to seek section 212(c) relief under this section.

(i) *Fees.* No filing fee is required at the time the alien files a special motion to seek section 212(c) relief under this section. However, if the special motion is granted, and the alien has not previously filed an application for section 212(c) relief, the alien will be required to submit the appropriate fee receipt at the time the alien files the Form I–191 with the immigration court.

(j) *Remands of appeals.* If the Board has jurisdiction and grants the motion to apply for section 212(c) relief pursuant to this section, it shall remand the case to the immigration judge solely for adjudication of the section 212(c) application.

(k) *Limitations on eligibility under this section.* This section does not apply to:

(1) Aliens who have departed the United States and are currently outside the United States;

(2) Aliens issued a final order of deportation or removal who then illegally returned to the United States; or

(3) Aliens who have not been admitted or paroled.

[69 FR 57833, Sept. 28, 2004]

§ 1003.46 Protective orders, sealed submissions in Immigration Courts.

(a) *Authority.* In any immigration or bond proceeding, Immigration Judges may, upon a showing by the Service of a substantial likelihood that specific information submitted under seal or to be submitted under seal will, if disclosed, harm the national security (as defined in section 219(c)(2) of the Act) or law enforcement interests of the United States, issue a protective order barring disclosure of such information.

(b) *Motion by the service.* The Service may at any time after filing a Notice to Appear, or other charging document, file with the Immigration Judge, and serve upon the respondent, a motion for an order to protect specific information it intends to submit or is submitting under seal. The motion shall describe, to the extent practical, the information that the Service seeks to protect from disclosure. The motion shall specify the relief requested in the protective order. The respondent may file a response to the motion within ten days after the motion is served.

(c) *Sealed annex to motion.* In the Service's discretion, the Service may file the specific information as a sealed annex to the motion, which shall not be served upon the respondent. If the Service files a sealed annex, or the Immigration Judge, in his or her discretion, instructs that the information be filed as a sealed annex in order to determine whether to grant or deny the motion, the Immigration Judge shall consider the information only for the purpose of determining whether to grant or deny the motion.

(d) *Due deference.* The Immigration Judge shall give appropriate deference to the expertise of senior officials in law enforcement and national security agencies in any averments in any submitted affidavit in determining whether the disclosure of information will harm the national security or law enforcement interests of the United States.

(e) *Denied motions.* If the motion is denied, any sealed annex shall be returned to the Service, and the Immigration Judge shall give no weight to such information. The Service may immediately appeal denial of the motion to the Board, which shall have jurisdiction to hear the appeal, by filing a Notice of Appeal and the sealed annex with the Board. The Immigration Judge shall hold any further proceedings in abeyance pending resolution of the appeal by the Board.

(f) *Granted motions.* If the motion is granted, the Immigration Judge shall issue an appropriate protective order.

(1) The Immigration Judge shall ensure that the protective order encompasses such witnesses as the respondent demonstrates are reasonably necessary to the presentation of his case. If necessary, the Immigration Judge may impose the requirements of the protective order on any witness before the Immigration Judge to whom such information may be disclosed.

(2) The protective order may require that the respondent, and his or her attorney or accredited representative, if any:

(i) Not divulge any of the information submitted under the protective order, or any information derived therefrom, to any person or entity, other than authorized personnel of the Executive Office for Immigration Review, the Service, or such other persons approved by the Service or the Immigration Judge;

(ii) When transmitting any information under a protective order, or any information derived therefrom, to the Executive Office for Immigration Review or the Service, include a cover sheet identifying the contents of the submission as containing information subject to a protective order under this section;

(iii) Store any information under a protective order, or any information derived therefrom, in a reasonably secure manner, and return all copies of such information to the Service upon

completion of proceedings, including judicial review; and

(iv) Such other requirements as the Immigration Judge finds necessary to protect the information from disclosure.

(3) Upon issuance of such protective order, the Service shall serve the respondent with the protective order and the sealed information. A protective order issued under this section shall remain in effect until vacated by the Immigration Judge.

(4) Further review of the protective order before the Board shall only be had pursuant to review of an order of the Immigration Judge resolving all issues of removability and any applications for relief pending in the matter pursuant to 8 CFR 3.1(b). Notwithstanding any other provision of this section, the Immigration Judge shall retain jurisdiction to modify or vacate a protective order upon motion of the Service or the respondent. An Immigration Judge may not grant a motion by the respondent to modify or vacate a protective order until either: the Service files a response to such motion or 10 days after service of such motion on the Service.

(g) *Admissibility as evidence.* The issuance of a protective order shall not prejudice the respondent's right to challenge the admissibility of the information subject to a protective order. The Immigration Judge may not find the information inadmissible solely because it is subject to a protective order.

(h) *Seal.* Any submission to the Immigration Judge, including any briefs, referring to information subject to a protective order shall be filed under seal. Any information submitted subject to a protective order under this paragraph shall remain under seal as part of the administrative record.

(i) *Administrative enforcement.* If the Service establishes that a respondent, or the respondent's attorney or accredited representative, has disclosed information subject to a protective order, the Immigration Judge shall deny all forms of discretionary relief, except bond, unless the respondent fully cooperates with the Service or other law enforcement agencies in any investigation relating to the noncompliance with the protective order and disclosure of the information; and establishes by clear and convincing evidence either that extraordinary and extremely unusual circumstances exist or that failure to comply with the protective order was beyond the control of the respondent and his or her attorney or accredited representative. Failure to comply with a protective order may also result in the suspension of an attorney's or an accredited representative's privilege of appearing before the Executive Office for Immigration Review or before the Service pursuant to 8 CFR part 3, subpart G.

[67 FR 36802, May 28, 2002]

§ 1003.47 Identity, law enforcement, or security investigations or examinations relating to applications for immigration relief, protection, or restriction on removal.

(a) *In general.* The procedures of this section are applicable to any application for immigration relief, protection, or restriction on removal that is subject to the conduct of identity, law enforcement, or security investigations or examinations as described in paragraph (b) of this section, in order to ensure that DHS has completed the appropriate identity, law enforcement, or security investigations or examinations before the adjudication of the application.

(b) *Covered applications.* The requirements of this section apply to the granting of any form of immigration relief in immigration proceedings which permits the alien to reside in the United States, including but not limited to the following forms of relief, protection, or restriction on removal to the extent they are within the authority of an immigration judge or the Board to grant:

(1) Asylum under section 208 of the Act.

(2) Adjustment of status to that of a lawful permanent resident under sections 209 or 245 of the Act, or any other provision of law.

(3) Waiver of inadmissibility or deportability under sections 209(c), 212, or 237 of the Act, or any provision of law.

(4) Permanent resident status on a conditional basis or removal of the

conditional basis of permanent resident status under sections 216 or 216A of the Act, or any other provision of law.

(5) Cancellation of removal or suspension of deportation under section 240A or former section 244 of the Act, or any other provision of law.

(6) Relief from removal under former section 212(c) of the Act.

(7) Withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture.

(8) Registry under section 249 of the Act.

(9) Conditional grants relating to the above, such as for applications seeking asylum pursuant to section 207(a)(5) of the Act or cancellation of removal in light of section 240A(e) of the Act.

(c) *Completion of applications for immigration relief, protection, or restriction on removal.* Failure to file necessary documentation and comply with the requirements to provide biometrics and other biographical information in conformity with the applicable regulations, the instructions to the applications, the biometrics notice, and instructions provided by DHS, within the time allowed by the immigration judge's order, constitutes abandonment of the application and the immigration judge may enter an appropriate order dismissing the application unless the applicant demonstrates that such failure was the result of good cause. Nothing in this section shall be construed to affect the provisions in 8 CFR 1208.4 regarding the timely filing of asylum applications or the determination of a respondent's compliance with any other deadline for initial filing of an application, including the consequences of filing under the Child Status Protection Act.

(d) *Biometrics and other biographical information.* At any hearing at which a respondent expresses an intention to file or files an application for relief for which identity, law enforcement, or security investigations or examinations are required under this section, unless DHS advises the immigration judge that such information is unnecessary in the particular case, DHS shall notify the respondent of the need to provide biometrics and other biographical information and shall provide a biometrics notice and instructions to the respondent for such procedures. The immigration judge shall specify for the record when the respondent receives the biometrics notice and instructions and the consequences for failing to comply with the requirements of this section. Whenever required by DHS, the applicant shall make arrangements with an office of DHS to provide biometrics and other biographical information (including for any other person covered by the same application who is required to provide biometrics and other biographical information) before or as soon as practicable after the filing of the application for relief in the immigration proceedings. Failure to provide biometrics or other biographical information of the applicant or any other covered individual within the time allowed will constitute abandonment of the application or of the other covered individual's participation unless the applicant demonstrates that such failure was the result of good cause. DHS is responsible for obtaining biometrics and other biographical information with respect to any alien in detention.

(e) *Conduct of investigations or examinations.* DHS shall endeavor to initiate all relevant identity, law enforcement, or security investigations or examinations concerning the alien or beneficiaries promptly, to complete those investigations or examinations as promptly as is practicable (considering, among other things, increased demands placed upon such investigations), and to advise the immigration judge of the results in a timely manner, on or before the date of a scheduled hearing on any application for immigration relief filed in the proceedings. The immigration judges, in scheduling hearings, shall allow a period of time for DHS to undertake the necessary identity, law enforcement, or security investigations or examinations prior to the date that an application is scheduled for hearing and disposition, with a view to minimizing the number of cases in which hearings must be continued.

(f) *Continuance for completion of investigations or examinations.* If DHS has not reported on the completion and results

of all relevant identity, law enforcement, or security investigations or examinations for an applicant and his or her beneficiaries by the date that the application is scheduled for hearing and disposition, after the time allowed by the immigration judge pursuant to paragraph (e) of this section, the immigration judge may continue proceedings for the purpose of completing the investigations or examinations, or hear the case on the merits. DHS shall attempt to give reasonable notice to the immigration judge of the fact that all relevant identity, law enforcement, or security investigations or examinations have not been completed and the amount of time DHS anticipates is required to complete those investigations or examinations.

(g) *Adjudication after completion of investigations or examinations.* In no case shall an immigration judge grant an application for immigration relief that is subject to the conduct of identity, law enforcement, or security investigations or examinations under this section until after DHS has reported to the immigration judge that the appropriate investigations or examinations have been completed and are current as provided in this section and DHS has reported any relevant information from the investigations or examinations to the immigration judge.

(h) *Adjudication upon remand from the Board.* In any case remanded pursuant to 8 CFR 1003.1(d)(6), the immigration judge shall consider the results of the identity, law enforcement, or security investigations or examinations subject to the provisions of this section. If new information is presented, the immigration judge may hold a further hearing if necessary to consider any legal or factual issues, including issues relating to credibility, if relevant. The immigration judge shall then enter an order granting or denying the immigration relief sought.

(i) *Procedures when immigration relief granted.* At the time that the immigration judge or the Board grants any relief under this section that would entitle the respondent to a new document evidencing such relief, the decision granting such relief shall include advice that the respondent will need to contact an appropriate office of DHS. Information concerning DHS locations and local procedures for document preparation shall be routinely provided to EOIR and updated by DHS. Upon respondent's presentation of a final order from the immigration judge or the Board granting such relief and submission of any biometric and other information necessary, DHS shall prepare such documents in keeping with section 264 of the Act and regulations thereunder and other relevant law.

(j) *Voluntary departure.* The procedures of this section do not apply to the granting of voluntary departure prior to the conclusion of proceedings pursuant to 8 CFR 1240.26(b) or at the conclusion of proceedings pursuant to 8 CFR 1240.26(c). If DHS seeks a continuance in order to complete pending identity, law enforcement, or security investigations or examinations, the immigration judge may grant additional time in the exercise of discretion, and the 30-day period for the immigration judge to grant voluntary departure, as provided in §1240.26(b)(1)(ii), shall be extended accordingly.

(k) *Custody hearings.* The foregoing provisions of this section do not apply to proceedings seeking the redetermination of conditions of custody of an alien during the pendency of immigration proceedings under section 236 of the Act. In scheduling an initial custody redetermination hearing, the immigration judge shall, to the extent practicable consistent with the expedited nature of such cases, take account of the brief initial period of time needed for DHS to conduct the automated portions of its identity, law enforcement, or security investigations or examinations with respect to aliens detained in connection with immigration proceedings. If at the time of the custody hearing DHS seeks a brief continuance in an appropriate case based on unresolved identity, law enforcement, or security investigations or examinations, the immigration judge in the exercise of discretion may grant one or more continuances for a limited period of time which is reasonable under the circumstances.

[70 FR 4753, Jan. 31, 2005]

Subpart D—Special Provisions

SOURCE: 89 FR 46794, May 29, 2024, unless otherwise noted.

§ 1003.55 Treatment of post-conviction orders.

(a) *Applicability of Matter of Thomas & Thompson, 27 I&N Dec. 674 (A.G. 2019).* (1) *Matter of Thomas & Thompson* shall not apply to a criminal sentence:

(i) Where a court at any time granted a request to modify, clarify, vacate, or otherwise alter the sentence and the request was filed on or before October 25, 2019; or

(ii) Where the noncitizen demonstrates that the noncitizen reasonably and detrimentally relied on the availability of an order modifying, clarifying, vacating, or otherwise altering the sentence entered in connection with a guilty plea, conviction, or sentence on or before October 25, 2019.

(2) Where paragraph (a)(1) of this section applies, the adjudicator shall assess the relevant order under *Matter of Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005), *Matter of Song*, 23 I&N Dec. 173 (BIA 2001), and *Matter of Estrada*, 26 I&N Dec. 749 (BIA 2016), as applicable.

(b) *Post-conviction orders correcting errors.* Adjudicators shall give effect to an order that corrects a genuine ambiguity, mistake, or typographical error on the face of the original conviction or sentencing order and that was entered to give effect to the intent of the original order.

Subpart E—List of Pro Bono Legal Service Providers

SOURCE: 62 FR 9073, Feb. 28, 1997, unless otherwise noted.

§ 1003.61 General provisions.

(a) *Definitions*—(1) *Director.* Director means the Director of the Executive Office for Immigration Review (EOIR), pursuant to 8 CFR 1001.1(o), and shall also include any office or official within EOIR to whom the Director delegates authority with respect to subpart E of this part.

(2) *Pro bono legal services.* Pro bono legal services are those uncompensated legal services performed for indigent individuals or the public good without any expectation of either direct or indirect remuneration, including referral fees (other than filing fees or photocopying and mailing expenses), although a representative may be regularly compensated by the firm, organization, or pro bono referral service with which he or she is associated.

(3) *Organization.* A non-profit religious, charitable, social service, or similar group established in the United States.

(4) *Pro bono referral service.* A referral service, offered by a non-profit group, association, or similar organization established in the United States that assists persons in locating pro bono representation by making case referrals to attorneys or organizations that are available to provide pro bono representation.

(5) *Provider.* Any organization, pro bono referral service, or attorney whose name is included on the List of Pro Bono Legal Service Providers.

(b) *Authority.* The Director shall maintain a list, known as the List of Pro Bono Legal Service Providers (List), of organizations, pro bono referral services, and attorneys qualified under this subpart to provide pro bono legal services in immigration proceedings. The List, which shall be updated not less than quarterly, shall be provided to individuals in removal and other proceedings before an immigration court.

(c) *Qualification.* An organization, pro bono referral service, or attorney qualifies to be included on the List if the eligibility requirements under § 1003.62 and the application procedures under § 1003.63 are met.

(d) *Organizations.* Approval of an organization's application to be included on the List under this subpart is not equivalent to recognition under part 1292 of this chapter. Recognition under part 1292 of this chapter does not constitute a successful application for purposes of the List.

[80 FR 59510, Oct. 1, 2015]

§ 1003.62 Eligibility.

(a) *Organizations recognized under part 1292.* An organization that is recognized under part 1292 of this chapter is eligible to apply to have its name included

on the List if the organization meets the requirements in paragraphs (a)(1) through (3) of this section.

(1) The organization will provide a minimum of 50 hours per year of pro bono legal services to individuals at each immigration court location where the organization intends to be included on the List, in cases where an attorney or representative of the organization, or an attorney or representative to whom the organization has referred the case for pro bono representation, files a Form EOIR–28 Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (EOIR–28 Notice of Entry of Appearance). When an attorney or representative of the organization represents the individual pro bono before the immigration court location, the organization may count, toward the 50-hour requirement, the attorney's or representative's out-of-court preparation time and in-court time. When the organization refers the case for pro bono legal services outside the organization, the organization may count, toward the 50-hour requirement, time the organization's attorneys and representatives spent providing pro bono legal services, for example conducting an intake interview or mentoring the attorney or representative to whom the case is referred. However, the organization is not permitted to count the time of the attorney or representative to whom the case was referred.

(2) The organization has on its staff at least one attorney, as defined in §1292.1(a)(1) of this chapter, or at least one representative accredited under part 1292 of this chapter, to practice before the immigration courts and the Board of Immigration Appeals.

(3) No attorney or representative who will provide pro bono legal services on the organization's behalf in cases pending before EOIR is the subject of an order of disbarment under §1003.101(a)(1) or suspension under §1003.101(a)(2).

(b) *Organizations not recognized under part 1292.* An organization that is not recognized under part 1292 of this chapter is eligible to apply to have its name included on the List if the organization meets the requirements in paragraphs (b)(1) through (3) of this section.

(1) The organization will provide a minimum of 50 hours per year of pro bono legal services to individuals at each immigration court location where the organization intends to be included on the List, in cases where an attorney or representative of the organization, or an attorney or representative to whom the organization has referred the case for pro bono representation, files a Form EOIR–28 Notice of Entry of Appearance. When an attorney or representative of the organization represents the individual pro bono before the immigration court location, the organization may count, toward the 50-hour requirement, the attorney's or representative's out-of-court preparation time and in-court time. When the organization refers the case for pro bono legal services outside the organization, the organization may count, toward the 50-hour requirement, time the organization's attorneys or representatives spent providing pro bono legal services, for example conducting an intake interview or mentoring the attorney or representative to whom the case is referred. However, the organization is not permitted to count the time of the attorney or representative to whom the case was referred.

(2) The organization has on its staff at least one attorney, as defined in §1292.1(a)(1) of this chapter.

(3) No attorney or representative who will provide pro bono legal services on the organization's behalf in cases pending before EOIR is the subject of an order of disbarment under §1003.101(a)(1) or suspension under §1003.101(a)(2).

(c) *Pro bono referral services.* A referral service is eligible to apply to have its name included on the List at each immigration court location where the referral service either refers or plans to refer cases to attorneys or organizations that will provide pro bono legal services to individuals in proceedings before an immigration judge.

(d) *Attorneys.* An attorney, as defined in §1292.1(a)(1) of this chapter, is eligible to apply to have his or her name included on the List if the attorney meets the requirements in paragraphs (d)(1) through (3) of this section.

(1) The attorney is not the subject of an order of disbarment under

§ 1003.101(a)(1) or suspension under § 1003.101(a)(2);

(2) The attorney will provide a minimum of 50 hours per year of pro bono legal services to individuals at each immigration court location where the attorney intends to be included on the List, in cases where he or she files a Form EOIR–28 Notice of Entry of Appearance. The attorney may count, toward the requirement, both out-of-court preparation time and in-court time.

(3) The attorney cannot provide pro bono legal services through or in association with an organization or pro bono referral service described in paragraph (a), (b), or (c) of this section because:

(i) Such an organization or referral service is unavailable; or

(ii) The range of services provided by an available organization(s) or referral service(s) is insufficient to address the needs of the community.

[80 FR 59510, Oct. 1, 2015]

§ 1003.63 Applications.

(a) *Generally.* To be included on the List, any organization, pro bono referral service, or attorney that is eligible under § 1003.62 to apply to be included on the List must file an application with the Director. Applications must be received by the Director at least 60 days in advance of the quarterly update in order to be considered. The application must:

(1) Establish by clear and convincing evidence that the applicant qualifies to be on the List pursuant to § 1003.61(c);

(2) Specify how the organization, pro bono referral service, or attorney wants its name and contact information to be set forth on the List; and

(3) Identify each immigration court location where the organization, pro bono referral service, or attorney provides, or plans to provide, pro bono legal services.

(b) *Organizations.* An organization, whether recognized or not under part 1292, must submit with its application a declaration signed by an authorized officer of the organization that states under penalty of perjury:

(1) That it will provide annually at least 50 hours of pro bono legal services to individuals in removal or other proceedings before each immigration court location identified in its application;

(2) That every attorney and accredited representative who will represent clients pro bono before EOIR on behalf of the organization is registered to practice before EOIR under § 1292.1(f);

(3) That no attorney or representative who will provide pro bono legal services on behalf of the organization in cases pending before EOIR:

(i) Is under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; or

(ii) Is the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2); and

(4) Any specific limitations it has in providing pro bono legal services (e.g., not available to assist detained individuals or those with criminal convictions, or available for asylum cases only).

(c) *Pro bono referral services.* A pro bono referral service must submit with its application a declaration signed by an authorized officer of the referral service that states under penalty of perjury:

(1) That it will offer its referral services to individuals in removal or other proceedings before each immigration court location identified in its application; and

(2) Any specific limitations it has in providing its pro bono referral services (e.g., not available to assist detained individuals or those with criminal convictions, or available only for asylum cases).

(d) *Attorneys.* An attorney must submit with his or her application a declaration that states under penalty of perjury:

(1) That he or she will provide annually at least 50 hours of pro bono legal services to individuals in removal or other proceedings before each immigration court location identified in his or her application;

(2) Any specific limitations the attorney has in providing pro bono legal services (e.g., not available to assist detained individuals or those with criminal convictions, or available for asylum cases only);

(3) A description of the good-faith efforts he or she made to provide pro bono legal services through an organization or pro bono referral service described in §1003.62(a), (b), or (c) to individuals appearing before each immigration court location listed in the application;

(4) An explanation that any such organization or referral service is unavailable or that the range of services provided by available organization(s) or referral service(s) is insufficient to address the needs of the community;

(5) His or her EOIR registration number;

(6) That he or she is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; and

(7) That he or she is not the subject of an order of disbarment under §1003.101(a)(1) or suspension under §1003.101(a)(2).

(e) *Applications approved before* November 30, 2015. Providers whose applications to be included on the List were approved before November 30, 2015 must file an application under this section as follows: Organizations and pro bono referral services, within one year of November 30, 2015; attorneys, within six months of November 30, 2015. The names of providers who do not file an application as required by this paragraph shall be removed from the List following expiration of the application time period, the removal of which will be reflected no later than in the next quarterly update.

(f) *Notice and comments*—(1) *Public notice and comment.* The names of the applicants, whether organizations, pro bono referral services, or individuals, meeting the regulatory requirements to be included on the List shall be publicly posted for 15 days after review of the applications by the Director, and upon request a copy of each application shall be made available for public review. Any individual may forward to the Director comments or a recommendation for approval or disapproval of an application within 30 days from the first date the name of the applicant is publicly posted. The commenting party shall include his or her name and address. A comment or recommendation may be sent to the Director electronically, in which case the Director shall transmit the comment or recommendation to the applicant. A comment or recommendation not sent to the Director electronically must include proof of service on the applicant.

(2) *Response.* The applicant has 15 days to respond from the date the applicant was served with, or notified by the Director of, the comment. All responses must be filed with the Director and include proof of service of a copy of such response on the commenting party.

[80 FR 59511, Oct. 1, 2015, as amended at 86 FR 70723, Dec. 13, 2021]

§ 1003.64 Approval and denial of applications.

(a) *Authority.* The Director in his discretion shall have the authority to approve or deny an application to be included on the List of Pro Bono Legal Service Providers. The Director may request additional information from the applicant to determine whether the applicant qualifies to be included on the List.

(b) *Decision.* The applicant shall be notified of the decision in writing. The written notice shall be served at the address provided on the application unless the applicant subsequently provides a change of address pursuant to §1003.66, or shall be transmitted to the applicant electronically.

(1) *Denials.* If the application is denied, the applicant shall be given a written explanation of the grounds for such denial, and the decision shall be final. Such denial shall be without prejudice to file another application at any time after the next quarterly publication of the List.

(2) *Approval and continuing qualification.* If the application is approved, the applicant's name will be included on the List at the next quarterly update. Every three years from the date of approval, a provider must file with the Director a declaration, under penalty of perjury, stating that the provider remains qualified to be included on the List under §1003.62(a), (b), (c), or (d). For organizations and attorneys, the declaration must include alien registration numbers of clients in whose

cases the provider rendered pro bono legal services under §1003.62(a)(1), (b)(1), or (d)(2), representing at least 50 hours of pro bono legal services each year since the provider's most recent such declaration, or since the provider was included on the List, whichever was more recent. Organizations must provide, for each case listed, the name of the organization's attorneys or representatives who provided representation or other pro bono legal services, or the name of the attorney, representative, or organization the case was referred to for pro bono legal services. If a provider fails to timely file the declaration or declares that it is no longer qualified to be included on the List, the provider's name will be removed from the List at the next quarterly update. Failure to file a declaration within the applicable time period does not prohibit the filing of a new application to be included on the List.

[80 FR 59512, Oct. 1, 2015, as amended at 86 FR 70723, Dec. 13, 2021]

§1003.65 Removal of a provider from the List.

(a) *Automatic removal.* If the Director determines that an attorney on the List is the subject of a final order of disbarment under §1003.101(a)(1), or an order of suspension under §1003.101(a)(2), then the Director shall:

(1) Remove the name of the attorney from the List no later than at the next quarterly update; and

(2) Notify the attorney of such removal in writing, at the last known address given by the provider or electronically.

(b) *Requests for removal.* (1) Any provider may, at any time, submit a written request to have the provider's name removed from the List. The written request may include an explanation for the voluntary removal. Upon such written request, the name of the provider shall be removed from the List, and such removal will be reflected no later than in the next quarterly update.

(2) Any provider removed from the List at the provider's request may seek reinstatement to the List upon written notice to the Director. Any request for reinstatement must include a new declaration of eligibility, as set forth under §1003.63(b), (c), or (d). Reinstatement to the List is at the sole discretion of the Director. Upon the Director's approval of reinstatement, the provider's name shall be included on the List no later than in the next quarterly update. Reinstatement to the List does not affect the requirement under §1003.64(b)(2) that a provider submit a new declaration of eligibility every three years from the date of the approval of the original application to be included on the List.

(c) *EOIR inquiry in response to complaints.* If EOIR receives complaints that a particular provider on the List may no longer be accepting new pro bono clients, the Director may send a written inquiry to the provider noting that EOIR has received complaints with regard to the provider's acceptance of pro bono clients and allowing an opportunity for the provider to state whether the provider is continuing to comply with the regulations in this subpart or, if appropriate, whether the provider wishes to request voluntary removal from the List as provided in paragraph (b) of this section. The Director may remove a provider from the List for failure to respond to a written inquiry issued under this paragraph within 30 days or such additional time period stated by the Director in the written inquiry.

(d) *Procedures for removing providers from the List.* The following provisions apply in cases not covered by paragraphs (a), (b), or (c) of this section.

(1) *Grounds.* A provider shall be removed from the List if it, he, or she:

(i) Fails to comply with §1003.66;

(ii) Has filed a false declaration in connection with an application filed pursuant to §1003.63;

(iii) Improperly uses the List primarily to advertise or solicit clients for compensated legal services; or

(iv) Fails to comply with any and all other requirements of this subpart.

(2) *Notice.* If the Director determines that a provider falls within one or more of the enumerated grounds under paragraph (d)(1) of this section, the Director shall promptly notify the provider in writing, at the address last

provided to the Director by the provider or electronically, of the Director's intention to remove the name of the provider from the List.

(3) *Response.* The provider may submit a written answer within 30 days from the date the notice is served or is sent to the provider electronically. The provider must establish by clear and convincing evidence that the provider continues to meet the qualifications for inclusion on the List, by declaration under penalty of perjury as to the provider's continued compliance with eligibility requirements under this subchapter, which must include alien registration numbers of clients in whose cases the provider rendered pro bono legal services under §1003.62(a)(1), (b)(2), or (d)(2), representing at least 50 hours of pro bono legal services each year since the provider's most recent declaration under §1003.64(b)(2), or since the provider was included on the List, whichever was more recent.

(4) *Decision.* If, after consideration of any response submitted by the provider, the Director determines that the provider is no longer qualified to remain on the List, the Director shall:

(i) Remove the name of the provider from the List no later than in the next quarterly update; and

(ii) Notify the provider of such removal in writing, at the address last provided to the Director by the provider or electronically.

(5) *Disciplinary Action.* Removal from the List pursuant to §1003.65(a), (b), (c), or (d) shall be without prejudice to the authority to discipline a practitioner under EOIR's rules and procedures for professional conduct for practitioners listed in 8 CFR part 1003, subpart G.

[80 FR 59512, Oct. 1, 2015, as amended at 86 FR 70723, Dec. 13, 2021]

§1003.66 Changes in information or status.

All providers with a pending application or currently on the List must notify the Director in writing within ten business days if:

(a) The provider's contact information has changed;

(b) Any specific limitations in providing pro bono legal services under §1003.63(b)(4), (c)(2), or (d)(2) have changed; or

(c) The provider is no longer eligible under §1003.62.

[80 FR 59513, Oct. 1, 2015]

Subpart F [Reserved]

Subpart G—Professional Conduct for Practitioners—Rules and Procedures

SOURCE: 65 FR 39526, June 27, 2000, unless otherwise noted.

§1003.101 General provisions.

(a) *Authority to sanction.* An adjudicating official or the Board of Immigration Appeals (the Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Board and the Immigration Courts when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in §1003.102. In accordance with the disciplinary proceedings set forth in this subpart and outlined below, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

(1) Disbarment, which is permanent, from practice before the Board and the Immigration Courts or the DHS, or before all three authorities;

(2) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the DHS, or before all three authorities;

(3) Public or private censure; or

(4) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

(b) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to §1003.109. Nothing in this regulation shall be construed as authorizing persons who do not meet the definition of practitioner to represent individuals before the Board and the immigration courts or the DHS.

(c) The administrative termination of a representative's accreditation under 8 CFR 1292.17 after the issuance of a Notice of Intent to Discipline pursuant to §1003.105(a)(1) shall not preclude the continuation of disciplinary proceedings and the imposition of sanctions, unless counsel for the government moves to withdraw the Notice of Intent to Discipline and the adjudicating official or the Board grants the motion.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008; 77 FR 2014, Jan. 13, 2012; 81 FR 92362, Dec. 19, 2016; 87 FR 56259, Sept. 14, 2022]

§ 1003.102 Grounds.

It is deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any practitioner who falls within one or more of the categories enumerated in this section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law. A practitioner who falls within one of the following categories shall be subject to disciplinary sanctions in the public interest if he or she:

(a) Charges or receives, either directly or indirectly:

(1) In the case of an attorney, any fee or compensation for specific services rendered for any person that shall be deemed to be grossly excessive. The factors to be considered in determining whether a fee or compensation is grossly excessive include the following: The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the attorney or attorneys performing the services,

(2) In the case of an accredited representative as defined in §1292.1(a)(4) of this chapter, any fee or compensation for specific services rendered for any person, except that an accredited representative may be regularly compensated by the organization of which he or she is an accredited representative, or

(3) In the case of a law student or law graduate as defined in §1292.1(a)(2) of this chapter, any fee or compensation for specific services rendered for any person, except that a law student or law graduate may be regularly compensated by the organization or firm with which he or she is associated as long as he or she is appearing without direct or indirect remuneration from the client he or she represents;

(b) Bribes, attempts to bribe, coerces, or attempts to coerce, by any means whatsoever, any person (including a party to a case or an officer or employee of the Department of Justice) to commit any act or to refrain from performing any act in connection with any case;

(c) Knowingly or with reckless disregard makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence. If a practitioner has offered material evidence and comes to know of its falsity, the practitioner shall take appropriate remedial measures;

(d) Solicits professional employment, through in-person or live telephone contact or through the use of runners, from a prospective client with whom the practitioner has no family or prior professional relationship, when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain. If the practitioner has no family or prior professional relationship with the prospective client known to be in need of legal services in a particular matter, the practitioner must include the words ''Advertising Material'' on

the outside of the envelope of any written communication and at the beginning and ending of any recorded communication. Such advertising material or similar solicitation documents may not be distributed by any person in or around the premises of any building in which an immigration court is located;

(e) Is subject to a final order of disbarment or suspension, or has resigned while a disciplinary investigation or proceeding is pending;

(f) Knowingly or with reckless disregard makes a false or misleading communication about his or her qualifications or services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading, or,

(2) Contains an assertion about the practitioner or the practitioner's qualifications or services that cannot be substantiated. A practitioner shall not state or imply that the practitioner has been recognized or certified as a specialist in immigration or nationality law unless such certification is granted by the appropriate State regulatory authority or by an organization that has been approved by the appropriate State regulatory authority to grant such certification. An accredited representative shall not state or imply that the accredited representative:

(i) Is approved to practice before the immigration courts or the Board, if the representative is only approved as an accredited representative before DHS;

(ii) Is an accredited representative for an organization other than a recognized organization through which the representative acquired accreditation; or

(iii) Is an attorney.

(g) Engages in contumelious or otherwise obnoxious conduct, with regard to a case in which he or she acts in a representative capacity, which would constitute contempt of court in a judicial proceeding;

(h) Has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, in any court of the United States, or of any state, possession, territory, commonwealth, or the District of Columbia. A serious crime includes any felony and also includes any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, dishonesty, bribery, extortion, misappropriation, theft, or an attempt, or a conspiracy or solicitation of another, to commit a serious crime. A plea or verdict of guilty or a conviction after a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section;

(i) Knowingly or with reckless disregard falsely certifies a copy of a document as being a true and complete copy of an original;

(j) Engages in frivolous behavior in a proceeding before an immigration court, the Board, or any other administrative appellate body under title II of the Immigration and Nationality Act, provided:

(1) A practitioner engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to harass or to cause unnecessary delay. Actions that, if taken improperly, may be subject to disciplinary sanctions include, but are not limited to, the making of an argument on any factual or legal question, the submission of an application for discretionary relief, the filing of a motion, or the filing of an appeal. The signature of a practitioner on any filing, application, motion, appeal, brief, or other document constitutes certification by the signer that the signer has read the filing, application, motion, appeal, brief, or other document and that, to the best of the signer's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, the document is well-grounded in fact and is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, and is not interposed for any improper purpose.

(2) The imposition of disciplinary sanctions for frivolous behavior under

this section in no way limits the authority of the Board to dismiss an appeal summarily pursuant to §1003.1(d);

(k) Engages in conduct that constitutes ineffective assistance of counsel, as previously determined in a finding by the Board, an immigration judge in an immigration proceeding, or a Federal court judge or panel, and a disciplinary complaint is filed within one year of the finding;

(l) Repeatedly fails to appear for prehearing conferences, scheduled hearings, or case-related meetings in a timely manner without good cause;

(m) Assists any person, other than a practitioner as defined in §1003.101(b), in the performance of activity that constitutes the unauthorized practice of law. The practice of law before EOIR means engaging in *practice* or *preparation* as those terms are defined in §§1001.1(i) and (k);

(n) Engages in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process. Conduct that will generally be subject to sanctions under this ground includes any action or inaction that seriously impairs or interferes with the adjudicative process when the practitioner should have reasonably known to avoid such conduct;

(o) Fails to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners;

(p) Fails to abide by a client's decisions concerning the objectives of representation and fails to consult with the client as to the means by which they are to be pursued, in accordance with paragraph (r) of this section. A practitioner may take such action on behalf of the client as is impliedly authorized to carry out the representation;

(q) Fails to act with reasonable diligence and promptness in representing a client.

(1) A practitioner's workload must be controlled and managed so that each matter can be handled competently.

(2) A practitioner has the duty to act with reasonable promptness. This duty includes, but shall not be limited to, complying with all time and filing limitations. This duty, however, does not preclude the practitioner from agreeing to a reasonable request for a postponement that will not prejudice the practitioner's client.

(3) A practitioner should carry through to conclusion all matters undertaken for a client, consistent with the scope of representation as previously determined by the client and practitioner, unless the client terminates the relationship or the practitioner obtains permission to withdraw in compliance with applicable rules and regulations. If a practitioner has handled a proceeding that produced a result adverse to the client and the practitioner and the client have not agreed that the practitioner will handle the matter on appeal, the practitioner must consult with the client about the client's appeal rights and the terms and conditions of possible representation on appeal;

(r) Fails to maintain communication with the client throughout the duration of the client-practitioner relationship. It is the obligation of the practitioner to take reasonable steps to communicate with the client in a language that the client understands. A practitioner is only under the obligation to attempt to communicate with his or her client using addresses or phone numbers known to the practitioner. In order to properly maintain communication, the practitioner should:

(1) Promptly inform and consult with the client concerning any decision or circumstance with respect to which the client's informed consent is reasonably required;

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished. Reasonable consultation with the client includes the duty to meet with the client sufficiently in advance of a hearing or other matter to ensure adequate preparation of the client's case and compliance with applicable deadlines;

(3) Keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation; and

(4) Promptly comply with reasonable requests for information, except that when a prompt *response* is not feasible, the practitioner, or a member of the practitioner's staff, should acknowledge receipt of the request and advise the client when a *response* may be expected;

(s) Fails to disclose to the adjudicator legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client and not disclosed by opposing counsel;

(t) Repeatedly fails to submit a signed and completed entry of appearance using the appropriate form in compliance with applicable rules and regulations, including 8 CFR 292.4(a), 1003.17, and 1003.38;

(u) Repeatedly drafts notices, motions, briefs, or claims that are filed with DHS or EOIR that reflect little or no attention to the specific factual or legal issues applicable to a client's case, but rather rely on boilerplate language indicative of a substantial failure to competently and diligently represent the client;

(v) Acts outside the scope of the representative's approved authority as an accredited representative.

(w) Repeatedly fails to sign any pleading, application, motion, petition, brief, or other document prepared, drafted, or filed with DHS or EOIR. The practitioner's signature must be in the practitioner's individual name and must be handwritten or electronically in conformity with the rules and instructions of the applicable system.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008, 81 FR 92362, Dec. 19, 2016; 87 FR 56259, Sept. 14, 2022]

§ 1003.103 Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline.

(a) *Immediate Suspension*—(1) *Petition.* The EOIR disciplinary counsel shall file a petition with the Board to suspend immediately from practice before the Board and the Immigration Courts any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in §1003.102(h), or any practitioner who has been suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court, or who has been placed on an interim suspension pending a final resolution of the underlying disciplinary matter.

(2) DHS petition. DHS may file a petition with the Board to suspend immediately from practice before DHS any practitioner described in paragraph (a)(1) of this section. See 8 CFR 292.3(c).

(3) Copy of petition. A copy of a petition filed by the EOIR disciplinary counsel shall be forwarded to DHS, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before the Board or the Immigration Courts also apply to the practitioner's authority to practice before DHS. A copy of a petition filed by DHS shall be forwarded to the EOIR disciplinary counsel, who may submit a written request to the Board that entry of any order immediately suspending a practitioner before DHS also apply to the practitioner's authority to practice before the Board and Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of an immediate suspension or proposed discipline must be filed with the Board or the adjudicating official.

(4) *Immediate suspension.* Upon the filing of a petition for immediate suspension pursuant to §§1003.103(a)(1) or 1003.103(a)(2), together with a certified copy of a court record finding that a practitioner has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, or has been disciplined or has resigned, as described in paragraph (a)(1) of this section, the Board shall forthwith enter an order immediately suspending the practitioner

from practice before the Board, the Immigration Courts, and/or DHS, notwithstanding the pendency of an appeal, if any, of the underlying disciplinary proceeding, pending final disposition of a summary disciplinary proceeding as provided in paragraph (b) of this section. Such immediate suspension will continue until imposition of a final administrative decision. If an immediate suspension is imposed upon a practitioner, the Board may require that notice of such suspension be posted at the Board, the Immigration Courts, or DHS. Upon good cause shown, the Board may set aside such order of immediate suspension when it appears in the interest of justice to do so. If a final administrative decision includes the imposition of a period of suspension, time spent by the practitioner under immediate suspension pursuant to this paragraph may be credited toward the period of suspension imposed under the final administrative decision.

(b) *Summary disciplinary proceedings.* The EOIR disciplinary counsel (or DHS pursuant to 8 CFR 292.3(c)(3)) shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (a) of this section by the issuance of a Notice of Intent to Discipline, upon receipt of a certified copy of the order, judgment, or record evidencing the underlying criminal conviction, discipline, or resignation, and accompanied by a certified copy of such document. However, delays in initiation of summary disciplinary proceedings under this section will not impact an immediate suspension imposed pursuant to paragraph (a) of this section. Summary proceedings shall be conducted in accordance with the provisions set forth in §§ 1003.105 and 1003.106. Any such summary proceeding shall not be concluded until all direct appeals from an underlying criminal conviction shall have been completed.

(1) In matters concerning criminal convictions, a certified copy of the court record, docket entry, or plea shall be conclusive evidence of the commission of the crime in any summary disciplinary proceeding based thereon.

(2) In the case of a summary proceeding based upon a final order of disbarment or suspension, or a resignation while a disciplinary investigation or proceeding is pending (*i.e.*, reciprocal discipline), a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. Disciplinary sanctions shall follow in such a proceeding unless the attorney can rebut the presumption by demonstrating clear and convincing evidence that:

(i) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(iii) The imposition of discipline by the adjudicating official would result in grave injustice.

(c) *Duty of practitioner and recognized organizations to notify EOIR of conviction or discipline.* A practitioner and if applicable, the authorized officer of each recognized organization with which a practitioner is affiliated must notify the EOIR disciplinary counsel within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending, when the practitioner has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in § 1003.102(h), or has been disbarred or suspended by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory or Commonwealth of the United States, or the District of Columbia, or any Federal court. A practitioner's failure to do so may result in an immediate suspension as set forth in paragraph (a) of this section and other final discipline. An organization's failure to do so may result in the administrative termination of its recognition for violating the reporting requirement under 8 CFR 1292.14. This duty to notify applies only to convictions for serious

crimes and to orders imposing discipline for professional misconduct entered on or after August 28, 2000.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008; 77 FR 2014, Jan. 13, 2012; 81 FR 92362, Dec. 19, 2016]

§ 1003.104 Filing of complaints; preliminary inquiries; resolutions; referral of complaints.

(a) *Filing complaints*—(1) *Practitioners authorized to practice before the Board and the Immigration Courts.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Board and the Immigration Courts shall be filed with the EOIR disciplinary counsel. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the EOIR disciplinary counsel using the Form EOIR–44. The EOIR disciplinary counsel shall notify DHS of any disciplinary complaint that pertains, in whole or part, to a matter before DHS.

(2) *Practitioners authorized to practice before DHS.* Complaints of criminal, unethical, or unprofessional conduct, or frivolous behavior by a practitioner who is authorized to practice before DHS shall be filed with DHS pursuant to the procedures set forth in § 292.3(d) of this chapter.

(b) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its own initiative, the EOIR disciplinary counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other privilege relating to the representation to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the EOIR disciplinary counsel determines that a complaint is without merit, no further action will be taken. The EOIR disciplinary counsel may, in the disciplinary counsel's discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

(c) *Resolution reached prior to the issuance of a Notice of Intent to Discipline.* The EOIR disciplinary counsel, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(d) *Referral of complaints of criminal conduct.* If the EOIR disciplinary counsel receives credible information or allegations that a practitioner has engaged in criminal conduct, the EOIR disciplinary counsel shall refer the matter to DHS or the appropriate United States Attorney and, if appropriate, to the Inspector General, the Federal Bureau of Investigation, or other law enforcement agency. In such cases, in making the decision to pursue disciplinary sanctions, the EOIR disciplinary counsel shall coordinate in advance with the appropriate investigative and prosecutorial authorities within the Department to ensure that neither the disciplinary process nor criminal prosecutions are jeopardized.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76924, Dec. 18, 2008; 81 FR 92362, Dec. 19, 2016]

§ 1003.105 Notice of Intent to Discipline.

(a) *Issuance of Notice.* (1) If, upon completion of the preliminary inquiry, the EOIR disciplinary counsel determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in § 1003.102 or a recognized organization with misconduct as set forth in § 1003.110, the EOIR disciplinary counsel will file with the Board and issue to the practitioner or organization that was the subject of the preliminary inquiry a Notice of Intent to Discipline. In cases involving practitioners, service of the notice will be made upon the practitioner either by certified mail to the practitioner's last

known address, as defined in paragraph (a)(2) of this section, or by personal delivery. In cases involving recognized organizations, service of the notice will be made upon the authorized officer of the organization either by certified mail at the address of the organization or by personal delivery. The notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board. In summary disciplinary proceedings brought pursuant to §1003.103(b), a preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline. If a Notice of Intent to Discipline is filed against an accredited representative, the EOIR disciplinary counsel shall send a copy of the notice to the authorized officer of the recognized organization through which the representative is accredited at the address of the organization.

(2) For the purposes of this section, the last known address of a practitioner is the practitioner's address as it appears in EOIR's case management system if the practitioner is actively representing a party before EOIR on the date that the EOIR disciplinary counsel issues the Notice of Intent to Discipline. If the practitioner does not have a matter pending before EOIR on the date of the issuance of a Notice of Intent to Discipline, then the last known address for a practitioner will be as follows:

(i) Attorneys in the United States: the attorney's address that is on record with a state jurisdiction that licensed the attorney to practice law.

(ii) Accredited representatives: the address of a recognized organization with which the accredited representative is affiliated.

(iii) Accredited officials: the address of the embassy of the foreign government that employs the accredited official.

(iv) All other practitioners: the address for the practitioner that appears in EOIR's case management system for the most recent matter on which the practitioner represented a party.

(3) *DHS Issuance of Notice to practitioner.* DHS may file a Notice of Intent to Discipline with the Board in accordance with 8 CFR 292.3(e).

(b) *Copy of notice; reciprocity of discipline.* A copy of the Notice of Intent to Discipline filed by the EOIR disciplinary counsel shall be forwarded to DHS, which may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Board and the Immigration Courts also apply to the practitioner's authority to practice before DHS. A copy of the Notice of Intent to Discipline filed by DHS shall be forwarded to the EOIR disciplinary counsel, who may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner that restricts his or her authority to practice before DHS also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the adjudicating official.

(c) *Answer*—(1) *Filing.* The practitioner or, in cases involving a recognized organization, the organization, shall file a written answer to the Notice of Intent to Discipline with the Board within 30 days of the date of service of the Notice of Intent to Discipline unless, on motion to the Board, an extension of time to answer is granted for good cause. A motion for an extension of time to answer must be received by the Board no later than three (3) working days before the time to answer has expired. A copy of the answer and any such motion shall be served by the practitioner on the counsel for the government.

(2) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the Notice of Intent to Discipline. Every allegation in the Notice of Intent to Discipline which is not denied in the answer shall be deemed to be admitted and may be considered as

proved, and no further evidence in respect of such allegation need be adduced. The practitioner or, in cases involving a recognized organization, the organization, may also state affirmatively special matters of defense and may submit supporting documents, including affidavits or statements, along with the answer.

(3) *Request for hearing.* The practitioner or, in cases involving a recognized organization, the organization, shall also state in the answer whether a hearing on the matter is requested. If no such request is made, the opportunity for a hearing will be deemed waived.

(d) *Failure to file an answer.* (1) Failure to file an answer within the time period prescribed in the Notice of Intent to Discipline, except where the time to answer is extended by the Board, shall constitute an admission of the allegations in the Notice of Intent to Discipline and no further evidence with respect to such allegations need be adduced.

(2) Upon such a default by the practitioner or, in cases involving a recognized organization, the organization, the counsel for the government shall submit to the Board proof of service of the Notice of Intent to Discipline. The practitioner or the organization shall be precluded thereafter from requesting a hearing on the matter. The Board shall issue a final order adopting the proposed disciplinary sanctions in the Notice of Intent to Discipline unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted or not in the interests of justice. With the exception of cases in which the Board has already imposed an immediate suspension pursuant to §1003.103 or that otherwise involve an accredited representative or recognized organization, any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. Any final order imposing discipline against an accredited representative or recognized organization shall become effective immediately. A practitioner or a recognized organization may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on counsel for the government, provided:

(i) Such a motion is filed within 15 days of the date of service of the final order; and

(ii) The practitioner's or the recognized organization's failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner or the recognized organization.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76925, Dec. 18, 2008; 77 FR 2014, Jan. 13, 2012; 81 FR 92362, Dec. 19, 2016]

§1003.106 Right to be heard and disposition.

(a) *Right to be heard*—(1) *Summary disciplinary proceedings.* A practitioner who is subject to summary disciplinary proceedings pursuant to §1003.103(b) must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in §1003.103(b)(2)(i) through (iii). If the practitioner files a timely answer and the Board determines that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in §1003.103(b)(2)(i) through (iii), then the Board shall refer the case to the Chief Immigration Judge for the appointment of an adjudicating official. If the practitioner fails to make such a prima facie showing, the Board shall retain jurisdiction over the case and issue a final order. Notwithstanding the foregoing, the Board shall refer any case to the Chief Immigration Judge for the appointment of an adjudicating official in which the practitioner has filed a timely answer and the case involves a

charge or charges that cannot be adjudicated under the summary disciplinary proceedings provisions in §1003.103(b). The Board shall refer such a case regardless of whether the practitioner has requested a hearing.

(2) *Procedure.* The procedures set forth in paragraphs (b) through (d) of this section apply to cases in which the practitioner or recognized organization files a timely answer to the Notice of Intent to Discipline, with the exception of cases in which the Board issues a final order pursuant to §1003.105(d)(2) or §1003.106(a)(1).

(i) The Chief Immigration Judge shall, upon the filing of an answer, appoint an Immigration Judge as an adjudicating official. At the request of the Chief Immigration Judge, the Chief Administrative Hearing Officer may appoint an Administrative Law Judge as an adjudicating official. The Director may appoint either an Immigration Judge or Administrative Law Judge as an adjudicating official if the Chief Immigration Judge or the Chief Administrative Hearing Officer does not appoint an adjudicating official or if the Director determines it is in the interest of efficiency to do so. An Immigration Judge or Administrative Law Judge shall not serve as the adjudicating official in any case in which the Judge is the complainant, in any case involving a practitioner who regularly appears before the Judge, or in any case involving a recognized organization whose representatives regularly appear before the Judge.

(ii) Upon the practitioner's or, in cases involving a recognized organization, the organization's, request for a hearing, the adjudicating official may designate the time and place of the hearing with due regard to the location of the practitioner's practice or residence or of the recognized organization, the convenience of witnesses, and any other relevant factors. When designating the time and place of a hearing, the adjudicating official shall provide for the service of a notice of hearing on the practitioner or the authorized officer of the recognized organization and the counsel for the government. The practitioner or the recognized organization shall be afforded adequate time to prepare a case in advance of the hearing. Pre-hearing conferences may be scheduled at the discretion of the adjudicating official in order to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline are subject to final approval by the adjudicating official or, if the practitioner or organization has not filed an answer, subject to final approval by the Board.

(iii) The practitioner or, in cases involving a recognized organization, the organization, may be represented by counsel at no expense to the government. Counsel for the practitioner or the organization shall file the appropriate Notice of Entry of Appearance (Form EOIR–27 or EOIR–28) in accordance with the procedures set forth in this part. Each party shall have a reasonable opportunity to examine and object to evidence presented by the other party, to present evidence, and to cross-examine witnesses presented by the other party. If the practitioner or the recognized organization files an answer but does not request a hearing, then the adjudicating official shall provide the parties an opportunity to submit briefs and evidence to support or refute any of the charges or affirmative defenses.

(iv) In rendering a decision, the adjudicating official shall consider the following: The complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the answer, any supporting documents, and any other evidence, including pleadings, briefs, and other materials. Counsel for the government shall bear the burden of proving the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline by clear and convincing evidence.

(v) The record of proceedings, regardless of whether an immigration judge or an administrative law judge is the adjudicating official, shall conform to the requirements of 8 CFR part 1003, subpart C and 8 CFR 1240.9. Disciplinary hearings shall be conducted in the same manner as Immigration Court proceedings as is appropriate, and shall be open to the public, except that:

(A) Depending upon physical facilities, the adjudicating official may place reasonable limitations upon the number of individuals in attendance at any one time, with priority being given to the press over the general public, and

(B) For the purposes of protecting witnesses, parties, or the public interest, the adjudicating official may limit attendance or hold a closed hearing.

(3) *Failure to appear in proceedings.* If the practitioner or, in cases involving a recognized organization, the organization, requests a hearing as provided in §1003.105(c)(3) but fails to appear, the adjudicating official shall then proceed and decide the case in the absence of the practitioner or the recognized organization in accordance with paragraph (b) of this section, based on the available record, including any additional evidence or arguments presented by the counsel for the government at the hearing. In such a proceeding the counsel for the government shall submit to the adjudicating official proof of service of the Notice of Intent to Discipline as well as the Notice of the Hearing. The practitioner or the recognized organization shall be precluded thereafter from participating further in the proceedings. A final order imposing discipline issued pursuant to this paragraph shall not be subject to further review, except that the practitioner or the recognized organization may file a motion to set aside the order, with service of such motion on counsel for the government, provided:

(i) Such a motion is filed within 15 days of the date of issuance of the final order; and

(ii) The practitioner's or the recognized organization's failure to appear was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner or the recognized organization.

(b) *Decision.* The adjudicating official shall consider the entire record and, as soon as practicable, render a decision. If the adjudicating official finds that one or more grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have been established by clear and convincing evidence, the official shall rule that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified, or otherwise amended. If the adjudicating official determines that the practitioner should be suspended, the time period for such suspension shall be specified. If the adjudicating official determines that the organization's recognition should be revoked, the official may also identify the persons affiliated with the organization who were directly involved in the conduct that constituted the grounds for revocation. If the adjudicating official determines that the organization's recognition should be terminated, the official shall specify the time restriction, if any, before the organization may submit a new request for recognition. Any grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline that have not been established by clear and convincing evidence shall be dismissed. The adjudicating official shall provide for service of a written decision or memorandum summarizing an oral decision on the practitioner or, in cases involving a recognized organization, on the authorized officer of the organization and on the counsel for the government. Except as provided in paragraph (a)(2) of this section, the adjudicating official's decision becomes final only upon waiver of appeal or expiration of the time for appeal to the Board, whichever comes first, and does not take effect during the pendency of an appeal to the Board as provided in §1003.6. A final order imposing discipline against an accredited representative or recognized organization shall take effect immediately.

(c) *Appeal.* Upon issuance of a decision by the adjudicating official, either party or both parties may appeal to the Board to conduct a review pursuant to §1003.1(d)(3). Parties must comply with all pertinent provisions for appeals to the Board, including provisions relating to forms and fees, as set forth in Part 1003, and must use Form EOIR–45. The decision of the Board is the final administrative order as provided in §1003.1(d)(7), and shall be served upon the practitioner or, in cases involving a

recognized organization, the organization, as provided in §1003.1(f). With the exception of cases in which the Board has already imposed an immediate suspension pursuant to §1003.103 or cases involving accredited representatives or recognized organizations, any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. A final order imposing discipline against an accredited representative or recognized organization shall take effect immediately. A copy of the final administrative order of the Board shall be served upon the counsel for the government. If disciplinary sanctions are imposed against a practitioner or a recognized organization (other than a private censure), the Board may require that notice of such sanctions be posted at the Board, the Immigration Courts, or DHS for the period of time during which the sanctions are in effect, or for any other period of time as determined by the Board.

(d) *Referral.* In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the EOIR disciplinary counsel may notify an appropriate Federal or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) shall be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice. In addition, the EOIR disciplinary counsel shall transmit notice of all public discipline imposed under this rule to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76925, Dec. 18, 2008; 77 FR 2015, Jan. 13, 2012; 81 FR 92363, Dec. 19, 2016; 86 FR 70723, Dec. 13, 2021]

§1003.107 Reinstatement after disbarment or suspension.

(a) *Reinstatement upon expiration of suspension.* (1) Except as provided in paragraph (c)(1) of this section, after the period of suspension has expired, a practitioner who has been suspended and wishes to be reinstated must file a motion to the Board requesting reinstatement to practice before the Board and the Immigration Courts, or DHS, or before all three authorities. The practitioner must demonstrate by clear and convincing evidence that notwithstanding the suspension, the practitioner otherwise meets the definition of attorney or representative as set forth in §1001.1(f) and (j), respectively, of this chapter. The practitioner must serve a copy of such motion on the EOIR disciplinary counsel. In matters in which the practitioner was ordered suspended from practice before DHS, the practitioner must serve a copy of such motion on the DHS disciplinary counsel.

(2) The EOIR disciplinary counsel and, in matters in which the practitioner was ordered suspended from practice before DHS, the DHS disciplinary counsel, may reply within 13 days of service of the motion in the form of a written response objecting to the reinstatement on the ground that the practitioner failed to comply with the terms of the suspension. The response must include supporting documentation or evidence of the petitioner's failure to comply with the terms of the suspension. The Board, in its discretion, may afford the parties additional time to file briefs or hold a hearing to determine if the practitioner meets all the requirements for reinstatement.

(3) If a practitioner does not meet the definition of attorney or representative, the Board shall deny the motion for reinstatement without further consideration. If the practitioner failed to comply with the terms of the suspension, the Board shall deny the motion and indicate the circumstances under which the practitioner may apply for reinstatement. If the practitioner meets the definition of attorney or representative and the practitioner otherwise has complied with the terms of the suspension, the Board shall grant

the motion and reinstate the practitioner.

(b) *Early reinstatement.* (1) Except as provided in paragraph (c) of this section, a practitioner who has been disbarred or who has been suspended for one year or more may file a petition for reinstatement directly with the Board after one-half of the suspension period has expired or one year has passed, whichever is greater, provided that notwithstanding the suspension, the practitioner otherwise meets the definition of attorney or representative as set forth in §1001.1(f) and (j), respectively, of this chapter. A copy of such a petition shall be served on the EOIR disciplinary counsel. In matters in which the practitioner was ordered disbarred or suspended from practice before DHS, a copy of such petition shall be served on the DHS disciplinary counsel.

(2) A practitioner seeking early reinstatement must demonstrate by clear and convincing evidence that the practitioner possesses the moral and professional qualifications required to appear before the Board, the Immigration Courts, or DHS, and that the practitioner's reinstatement will not be detrimental to the administration of justice. The EOIR disciplinary counsel and, in matters in which the practitioner was ordered disbarred or suspended from practice before DHS, the DHS disciplinary counsel, may reply within 30 days of service of the petition in the form of a written response to the Board, which may include, but is not limited to, documentation or evidence of the practitioner's failure to comply with the terms of the disbarment or suspension or of any complaints filed against the disbarred or suspended practitioner subsequent to the practitioner's disbarment or suspension.

(3) If a practitioner cannot meet the definition of attorney or representative, the Board shall deny the petition for reinstatement without further consideration. If the petition for reinstatement is found to be otherwise inappropriate or unwarranted, the petition shall be denied. Any subsequent petitions for reinstatement may not be filed before the end of one year from the date of the Board's previous denial of reinstatement, unless the practitioner is otherwise eligible for reinstatement under paragraph (a). If the petition for reinstatement is determined to be timely, the practitioner meets the definition of attorney or representative, and the petitioner has otherwise established by the requisite standard of proof that the practitioner possesses the qualifications set forth herein, and that reinstatement will not be detrimental to the administration of justice, the Board shall grant the petition and reinstate the practitioner. The Board, in its discretion, may hold a hearing to determine if the practitioner meets all of the requirements for reinstatement.

(c) *Accredited representatives.* (1) An accredited representative who has been suspended for a period of time greater than the remaining period of validity of the representative's accreditation at the time of the suspension is not eligible to be reinstated under §1003.107(a) or (b). In such circumstances, after the period of suspension has expired, an organization may submit a new request for accreditation pursuant to 8 CFR 1292.13 on behalf of such an individual.

(2) *Disbarment.* An accredited representative who has been disbarred is permanently barred from appearing before the Board, the Immigration Courts, or DHS as an accredited representative and cannot seek reinstatement.

(d) *Appearance after reinstatement.* A practitioner who has been reinstated to practice by the Board must file a new Notice of Entry of Appearance of Attorney or Representative in each case on the form required by applicable rules and regulations, even if the reinstated practitioner previously filed such a form in a proceeding before the practitioner was disciplined.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76926, Dec. 18, 2008; 77 FR 2015, Jan. 13, 2012; 81 FR 92364, Dec. 19, 2016]

§1003.108 Confidentiality.

(a) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner or recognized organization whose conduct is the subject of a complaint or preliminary inquiry, however, may

waive confidentiality, except that the EOIR disciplinary counsel may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by public disclosure before the filing of a Notice of Intent to Discipline.

(1) *Disclosure of information for the purpose of protecting the public.* The EOIR disciplinary counsel may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(i) A practitioner or recognized organization has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the EOIR disciplinary counsel may define the scope of information disseminated and may limit the disclosure of information to specified individuals and entities;

(ii) A practitioner or recognized organization has committed criminal acts or is under investigation by law enforcement authorities;

(iii) A practitioner or recognized organization is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such authorities;

(iv) A practitioner or recognized organization is the subject of multiple disciplinary complaints and the EOIR disciplinary counsel has determined not to pursue all of the complaints. The EOIR disciplinary counsel may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner or recognized organization have been resolved.

(2) *Disclosure of information for the purpose of conducting a preliminary inquiry.* The EOIR disciplinary counsel, in the exercise of discretion, may disclose documents and information concerning complaints and preliminary inquiries to the following individuals and entities:

(i) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(ii) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(iii) To agencies and other jurisdictions responsible for disciplinary or regulatory investigations and proceedings;

(iv) To the complainant or a lawful designee;

(v) To the practitioner or recognized organization who is the subject of the complaint or preliminary inquiry or the practitioner's or recognized organization's counsel of record.

(3) *Disclosure of information for the purpose of recognition of organizations and accreditation of representatives.* The EOIR disciplinary counsel, in the exercise of discretion, may disclose information concerning complaints or preliminary inquiries regarding applicants for recognition and accreditation, recognized organizations or their authorized officers, or accredited representatives to the Assistant Director for Policy (or the Assistant Director for Policy's delegate) for any purpose related to the recognition of organizations and accreditation of representatives.

(b) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions reached prior to the issuance of a Notice of Intent to Discipline, such as warning letters, admonitions, and agreements in lieu of discipline are confidential, except that resolutions that pertain to an accredited representative may be disclosed to the accredited representative's organization and the Assistant Director for Policy (or the Assistant Director for Policy's delegate). However, all such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

(c) *Notices of Intent to Discipline and action subsequent thereto.* Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures

may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent disciplinary proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official or the Board. Disciplinary hearings are open to the public, except as noted in § 1003.106(a)(1)(v).

[65 FR 39526, June 27, 2000, as amended at 73 FR 76926, Dec. 18, 2008; 81 FR 92365, Dec. 19, 2016; 84 FR 44542, Aug. 26, 2019]

§ 1003.109 Discipline of government attorneys.

Complaints regarding the conduct or behavior of Department attorneys, Immigration Judges, or Board Members shall be directed to the Office of Professional Responsibility, United States Department of Justice. If disciplinary action is warranted, it shall be administered pursuant to the Department's attorney discipline procedures.

§ 1003.110 Sanction of recognized organizations.

(a) *Authority to sanction.* (1) An adjudicating official or the Board may impose disciplinary sanctions against a recognized organization if it is in the public interest to do so. It will be in the public interest to impose disciplinary sanctions if a recognized organization has engaged in the conduct described in paragraph (b) of this section. In accordance with the disciplinary proceedings set forth in this subpart, an adjudicating official or the Board may impose the following sanctions:

(i) Revocation, which removes the organization and its accredited representatives from the recognition and accreditation roster and permanently bars the organization from future recognition;

(ii) Termination, which removes the organization and its accredited representatives from the recognition and accreditation roster but does not bar the organization from future recognition. In terminating recognition under this section, the adjudicating official or the Board may preclude the organization from submitting a new request for recognition under 8 CFR 1292.13 before a specified date; or

(iii) Such other disciplinary sanctions, except a suspension, as the adjudicating official or the Board deems appropriate.

(2) The administrative termination of an organization's recognition under 8 CFR 1292.17 after the issuance of Notice of Intent to Discipline pursuant to § 1003.105(a)(1) shall not preclude the continuation of disciplinary proceedings and the imposition of sanctions, unless counsel for the government moves to dismiss the Notice of Intent to Discipline and the adjudicating official or the Board grants the motion.

(3) The imposition of disciplinary sanctions against a recognized organization does not result in disciplinary sanctions against that organization's accredited representatives; disciplinary sanctions, if any, against an organization's accredited representatives must be imposed separately from disciplinary sanctions against the organization. Termination or revocation of an organization's recognition has the effect of terminating the accreditation of representatives of that organization, but such individuals may retain or seek accreditation through another recognized organization.

(b) *Grounds.* It shall be deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any recognized organization that violates one or more of the grounds specified in this paragraph, except that these grounds do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. A recognized organization may be subject to disciplinary sanctions if it:

(1) Knowingly or with reckless disregard provides a false statement or misleading information in applying for recognition or accreditation of its representatives;

(2) Knowingly or with reckless disregard provides false or misleading information to clients or prospective clients regarding the scope of authority of, or the services provided by, the organization or its accredited representatives;

(3) Fails to adequately supervise accredited representatives;

(4) Employs, receives services from, or affiliates with an individual who performs an activity that constitutes the unauthorized practice of law or immigration fraud; or

(5) Engages in the practice of law through staff when it does not have an attorney or accredited representative.

(c) *Joint disciplinary proceedings.* The EOIR disciplinary counsel or DHS disciplinary counsel may file a Notice of Intent to Discipline against a recognized organization and one or more of its accredited representatives pursuant to §1003.101 *et seq.* Disciplinary proceedings conducted on such notices, if they are filed jointly with the Board, shall be joined and referred to the same adjudicating official pursuant to §1003.106. An adjudicating official may join related disciplinary proceedings after the filing of a Notice of Intent to Discipline.

[81 FR 92365, Dec. 19, 2016]

§1003.111 Interim suspension.

(a) *Petition for interim suspension*—(1) *EOIR Petition.* In conjunction with the filing of a Notice of Intent to Discipline or at any time thereafter during disciplinary proceedings before an adjudicating official, the EOIR disciplinary counsel may file a petition for an interim suspension of an accredited representative. Such suspension, if issued, precludes the representative from practicing before the Board and the Immigration Courts during the pendency of disciplinary proceedings and continues until the issuance of a final order in the disciplinary proceedings.

(2) *DHS Petition.* In conjunction with the filing of a Notice of Intent to Discipline or at any time thereafter during disciplinary proceedings before an adjudicating official, the DHS disciplinary counsel may file a petition for an interim suspension of an accredited representative. Such suspension, if issued, precludes the representative from practicing before DHS during the pendency of disciplinary proceedings and continues until the issuance of a final order in the disciplinary proceedings.

(3) *Contents of the petition.* In the petition, counsel for the government must demonstrate by a preponderance of the evidence that the accredited representative poses a substantial threat of irreparable harm to clients or prospective clients. An accredited representative poses a substantial threat of irreparable harm to clients or prospective clients if the representative committed three or more acts in violation of the grounds of discipline described at §1003.102, when actual harm or threatened harm is demonstrated, or engages in any other conduct that, if continued, will likely cause irreparable harm to clients or prospective clients. Counsel for the government must serve the petition on the accredited representative, as provided in §1003.105, and send a copy of the petition to the authorized officer of the recognized organization at the address of the organization through which the representative is accredited.

(4) *Requests to broaden scope.* The EOIR disciplinary counsel or DHS disciplinary counsel may submit a request to broaden the scope of any interim suspension order such that an accredited representative would be precluded from practice before the Board, the Immigration Courts, and DHS.

(b) *Response.* The accredited representative may file a written response to the petition for interim suspension within 30 days of service of the petition.

(c) *Adjudication.* Upon the expiration of the time to respond to the petition for an interim suspension, the adjudicating official will consider the petition for an interim suspension, the accredited representative's response, if any, and any other evidence presented by the parties before determining whether to issue an interim suspension. If the adjudicating official imposes an interim suspension on the representative, the adjudicating official may require that notice of the interim suspension be posted at the Board and the Immigration Courts, or DHS, or all three authorities. Upon good cause shown, the adjudicating official may set aside an order of interim suspension when it appears in the interest of justice to do so. If a final order in the disciplinary proceedings includes the imposition of a period of suspension against an accredited representative, time spent by the representative under

an interim suspension pursuant to this section may be credited toward the period of suspension imposed under the final order.

[81 FR 92365, Dec. 19, 2016]