

APPEALS TO THE BOARD OF IMMIGRATION APPEALS

This section is for people who disagree with the Immigration Judge's decision in their case and would like to file an appeal.

When Can You Appeal?

- You can only appeal after the Immigration Judge has made a decision and has issued an order in your removal or bond proceedings. The judge will usually tell you that he or she is ordering you removed to a certain country. In addition, the judge may grant or deny some form of relief from removal to that country. You can then file an appeal. In bond proceedings, the judge will grant or deny you a bond. If the judge denies you a bond, the judge has decided to leave you in detention. You can then file an appeal. For more information on bonds, please see the flyer on bonds.

How Do You Appeal?

- Once the judge makes a final decision, you **MUST** reserve your right to appeal during that hearing if you would like to file an appeal later. To appeal the judge's decision, you must file form [EOIR 26, Notice of Appeal](#).
- If you are not sure whether you want to appeal, it is always safer to tell the judge that you would like to appeal because you will only have 30 days to decide what to do. If you tell the judge that you do not want to appeal, you will not be able to change your mind later.
- Once you reserve your right to appeal, you have 30 days to file your Notice of Appeal from the date of the Judge's final decision. If you do not file the Notice of Appeal within 30 days of the Judge's decision, the Judge's order will become final and you will no longer have the right to appeal.

What Happens During The Appeals Process?

- To file an appeal, complete and send the Notice of Appeal Form EOIR-26 to the BIA within 30 days. *The BIA must receive your Notice of Appeal within those 30 days.* It is not enough for you to have the Notice of Appeal postmarked before the 30 days are up. You must also submit a filing fee of \$110 along with the Notice of Appeal. If you cannot afford the filing fee, you can file for a waiver of the fee. The fee waiver form is separate from the appeal form. On the form, you write down your income and expenses to show that you cannot afford to pay the appeal fee.
- The BIA will send you a receipt.

- The BIA will send you a copy of the transcript, the judge's final decision, and a briefing schedule. If you say that you will file a brief and then do not send the brief, your appeal will be dismissed without the BIA reviewing your case.
- Prepare and send your brief to the BIA. A brief is a formal legal document telling the BIA why the Judge made mistakes under the law in your case. It is best to have a lawyer represent you in the appeal.
- The BIA will review the brief and will make a decision on your appeal.
- If you filed an appeal but changed your mind, you may file a Motion to Withdraw Appeal.
- If you lose your appeal, you have the right to appeal that decision to an even higher court. To do this, you must file a Petition for Review to the U.S. Court of Appeals that covers the area where the judge held removal proceedings. The Petition for Review must be filed within 30 calendar days of the BIA's order. You cannot introduce new evidence on appeal. There are complicated rules about what things a U.S. Court of Appeals can review. Sometimes, a U.S. Court of Appeal cannot review your case because the court lacks jurisdiction. To lack jurisdiction is to lack the power to make a decision in a case.