



# U.S. Citizenship and Immigration Services

# Motions and Appeals

## USCIS National Stakeholder Engagement

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# Pertinent Regulations

- General Information about Applications and Petitions
  - Title 8, Code of Federal Regulations (8 CFR) Part 103.2
- Denials, Appeals (AAO), and Precedent Decisions
  - 8 CFR 103.3
- Certifications
  - 8 CFR 103.4
- Reopening and Reconsideration
  - 8 CFR 103.5
- Board of Immigration Appeals
  - 8 CFR 1003.1 – 1003.8



# Appeals to AAO and BIA



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# What is an Appeal?

An appeal is a request for a higher authority, independent of the original deciding office, to review the decision of a lower office. In the case of USCIS, the appellate authority will review decisions made by Service Centers or field offices.



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# Can The Denial of My Petition or Application Be Appealed?

- Not every form falls under appellate jurisdiction. Only designated form types may file appeals.
- Denial decisions will advise the applicant or petitioner if the decision is appealable and, if so, which appellate authority has jurisdiction.



# Appellate Authorities

- Administrative Appeals Office (AAO) (formerly Administrative Appeals Unit (AAU))
  - Appeals are filed on Form I-290B.
  - Eligible form types were previously listed at 8 CFR 103.1(f)(3); however, this provision was deleted during the agency's transition to the Department of Homeland Security. As such, we generally rely on regulations relating to each form type to determine appeal rights and appellate authority. Forms that may be appealed to AAO include, but are not limited to:
    - Form I-129
    - Form I-131 (Refugee Travel Document and Reentry Permit only)
    - Form I-140
    - Form I-360 (Special Immigrants, VAWA only)
    - Form I-600
    - Form I-821
    - Form N-565



# Appellate Authorities

- Board of Immigration Appeals (BIA)
  - Appeals are filed on Form EOIR-29.
  - Decisions that may be appealed to the BIA are listed at 8 CFR 1003.1(b), including most family-based immigrant visa petitions.
    - Form I-130
    - Form I-360 (Widow(er))



# Where Do I File My Appeal?

- AAO appeals should be filed with the applicable address as listed in the instructions for Form I-290B and will be routed to the appropriate office from there.
- BIA appeals should be filed with the address listed in the denial.



# Key Eligibility Aspects of Appeals

- Is the appeal timely filed?
- Is the appeal filed by the affected party?
- Does the appeal overcome the grounds of the denial?
- Is eligibility for the benefit established?
  - Eligibility must be established as of the original date of filing.



# Is the Appeal Timely Filed?

- Appeals on any denial decisions must be filed within 30 calendar days of the decision.
- Revocation appeals to the BIA have a 30 day period for filing an appeal. However, if an immigrant petition appealable to AAO is revoked under 8 CFR 205.2, any AAO appeal must be filed within 15 calendar days of the decision.
- If the decision was mailed to the applicant or petitioner, an additional three days will be added on to the appeal timeframe for decisions appealable to the AAO. See 8 CFR 103.5a(b). Regulations pertaining to BIA appeals do not provide for this additional three day period. See 8 CFR § 1003.3
- If the last day of this timeframe falls on a weekend or legal holiday, the filing will still be considered timely if it arrives by the next business day.



# Who Can File an Appeal?

- Appeals must be filed by the affected party, which is defined as “...the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition...” 8 CFR 103.3(a)(1)(iii)(B)
- Appeals may also be filed by the attorney or representative of the affected party, in accordance with 8 CFR part 292, as long as the appeal is accompanied by a properly completed Form G-28 (for AAO) or Form EOIR-27 (for BIA).



# What Must Be Filed With the Appeal?

- The affected party may choose to submit:
  - The appeal form along with a brief and/or evidence;
  - The appeal form alone, to be followed by a brief and/or evidence;
  - The appeal form alone.
- If the affected party chooses to submit the brief after filing the appeal, the brief must be received within 30 days.
- Any evidence submitted should overcome the basis for denial/revocation and establish eligibility for the benefit sought.



# Briefs Submitted After Filing

- For appeals to the AAO, any briefs submitted after the filing of the appeal must be forwarded directly to the AAO at:

USCIS Administrative Appeals Office  
U.S. Citizenship and Immigration Services  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, D.C. 20529-2090

- For appeals to the BIA, any briefs submitted after the filing of the appeal must be submitted with the office having control of the file, not the BIA.



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# What Happens After The Appeal Is Filed?

- The office which made the decision will review the appeal and any brief or evidence submitted.
  - If the brief/evidence submitted overcomes the reason(s) for denial/revocation and establishes eligibility for the benefit sought, the office may treat the appeal as a motion and approve the case.
  - If the adjudicator determines that the brief/evidence submitted on appeal does not overcome the reason(s) for denial/revocation or establish eligibility for the benefit sought, the appeal will be forwarded to the appropriate appellate office.
- For appeals that are forwarded to the appellate office, the appellate office will review the files and render a decision.



# Decisions on Appeal

- **Dismissed**
  - The affected party's appeal was dismissed and the decision made by the original USCIS office was upheld by the appellate authority.
  - i.e. The original decision stands.
- **Sustained**
  - The appellate authority agreed with the affected party and the denial was overcome.
  - i.e. The original decision is overturned.
- **Remanded**
  - The appellate authority has requested additional review of the case by the original USCIS office. The decision letter will explain the actions that will need to be addressed. This may require additional evidence from the affected party.



# What Happens Next?

- **Dismissed**

- Once notice is sent to the affected party, no further action is taken by the appellate unit or the USCIS office. However, the affected party may choose to file a motion to reopen or reconsider.

- **Sustained**

- The application or petition will be returned to the originating office for approval. Related cases which were denied as a result of the denial of the primary case, such as a concurrent Form I-485 denied based on the denial of the underlying Form I-140, will be reopened on Service motion.

- **Remanded**

- The application or petition will be returned to the originating office for additional review. A request for additional evidence may be sent to the affected party. The originating office will then render a new decision, either an approval or a new denial or revocation. The new decision may be certified back to the appellate office.



# Motions to Reopen or Reconsider



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# What is a Motion?

- A motion to reopen or reconsider is an application made to obtain a new decision. Unlike appeals, which are reviewed by a higher authority independent of the original deciding office, a motion will generally be reviewed by the office who made the most recent decision.
  - If the party is filing a motion to reopen or reconsider on a denial/revocation made by a USCIS office, the motion will be reviewed by that office.
  - If the party is filing a motion to reopen or reconsider on a dismissed appeal, the motion will be under the jurisdiction of the appellate office which made that decision.
- Unlike appeals, motions may be filed on most types of forms adjudicated by USCIS.



# General Information on Motions

- Motions seeking reconsideration or reopening of decisions which have been rendered by a Service Center or Field Office should be filed with USCIS on Form I-290B
- The affected party may request:
  - A motion to reopen.
  - A motion to reconsider.
  - A combined motion to reopen and motion to reconsider.
- A motion to reopen a case that was denied either due to abandonment or failure to submit the fingerprint fee has special considerations.



# Key Eligibility Aspects for Motions

- Does the motion meet the regulatory requirements?
- Is the motion timely filed?
- Is the motion filed by affected party?
- Does the evidence overcome the denial/revocation?
- Is eligibility for the benefit established?
  - Eligibility must be established as of the original date of filing.



# Regulatory Requirements

- Motion to reopen – 8 CFR 103.5(a)(2)
- Motion to reconsider – 8 CFR 103.5(a)(3)
- Motion to reopen based on denial due to abandonment – 8 CFR 103.5(a)(2)
- Motion to reopen based on denial for failure to submit correct fee for fingerprinting – 8 CFR 103.2(e)(4)(ii)-(iii)



# Requirements for a Motion to Reopen

- A motion to reopen must present new facts.
  - Duplicate copies of evidence already submitted or new documentation which is not relevant to the basis for denial would not meet this requirement.
- Facts must be supported by affidavits or other documentary evidence.



# Requirements for a Motion to Reconsider

- A motion to reconsider must state the reason(s) for consideration.
- Reason(s) for reconsideration must be supported by pertinent precedent decisions.
- A motion to reconsider must show that the decision was based on incorrect application of law or Service policy.
  - The motion must demonstrate that the decision was incorrect based on the evidence of record at the time of the initial decision.



# Requirements for a Motion to Reopen—Abandonment

- A motion to reopen an application or petition denied due to abandonment must be filed with evidence to show that abandonment was in error because:
  - The requested evidence was not material to the issue of eligibility;
  - The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
  - The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.



# Requirements for a Motion to Reopen—Abandonment

- If a petition or application is denied due to abandonment, the petitioner or applicant has no appellate rights, even if the form would normally have such rights. See 8 CFR 103.2(b)(15). Abandoned cases may only be reopened on motion as outlined in 8 CFR 103.5(a)(2).



# Requirements for a Motion to Reopen—Fingerprint

- A motion to reopen an application or petition denied for failure to submit the correct service fee for fingerprinting will be granted only on proof that:
  - The correct service fee for fingerprinting was submitted at the time of filing the application or petition;
  - The correct service fee for fingerprinting was submitted in response to the notice of deficiency within the time allotted in the notice; or
  - The notice of deficiency was sent to an address other than the address on the application or petition, or the notice of representation, or that the applicant or petitioner notified USCIS, in writing, of a change of address or change of representation subsequent to filing and before the notice of deficiency was sent and USCIS notice of deficiency was not sent to the new address.



# Is the Motion Timely Filed?

- All motions seeking reconsideration or reopening of USCIS' decisions must be filed within 30 calendar days of the decision.
  - If the decision was mailed to the applicant or petitioner, an additional three days will be added to the motion timeframe. See 8 CFR 103.5a(b).
  - If the last day of this timeframe falls on a weekend or holiday, the filing will still be considered timely if it arrives by the next business day.
- If a motion is untimely filed, it will be dismissed.
  - Exception: failure to file a motion to reopen before this period expires **may** be excused if it is demonstrated that the delay was reasonable and beyond the control of the affected party.



# Who Can File a Motion?

- Motions must be filed by the affected party, which is defined as “...the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition...” 8 CFR 103.3(a)(1)(iii)(B) ; see also 103.5(a)(1).
- The affected party may be represented by attorney or representative in accordance with 8 CFR 292 (G-28).
- If the motion is not filed by the affected party, it will be dismissed.



# What Happens Next?

- The officer will review the motion to determine whether it meets all of the regulatory requirements, including:
  - Timeliness;
  - Whether filed by affected party; and
  - Whether it meets the specific requirements for a Motion to Reopen or Motion to Reconsider, including requirements for cases denied due to abandonment or lack of fingerprint fee.
- If the motion does not meet the regulatory requirements, it will be dismissed.
- If the motion does meet the regulatory requirements, the officer will grant the motion then review the evidence submitted.



# What Happens Next?

- Once the officer has granted the motion, the underlying case is reopened. The evidence will be reviewed to determine if:
  - It overcomes the reason(s) for denial/revocation;
  - It establishes eligibility for the benefit sought.
- If the evidence submitted overcomes the reason(s) for denial/revocation and establishes eligibility for the benefit, the officer will approve the underlying application or petition.
- If the evidence does not overcome the reason(s) for denial/revocation and/or does not establish eligibility for the benefit, the officer will deny the case.
  - In rare instances, the officer may also request additional evidence before rendering a decision.



# Service Motions

- The Service may, in its discretion, reopen a case. See 8 CFR 103.5(a)(5).
- In most circumstances, if the approval is in error or if adverse information is uncovered, USCIS will do an intent to revoke the approval.
- However, regulations do not provide for revocations of all types of applications and petitions. If an application or petition cannot be revoked, USCIS will issue a Service motion and provide an opportunity for the applicant or petitioner to rebut the adverse findings.

