4 Appeals of Immigration Judge Decisions

4.1 Types of Appeal

The Board entertains appeals from the decisions of Immigration Judges and certain decisions of the Department of Homeland Security (DHS). See Chapter 1.4(a) (Jurisdiction). Unless otherwise indicated, this chapter is limited to appeals from the decisions of Immigration Judges pertaining to the removal, deportation, or exclusion of aliens.

Other kinds of appeals are discussed in the following chapters:

Chapter 7	Bond
Chapter 9	Visa Petitions
Chapter 10	Fines
Chapter 11	Discipline of Practitioners

4.2 Process

(a) ***Immigration Judge decision*****. —** An Immigration Judge presides over courtroom proceedings in removal, deportation, exclusion, and other proceedings. See Chapter 1.2(c) (Relationship to the Immigration Courts). The parties in such proceedings are the alien and DHS. See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)).

(i) ***Oral vs. written.*** **—** The decision of an Immigration Judge may be rendered either orally or in writing. When a decision is rendered orally, the Immigration Judge recites the entire decision in the parties' presence and provides them with a written memorandum order summarizing the oral decision. When a decision is rendered in writing, the decision is served on the parties by first class mail or by personal service. See 8 C.F.R. § 1003.37.

(ii) ***Appeal to the Board vs. motion before the Immigration Judge.*** **—** After the Immigration Judge renders a decision, a party may either file an appeal with the Board or file a motion with the Immigration Judge. Once a party files an appeal with the Board, jurisdiction is vested with the Board, and the Immigration Judge is divested of jurisdiction over the case. Accordingly, once an appeal has

been filed with the Board, an Immigration Judge may no longer entertain a motion to reopen or a motion to reconsider. For that reason, if a party first files a motion with the Immigration Judge and then files an appeal with the Board, the Immigration Judge loses jurisdiction over the motion, and the record of proceedings is transferred to the Board for consideration of the appeal.

(iii) *Certification vs. appeal.* — Certification to the Board is entirely separate and distinct from the filing of an appeal, and the two should not be confused. See Chapter 4.18 (Certification by an Immigration Judge).

(b) *Filing*. — If an appeal is taken from the decision of an Immigration Judge, it must be filed properly and within the time allowed. See Chapters 3 (Filing with the Board), 4.5 (Appeal Deadlines). An appeal of an Immigration Judge decision must be filed directly with the Board, using the Notice of Appeal (Form EOIR-26). 8 C.F.R. § 1003.3(a). See Chapter 3.1 (Delivery and Receipt). The appeal may *not* be filed with DHS or an Immigration Court. Erroneous filing of an appeal with DHS or an Immigration Court does not constitute filing with the Board and will not excuse the filing party from the appeal deadline.

If an appeal is received by the Board but has not been properly filed (for example, the filing fee is missing or Proof of Service has not been completed), the appeal may be rejected. See Chapter 3.1(c) (Defective filings); Chapter 3.1(c)(i) (Meaning of "rejected"). Rejection does *not* extend the filing deadline. Instead, it can result in an untimely filing and, ultimately, dismissal of the appeal. See Chapter 4.5(b) (Extensions).

(c) *Stays*. — An alien may seek a stay of deportation or a stay of removal while an appeal is pending before the Board. Stays are automatic in some instances, but discretionary in others. Stays are discussed in Chapter 6 (Stays and Expedite Requests).

(d) *Processing*. — Once an appeal is properly filed, a written receipt is sent to both the alien and DHS. The Board will then obtain the record of proceedings from the Immigration Court. In appropriate cases, a briefing schedule is provided to both sides. Also, in appropriate cases, a transcript is prepared, and copies are sent to the parties along with the briefing schedule. See subsections (e), (f) below.

(e) *Briefing schedule.* — When a Notice of Appeal is filed, a receipt is issued to acknowledge receipt of the appeal. A briefing schedule is then issued in which the parties are notified of the deadlines for filing a brief. See Chapter 4.7 (Briefing Deadlines). The briefs must arrive at the Board by the dates set in the briefing schedule. See Chapter 3.1

(Delivery and Receipt). In the event that a briefing extension is requested and granted, a briefing extension notice is issued. See Chapter 4.7(c) (Extensions).

(f) *Transcription.* — The Board transcribes Immigration Court proceedings in appropriate cases.

(i) *Preparation of transcripts.* — The Board transcribes proceedings, where appropriate, after receiving a properly filed appeal from the decision of an Immigration Judge. Where a transcript is prepared, the transcript is sent to both parties along with the briefing schedule via regular mail. The Board does not entertain requests to send transcripts by overnight delivery or other means.

(ii) *Requests for transcripts.* — Transcripts are not normally prepared for the following types of appeals: bond determinations; denials of motions to reopen (including motions to reopen in absentia proceedings); denials of motions to reconsider; and interlocutory appeals.

Proceedings of these types may in some instances be transcribed at the discretion of the Board. If a party desires a transcript for any of these types of proceedings, he or she should send correspondence with a cover page labeled "REQUEST FOR TRANSCRIPTION." See Appendix F (Sample Cover Page). That correspondence should briefly state the reasons for the request. However, a request for transcription does *not* affect the briefing schedule. Parties are still required to meet briefing deadlines.

If the Board declines to transcribe a hearing, the parties may consult the tape recording of proceedings. Except for those periods when the Board is preparing a transcript of proceedings, the tape recordings of the proceedings remain in the possession of the Immigration Court. Parties wishing to review the tape recordings should contact the Immigration Court in which the proceedings were held.

(iii) *Defects in the transcript.* — Obvious defects in the transcript (e.g., photocopying errors, large gaps in the recorded record) should be brought to the immediate attention of the Clerk's Office. Such requests should be filed separately under a cover page titled "REQUEST FOR CORRECTION OF TRANSCRIPT." See Appendix B (Directory), Appendix F (Sample Cover Page). The Board, in its discretion, may remedy the defect where appropriate and feasible.

Defects do *not* excuse the parties from existing briefing deadlines. Those deadlines remain in effect until the parties are notified otherwise. See Chapter 4.7(c) (Extensions).

Where the Board does not or cannot remedy the purported defect in the transcript, and the party believes that defect to be significant to the party's argument or the adjudication of the appeal, the party should identify the defect and argue its significance with specificity in the appeal brief. The Board recommends that the brief be supported by a sworn, detailed statement. The Board will consider any allegations of transcript error in the course of adjudicating the appeal.

(iv) *Stipulated record of proceedings*. — Whether or not a transcript is available, the alien and DHS may prepare and sign a stipulation regarding the facts or events that transpired below. The parties may also correct errors or omissions in the record by stipulation.

(g) *Oral argument*. — The Board occasionally grants oral argument at the request of one of the parties. In such cases, parties present their case orally to a panel of three or more Board Members in a courtroom setting. See Chapter 8 (Oral Argument).

(h) *Record on appeal.* — The actual contents of the record on appeal vary from case to case, but generally include the following items: charging documents; hearing notices; notices of appearance; applications for relief and any accompanying documents; court-filed papers and exhibits; transcript of proceedings and oral decision of the Immigration Judge, if prepared; written memorandum order or decision of the Immigration Judge; Notice of Appeal; briefing schedules; briefs; motions; correspondence; and any prior decisions by the Board.

(i) *Decision.* — Upon the entry of a decision, the Board serves its decision upon the parties. See Chapter 1.4(d) (Board decisions). The decision is sent by regular mail to the parties.

4.3 Parties

(a) *Parties to an appeal.* —

(i) *The alien.* — Only an alien who was the subject of an Immigration Court proceeding, or the alien's representative, may file an appeal. The Notice of Appeal

(Form EOIR-26) must identify the names and alien registration numbers ("A numbers") of every person included in the appeal. *The appeal is limited to those persons identified.* 8 C.F.R. § 1003.3(a)(1). Thus, families should take special care -- in each and every filing -- to identify by name and alien registration number every family member included in the appeal. See Chapters 4.4(b)(iii) (How many to file), 4.10 (Combining and Separating Appeals).

(ii) *DHS. —* DHS is deemed a party to the Immigration Court proceeding. See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)). Thus, DHS is entitled to appeal an Immigration Judge decision and is deemed a party for any appeal filed by the alien. An appeal filed by DHS must also identify the names and alien registration numbers of every person from whose proceeding DHS is filing that appeal.

(iii) *Other persons or entities. —* No other person or entity may file an appeal of an Immigration Judge decision.

(b) *Parties who have waived appeal. —*

(i) *Effect of appeal waiver. —* If the opportunity to appeal is knowingly and intelligently waived, the decision of the Immigration Judge becomes final. See 8 C.F.R. § 1003.39. If a party waives appeal at the conclusion of proceedings before the Immigration Judge, that party generally may not file an appeal thereafter. See 8 C.F.R. § 1003.3(a)(1); *Matter of Shih*, 20 I&N Dec. 697 (BIA 1993). See also 8 C.F.R. § 1003.1(d)(2)(i)(G).

(ii) *Challenging a waiver of appeal. —* Generally, a party who waives appeal cannot retract, withdraw, or otherwise undo that waiver. If a party wishes to challenge the validity of his or her waiver of appeal, the party may do so in one of two ways: either in a timely motion filed with the Immigration Judge that explains why the appeal waiver was not valid *or* in an appeal filed directly with the Board that explains why the appeal waiver was not valid. *Matter of Patino*, 23 I&N Dec. 74 (BIA 2001). Once an appeal is filed, jurisdiction vests with the Board, and the motion can no longer be ruled upon by the Immigration Judge. See Chapter 4.2(a)(ii) (Appeal to the Board vs. motion before the Immigration Judge).

(c) *Representation. —* A party to an appeal may appear without representation ("pro se") or with representation. See Chapter 2 (Appearances before the Board). If a party wishes to be represented, he or she may be represented by an individual authorized

to provide representation under the regulations. See 8 C.F.R. § 1003.3(a)(1). See also Chapter 2 (Appearances before the Board). Whenever a party is represented, the party should submit all filings, documents, and communications to the Board through his or her representative. See Chapter 2.1(d) (Filings and communications).

(d) ***Persons not party to the appeal.*** **—** Only a party to an appeal, or a party's representative, may file an appeal, motion, or document or send correspondence regarding that appeal. Family members, employers, and other third parties may not file appeals.

If anyone who is not a party to the appeal wishes to make a submission to the Board regarding a particular case, that person or entity should make the submission through one of the parties. Third parties who wish to appear as amicus curiae should consult Chapter 2.10 (Amicus Curiae).

4.4 Filing an Appeal

(a) ***Rules for filing.*** **—** An appeal must be filed in accordance with the general rules for filing. See Chapter 3.1 (Delivery and Receipt). For the order in which documents should be filed, see Chapter 3.3(c)(i)(A) (Appeals).

(b) ***Notice of Appeal.*** **—** For any appeal of an Immigration Judge decision, a completed and executed Notice of Appeal (Form EOIR-26) must be timely filed with the Board. See Chapter 4.5 (Appeal Deadlines). See also 8 C.F.R. § 1003.3(a)(1). Parties must read carefully and comply with the instructions on the Notice of Appeal (Form EOIR-26).

(i) ***When to file*****. —** See Chapter 4.5 (Appeal Deadlines).

(ii) ***Where to file*****. —** For appeals of Immigration Judge decisions, the Notice of Appeal (Form EOIR-26) must be filed with the Board. It may *not* be filed with DHS or an Immigration Court. Filing an appeal of an Immigration Judge decision with DHS or an Immigration Court will not be accepted as proper filing with the Board. See Chapter 1.6(d) (Mail and other forms of delivery).

(iii) ***How many to file*****. —** A single Notice of Appeal (Form EOIR-26) must be filed for each alien who is appealing the decision of an Immigration Judge, *unless* the appeal is from proceedings that were consolidated by the Immigration

Judge. See Chapters 4.3(a) (Parties to an appeal), 4.10(a) (Consolidated appeals). Only the original Notice of Appeal must be filed. Additional copies of the Notice of Appeal need not be submitted.

(iv) ***Completing the Notice of Appeal.*** **—** For appeals of Immigration Judge decisions, the Notice of Appeal (Form EOIR-26) contains instructions on how to complete the form. Parties should be careful to complete the form accurately and completely.

(A) ***A numbers.*** **—** The alien registration number ("A number") of *every* person included in the appeal should appear on the form. If an individual alien has more than one alien registration number assigned to him or her, *every* number should appear on the form.

(B) ***Important data.*** **—** The party appealing should make sure the form is completed in full, including the parts of the form that request the date on the Immigration Judge's oral decision or written order, and the type of proceeding (removal, deportation, exclusion, asylum, bond, denial of a motion to reopen by an Immigration Judge, or denial of a motion to reconsider by an Immigration Judge).

(C) ***Brief in support of the appeal.*** **—** The appealing party must indicate on the Notice of Appeal (Form EOIR-26) whether or not a brief will be filed in support of the appeal. If a party indicates that a brief will be filed and thereafter fails to file a brief, the appeal may be summarily dismissed. See Chapters 4.7(e) (Decision not to file a brief), 4.16 (Summary Dismissal). The Board strongly encourages the filing of briefs. See Chapter 4.6 (Appeal Briefs).

(D) ***Grounds for the appeal.*** **—** Space is provided on the Notice of Appeal for a concise statement to identify the grounds for the appeal. The statement of appeal is not limited to the space on the form but may be continued on additional sheets of paper. Any additional sheets, however, should be attached to the Notice of Appeal (Form EOIR-26) and labeled with the name and alien registration number ("A number") of everyone included in the appeal.

Parties are advised that vague generalities, generic recitations of the law, and general assertions of Immigration Judge error are unlikely to apprise the Board of the reasons for appeal.

(E) ***Summary dismissal.*** **—** If neither the Notice of Appeal (Form EOIR-26) nor the documents filed with it adequately identify the basis for the appeal, the appeal may be summarily dismissed. See Chapter 4.16(b) (Failure to specify grounds for appeal). If a party indicates on the Notice of Appeal that a brief will be filed in support of the appeal and thereafter fails to file a brief, the appeal may be summarily dismissed. See Chapter 4.7(e) (Decision not to file a brief). There are other grounds for summary dismissal. See 8 C.F.R. § 1003.1(d)(2). See also Chapter 4.16 (Summary Dismissal).

(v) ***Mistakes to avoid.*** **—**

(A) ***Mixing unrelated appeals.*** **—** Parties and representatives should not "mix" unrelated appeals on one Notice of Appeal (Form EOIR-26). Each Immigration Judge decision must be appealed separately. For example, one Notice of Appeal should not combine the appeal of a bond determination and the appeal of an Immigration Judge decision regarding eligibility for relief. See Chapter 7.3(a)(i) (Separate Notice of Appeal). The appealing party should attach a copy of the decision being appealed to the Notice of Appeal.

(B) ***Using the Notice of Appeal for motions.*** **—** A Notice of Appeal (Form EOIR-26) may *not* be used to file a motion with the Board. See Chapter 5 (Motions before the Board).

(C) ***Using the Notice of Appeal to appeal to a federal court.*** **—** A Notice of Appeal (Form EOIR-26) may not be used to challenge a decision *made by* the Board. In this instance, the proper filing is a motion to reconsider with the Board or an action in the appropriate United States district or circuit court.

(c) ***Proof of Service.*** **—** The Certificate of Service portion of the Notice of Appeal (Form EOIR-26) must be completed. See Chapter 3.2(d) (Proof of Service).

(d) *Fee or fee waiver.* — The appeal must be accompanied by the appropriate filing fee or a completed Appeal Fee Waiver Request (Form EOIR-26A). 8 C.F.R. §§ 1003.3(a)(1), 1003.8. See Chapter 3.4 (Filing Fees).

(e) *Notice of Appearance.* — If a party is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) must accompany the Notice of Appeal (Form EOIR-26). See Chapter 4.3(c) (Representation).

(f) *Copy of order.* — Parties are encouraged to include a copy of either the memorandum order of the oral decision or the written decision being appealed.

(g) *Confirmation of receipt.* — The Board routinely issues receipts for Notices of Appeal (Form EOIR-26). The Board does not provide receipts for appellate briefs or supplemental filings. See Chapter 3.1(d) (Filing receipts).

4.5 Appeal Deadlines

(a) *Due date.* — A Notice of Appeal (Form EOIR-26) must be filed no later than 30 calendar days after the Immigration Judge renders an oral decision or mails a written decision. 8 C.F.R. § 1003.38(b).

The 30-day period is computed as described in Chapter 3.1(b)(ii) (Computation of time). The Board does not follow the "mailbox rule" but calculates deadlines according to the time of receipt at the Clerk's Office. See Chapter 3.1 (Delivery and Receipt). The 30-day deadline and method of computation applies to all parties, including persons detained by DHS or other federal or state authorities.

(b) *Extensions.* — The regulations set strict deadlines for the filing of an appeal, and the Board does not have the authority to extend the time in which to file a Notice of Appeal (Form EOIR-26). See 8 C.F.R. § 1003.38(b).

(c) *Detained persons.* — Detained persons are subject to the same 30-day appeal deadline. All appeals, regardless of origin, must be received by the Board in the time allotted. An appeal is not timely filed simply because it is deposited in the detention facility's internal mail system or is given to facility staff to mail prior to the deadline.

4.6 Appeal Briefs

(a) *Filing.* — An appeal brief must comply with the general requirements for filing. See Chapter 3.1 (Delivery and Receipt). The appeal brief must be timely. See Chapter 4.7 (Briefing Deadlines). It should have a cover page. See Appendix F (Sample Cover Page). The briefing notice from the Board should be stapled on top of the cover page or otherwise attached to the brief in accordance with the instructions on the briefing notice. The brief must be served on the other party. See Chapter 3.2(d) (Proof of Service). There is no fee for filing a brief.

(i) *Appeals from Immigration Judge decisions.* — For appeals from Immigration Judge decisions, the appeal brief must be filed directly with the *Board*. 8 C.F.R. § 1003.3(c)(1).

(ii) *Appeals from Department of Homeland Security decisions.* — For appeals from decisions of the Department of Homeland Security, the brief should be filed with DHS, not the Board, and in accordance with the instructions on the appeal form.

(b) *Brief-writing guidelines.* — A brief advises the Board of a party's position and arguments. A well-written brief is in any party's best interest and is therefore of great importance to the Board. The brief should be clear, concise, well-organized, and should cite the record and legal authorities fully, fairly, and accurately.

Briefs should always recite those facts which are appropriate and germane to the adjudication of the appeal, and should cite proper legal authority, where such authority is available. See Chapter 4.6(d) (Citation). Briefs should not belabor facts or law that are not in dispute. Parties are encouraged to expressly identify in their briefs when they agree with the Immigration Judge's recitation of facts or law.

There are no limits on the number of pages in an appeal brief. Parties are encouraged, however, to limit the body of their briefs to 25 pages, provided that such length can adequately dispose of the issues in the case. Briefs should *always* be paginated.

(c) *Format.* — Briefs should comport with the requirements set out in Chapter 3.3 (Documents).

(i) *Signature.* — Briefs should be signed by the person who prepared the brief. See Chapter 3.3(b) (Signatures).

(ii) *A Number.* — The alien registration number ("A number") of each alien should appear on the cover page of the brief and on the bottom right corner of each page thereafter.

If an alien has more than one alien registration number assigned to him or her, then every alien registration number should appear on the cover page of the brief.

If a brief is filed in a consolidated appeal and a comprehensive listing of alien registration numbers is impractical on every page, the first page of the brief should contain the name and alien registration number of every alien included in the appeal. The alien registration number of the lead alien, followed by "et al.", should appear as a footer on the bottom right corner of each page thereafter. See Chapter 4.10(a) (Consolidated appeals).

Unrelated proceedings should not be addressed in the same brief, *unless* proceedings have been consolidated by the Immigration Judge or the Board. If proceedings have been consolidated, this should be stated in the introductory portion of the brief. If proceedings have not been consolidated, a separate brief should be filed for each individual case. If a party wishes unrelated appeals to be considered together (but not consolidated), this may be requested in the introductory portion of the brief. See Chapter 4.10 (Combining and Separating Appeals).

(iii) *Caption.* — Parties should use captions and cover pages in all filings. See Chapter 3.3(c)(vi) (Cover page and caption), Appendix F (Sample Cover Page).

(iv) *Recommended contents.* — The following items should be included in the brief:

- a concise statement of facts and procedural history of the case
- a statement of issues presented for review
- the standard of review
- a summary of the argument

- the argument
- a short conclusion stating the precise relief or remedy sought

(v) ***References to parties.*** **—** To avoid confusion, use of "appellant" and "appellee" is discouraged. When litigation titles are desired or necessary, the following guidelines should be followed:

- removal proceedings: the alien is referred to as "respondent"
- deportation proceedings: the alien is referred to as "respondent"
- exclusion proceedings: the alien is referred to as "applicant"
- bond proceedings: the alien is referred to as "respondent"
- visa petition proceedings: the sponsoring individual or entity is referred to as "petitioner" and the alien being petitioned for is referred to as "beneficiary"
- all proceedings: the Immigration Judge should be referred to as "the Immigration Judge"
- all proceedings: the Department of Homeland Security should be referred to as "DHS," or "Department of Homeland Security"

Care must be taken not to confuse the Department of Homeland Security with the Immigration Court or the Immigration Judge. See Chapter 1.4(f) (Department of Homeland Security).

Complete names, titles, agency designations, or descriptive terms are preferred when referring to third parties.

(vi) ***Statement of facts.*** **—** A brief's statement of facts should be concise. If facts are not in dispute, the brief should simply and expressly adopt the facts as set forth in the decision of the Immigration Judge. If facts are in dispute or, in the party's estimation, are insufficiently developed in the decision of the Immigration Judge, the party's brief should set out the facts clearly and expressly identify the points of contention.

Facts, like case law, require citations. Parties should support factual assertions by citation to the record. When referring to the record, parties should follow Chapter 4.6(d) (Citation). Sweeping assertions of fact that are made without citation to their location in the record are not helpful. Likewise, facts that were not established on the record may not be introduced for the first time on appeal. *Matter of Fedorenko*, 19 I&N Dec. 57 (BIA 1984).

The Board admonishes all parties: Do not misstate or misrepresent the facts, or omit unfavorable facts that are relevant to the adjudication of the appeal. A brief's accuracy and integrity are paramount to the persuasiveness of the argument and the proper adjudication of the appeal.

(vii) *Footnotes.* — Substantive arguments should be restricted to the text of the brief. Excessive use of footnotes is discouraged.

(viii) *Headings and other markers.* — The brief should employ headings, subheadings, and spacing to make the brief more readable. Short paragraphs with topic sentences and proper headings facilitate the coherence and cohesion of an argument.

(ix) *Chronologies.* — A brief should contain a chronology of the facts, especially in those instances where the facts are complicated or involve several events. Charts or similar graphic representations that chronicle events are welcome.

(x) *Multiple briefs.* — The Board prefers that arguments in an appeal brief not incorporate by cross-reference arguments that have been made elsewhere, such as in a pretrial brief or motion brief. Whenever possible, arguments should be contained in full in the appeal brief.

(d) *Citation.* — Parties are expected to provide complete and clear citation to all authorities, factual or legal. The Board asks all parties to comply with the citation conventions articulated here and in Appendix J (Citation Guidelines).

(i) *Board decisions (precedent).* — In the past, the Board issued precedent decisions in slip opinion or "Interim Decision" form. See Chapter 1.4(d)(i)(C) (Interim Decisions). Citations to the Interim Decisions form are now greatly disfavored.

Precedent Board decisions are published in an "I&N Dec." form. See Chapter 1.4(d) (Board decisions). Citations to Board decisions should be made in accordance with their publication in *Administrative Decisions Under Immigration & Nationality Laws of the United States*. The proper citation form includes the volume number, the reporter abbreviation ("I&N Dec."), the first page of the decision, the name of the adjudicator (BIA, A.G., etc.), and the year of the decision. Example: *Matter of Gomez-Giraldo*, 20 I&N Dec. 957 (BIA 1995).

All precedent decisions should be cited as "*Matter of.*" The use of "*In re*" is not favored. Example: *Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002), not *In re Yanez*, 23 I&N Dec. 390 (BIA 2002).

Citations to a specific point in a precedent decision should include the precise page number(s) on which the point appears. Example: *Matter of Artigas*, 23 I&N Dec. 99, 100 (BIA 2001).

Citations to a separate opinion in a precedent decision should include a parenthetical identifying whether it is a dissent or concurrence. Example: *Matter of Artigas,* 23 I&N Dec. 99, 109-110 (BIA 2001) (dissent).

(ii) *Board decisions (non-precedent).* — Citation to non-precedent Board cases by parties not bound by the decision is discouraged. When it is necessary to refer to an unpublished decision, the reference should include the alien's full name, alien registration number, the adjudicator, and the decision date. Because the Board uses "*Matter of*" as a signal for a published case, its use with unpublished cases is discouraged. Example: Jane Smith, A12 345 678 (BIA July 1, 1999). A copy of the decision should be provided whenever possible. See Chapter 1.4(d)(ii) (Unpublished decisions).

(iii) *Board decisions (indexed).* — Indexed decisions are unpublished, non-precedent decisions that are compiled for the use of Executive Office for Immigration Review staff. Citation to non-precedent decisions, even when indexed, is discouraged. When it is necessary to refer to an indexed decision, the decision should be treated as a non-precedent case.

(iv) *Attorney General (precedent).* — When the Attorney General issues a precedent decision, the decision is published in the *Administrative Decisions Under Immigration & Nationality Laws of the United States*. Attorney General

precedent decisions should be cited in accordance with the same rules set forth in subsections (i) and (ii), above.

(v) *Department of Homeland Security (precedent). —* Certain precedent decisions of the Department of Homeland Security, as well as those of the former Immigration and Naturalization Service, appear in the *Administrative Decisions Under Immigration & Nationality Laws of the United States*. These decisions should be cited in accordance with the same rules set forth in subsections (i) and (ii), above.

(vi) *Federal and state court cases. —* Federal and state court decisions should be cited according to standard legal convention, as identified by the latest edition of *A Uniform System of Citation*, commonly known as the "Blue Book." If the case being cited is unpublished, a copy of that case should be provided.

(vii) *Statutes, rules, regulations, and other legal authorities and sources. —* Statutes, rules, regulations, and other standard sources of law should be cited according to standard legal convention, as identified by the latest edition of *A Uniform System of Citation*, commonly known as the "Blue Book." Sources of law or information that are peculiar to immigration law (e.g., the Foreign Affairs Manual) should be cited according to the convention of the immigration bar or cited in such a way as to make the source clear and accessible to the reader. Where citation is made to a source that is not readily available to the Board or the other party, a copy should be attached to the brief. See Chapter 3.3(e) (Source materials).

(viii) *Transcript of proceedings*. — If an argument on appeal is based on an error in fact, procedure, or conduct that is manifested in the transcript, the Notice of Appeal or brief should provide citations to the transcript. Passages in the transcript of proceedings should be cited according to page number: "Tr. at _____." Line citations are welcome, but not necessary.

(ix) *Decision of the Immigration Judge. —* If an argument on appeal is based on an error in the Immigration Judge's decision, the decision of the Immigration Judge, whether rendered orally or in writing, should be cited as "I.J. at _____." If the reference is to a decision other than the decision being appealed, the citation should indicate the nature of the proceeding and the date. Example: "I.J. bond decision at 5 (Jan. 1, 1999)."

(x) *Text from briefs.* — Text from the alien's brief should be cited as "Applicant's brief at _____" or "Respondent's brief at _____", whichever is appropriate. Text from the DHS brief should be cited as "DHS brief at _____."

(xi) *Exhibits.* — Exhibits designated during the hearing should be cited as they were designated by the Immigration Judge. Example: "Exh. _____." Exhibits accompanying an appeal, brief, or motion should identify the exhibit and what it is attached to. Example: "Motion to Reopen Exh. 2."

(e) *Consolidated briefs.* — Where cases have been consolidated, one brief may be submitted on behalf of all the aliens in the consolidated proceeding, provided that every alien's full name and alien registration number ("A number") appear on the consolidated brief. See generally Chapters 4.6(c)(ii) (A number), 4.10(a) (Consolidated appeals). A consolidated brief may not be filed if the cases have not been consolidated by the Board or an Immigration Judge.

(f) *Response briefs.* — When the appealing party files an appeal brief, the other party may file a "response brief," in accordance with the briefing schedule issued by the Board. See Chapter 4.7 (Briefing Deadlines).

If the appealing party fails to file a brief, the other party may nonetheless file one, provided it is filed in accordance with the briefing schedule issued by the Board.

(g) *Supplemental briefs.* — The Board usually does not accept supplemental briefs filed outside the period granted in the briefing schedule, except as described below.

(i) *New authorities.* — Whenever a party discovers new authority subsequent to the filing of a brief in a particular case, the party should notify the Board of the new authority through correspondence with a cover page entitled "STATEMENT OF NEW LEGAL AUTHORITIES." See Appendix F (Sample Cover Page). Such correspondence must be served upon the other party. See Chapter 3.2 (Service). It must also be limited to the citation of new authorities and may not contain any legal argument or discussion. Parties are admonished that the Board will not consider any correspondence that appears in form or substance to be a supplemental brief.

(ii) *New argument.* — If a party discovers new authority and wishes to file a supplemental brief, or in any way substitute for the original brief, the party should submit the brief along with a "MOTION TO ACCEPT SUPPLEMENTAL BRIEF" that

complies generally with the rules for motions, including service on the opposing party. See Chapter 5.2 (Filing a Motion). The motion should set forth the reason or reasons why the Board should permit the moving party to supplement the original brief. (For example, if a motion to file a supplemental brief is based on a change in the law, the moving party would identify that change and argue the significance of the new authority to the appeal.)

(h) *Reply briefs.* — The Board does not normally accept briefs outside the time set in the briefing schedule, including any brief filed by the appealing party in reply to the response brief of the opposing party. See subsection (f), above.

The Board may, in its discretion, consider an appealing party's "reply brief" when the following conditions are met: (i) the brief is accompanied by a "MOTION TO ACCEPT REPLY BRIEF," (ii) the motion is premised upon and asserts surprise at the assertions of the other party, (iii) the brief identifies and challenges the assertions of the other party, and (iv) the motion and brief are filed with the Board within 21 days of the filing of the other party's brief. (If the appeal was filed by a detained alien, see Chapter 4.7(a)(ii) (Detained cases). The brief should comply generally with the rules for motions. See Chapter 5.2 (Filing a Motion).

The Board will not suspend or delay adjudication of the appeal in anticipation of, or in response to, the filing of a reply brief.

(i) *Amicus curiae briefs.* — Amicus curiae briefs are subject to the same rules as parties' briefs. The filing of multiple amici briefs that raise similar points in support of one party is disfavored. Prospective amici of similar perspectives are encouraged to file a joint brief. See generally Chapter 2.10 (Amicus Curiae).

4.7 Briefing Deadlines

(a) *Due Date.* — In appropriate cases, the Board sets briefing schedules and informs the parties of their respective deadlines for filing briefs. See Chapter 4.2 (Process). A party may not file a brief beyond the deadline set in the briefing schedule, unless the brief is filed with the appropriate motion. See Chapters 4.6(g) (Supplemental briefs), 4.6(h) (Reply briefs), 4.7(d) (Untimely briefs).

(i) *Non-detained cases.* — When the alien is not detained, the parties are generally granted 21 calendar days each, sequentially, to file their initial briefs.

See Chapter 3.1(b)(i) (Construction of "day"). The appealing party is provided 21 days from the date of the briefing schedule notice to file an appeal brief, and the opposing party will have an additional 21 days (marked from the date the appealing party's brief was due) in which to file a response brief. 8 C.F.R. § 1003.3(c)(1).

If both parties file an appeal (i.e., cross-appeals), then both parties are granted the same 21-day period in which to file an appeal brief. See 8 C.F.R. § 1003.3(c)(1). If either party wishes to reply to the appeal brief of the other, that party should comply with the rules for reply briefs. See Chapter 4.6(h) (Reply briefs).

(ii) *Detained cases.* — When an appeal is filed in the case of a detained alien, the alien and DHS are both given the same 21 calendar days in which to file their initial briefs. The Board will accept reply briefs filed by DHS or by the alien within 14 days after expiration of the briefing schedule. However, the Board will not suspend or delay adjudication of the appeal in anticipation of, or in response to, the filing of a reply brief. See Chapter 4.6(h) (Reply briefs).

(b) *Processing.* — If a brief arrives at the Board and is timely, the brief is added to the record of proceedings and considered in the course of the adjudication of the appeal. If a brief arrives at the Board and is untimely, the brief is rejected and returned to the sender. See Chapter 3.1(c)(i) (Meaning of "rejected"). The Board may reject a brief as untimely at any time prior to the final adjudication of the appeal.

The Board does not issue receipts for briefs. If a party wishes to confirm the Board's receipt of a brief, the party should call the ASQ line for that information or, in the alternative, contact the Clerk's Office. See Chapter 1.6(b) (Telephone calls), Appendix B (Directory), Appendix I (Telephonic Information). If a party wishes to document the Board's receipt of a brief, the party should either (i) save proof of delivery (such as a courier's delivery confirmation or a return receipt from the U.S. Postal Service) or (ii) request a conformed copy. See Chapter 3.1(d)(iii) (Conformed copies).

(c) *Extensions.* — The Board has the authority to set briefing deadlines and to extend them. The filing of an extension request does *not* automatically extend the filing deadline, nor can the filing party assume that a request will be granted. Until such time as the Board affirmatively grants an extension request, the existing deadline stands.

(i) *Policy.* — In the interests of fairness and the efficient use of administrative resources, extension requests are not favored. A briefing deadline must be met unless the Board expressly extends it.

(A) *Non-detained cases*. - It is the Board's policy to grant one briefing extension per *party*, if requested in a timely fashion. When a briefing extension is requested, the Board's policy is to grant an additional 21 days to file a brief regardless of the amount of time requested. The 21 days are added to the original filing deadline. Extensions are not calculated from the date the request was made or the date the briefing notice was received. It is also the Board's policy *not* to grant second briefing extension requests. Second requests are granted only in rare circumstances.

(B) *Detained cases*. - It is the Board's policy to grant one briefing extension per *case,* if requested in a timely fashion. When a briefing extension is requested, the Board's policy is to grant an additional 21 days to file a brief regardless of the amount of time requested. The 21 days are added to the original filing deadline and applies to both parties. Extensions are not calculated from the date the request was made or the date the briefing notice was received. It is also the Board's policy *not* to grant second briefing extension requests. Second requests are granted only in rare circumstances.

(ii) *Request deadline.* — Extension requests must be received by the Board by the brief's original due date. Extension requests received after the due date will not be granted.

The timely filing of an extension request does not relieve the requesting party of the obligation to meet the filing deadline. Until the extension request is affirmatively granted by the Board, the original deadline remains in effect.

(iii) *Duty to avoid delay.* — All parties have an ethical obligation to avoid delay. The Board's deadlines are designed to provide ample opportunity for filing, and a conscientious party should be able to meet these deadlines.

(iv) *Contents.* — Extension requests should be labeled "BRIEFING EXTENSION REQUEST," and should be captioned accordingly. See Appendix F (Sample Cover Page). An extension request should indicate clearly:

- when the brief is due
- the reason for requesting an extension
- a representation that the party has exercised due diligence to meet the current deadline
- that the party will meet a revised deadline
- proof of service upon the other party

(d) *Untimely briefs. —* If a party wishes the Board to consider a brief despite its untimeliness, the brief must be accompanied by a "MOTION TO ACCEPT LATE-FILED BRIEF" and comply generally with the rules for motions. See Chapter 5.2 (Filing a Motion). If the motion is filed without the brief, the motion will be rejected. See Chapter 3.1(c)(i) (Meaning of "rejected"). Thus, the motion and the brief must be submitted together.

The Board has the discretion to consider a late-filed brief, but does so rarely. A motion to accept late-filed brief must set forth in detail the reasons for the untimeliness, and it should be supported by affidavits, declarations, or other evidence. If the motion is granted, the motion and brief are incorporated into the record, and the brief is considered by the Board. If the motion is denied, the motion is retained as part of the record, but the brief is returned without consideration. In either case, the parties are notified of the Board's decision on the motion.

Parties may file a motion to accept a late-filed brief only once. Subsequent late-filed brief motions will not be considered. Motions to reconsider denials of late-filed brief motions will also not be considered.

(e) *Decision not to file a brief. —* If a party indicates on a Notice of Appeal (Form EOIR-26) that a brief will be filed but later decides not to file a brief, that party should notify the Board in writing *before* the date the brief is due. The filing should have a cover page clearly labeled "BRIEFING WAIVER" and expressly indicate that the party will not be filing a brief. See Appendix F (Sample Cover Page).

Failure to file a brief after an extension request has been granted is highly disfavored . See Chapter 4.16 (Summary Dismissal).

(f) *Failure to file a brief. —* When a party indicates on the Notice of Appeal (Form EOIR-26) that he or she will file a brief and thereafter fails to file a brief and fails to explain the failure to do so, the Board may summarily dismiss the appeal on that basis. 8 C.F.R. § 1003.1(d)(2)(i)(D). See Chapter 4.16 (Summary Dismissal).

4.8 Evidence on Appeal

(a) *Record evidence. —* The Board considers only that evidence that was admitted in the proceedings below.

(b) *New evidence on appeal. —* The Board does not consider new evidence on appeal. If new evidence is submitted, that submission may be deemed a motion to remand proceedings to the Immigration Judge for consideration of that evidence and treated accordingly. See Chapter 5.8 (Motions to Remand).

(c) *Administrative notice on appeal. —* The Board may, at its discretion, take administrative notice of commonly known facts not appearing in the record. For example, the Board may take administrative notice of current events and contents of official documents, such as country condition reports prepared by the State Department.

(d) *Representations of counsel. —* Representations made by counsel in a brief or motion are not evidence. *Matter of Fedorenko*, 19 I&N Dec. 57 (BIA 1984).

4.9 New Authorities Subsequent to Appeal

Whenever a party discovers new authority subsequent to the filing of a Notice of Appeal or brief, whether that authority supports or detracts from the party's arguments, that party should notify the Board of the new authority. See Chapter 4.6(g)(i) (New authorities). If either party wishes to brief new authority, that party should consult Chapter 4.6(g)(ii) (New argument).

4.10 Combining and Separating Appeals

(a) *Consolidated appeals. —* Consolidation of appeals is the administrative joining of separate appeals into a single adjudication for all the parties involved. Consolidation is generally limited to appeals involving immediate family members,

although the Board may consolidate other appeals where the cases are sufficiently interrelated.

Most of the consolidated cases before the Board were consolidated by the Immigration Judge in the proceedings below. The Board may consolidate appeals at its discretion or upon request of one or both of the parties, when appropriate. For example, the Board may grant consolidation when spouses or siblings have separate but overlapping circumstances or claims for relief. Consolidation must be sought through the filing of a written request that states the reasons for requesting consolidation. Such a request should include a cover page labeled "REQUEST FOR CONSOLIDATION OF APPEALS." See Appendix F (Sample Cover Page). A copy of the request should be filed for each case included in the request for consolidation. The request should be filed as soon as possible.

(b) *Concurrent consideration of appeals.* — Concurrent consideration is the adjudication of unrelated appeals in tandem for the purposes of consistent adjudication and administrative efficiency. The Board may concurrently consider unrelated appeals at its discretion or upon request of one or both of the parties. Concurrent consideration must be sought through the filing of a written request that states the reasons for concurrent consideration. Such a request should include a cover page labeled "REQUEST FOR CONCURRENT CONSIDERATION OF APPEALS." See Appendix F (Sample Cover Page). Concurrent consideration differs from consolidated appeals in that, however similar the cases or the adjudications, the appeals remain separate and distinct from one another. Concurrent consideration is appropriate, for example, when unrelated cases involve the same legal issue.

(c) *Severance of appeals.* — Severance of appeals is the division of a consolidated appeal into separate appeals, relative to each individual involved. The Board may sever appeals at its discretion or upon request of one or both of the parties. Severance must be sought through the filing of a written request that states the reasons for requesting severance. Such a request should include a cover page labeled "REQUEST FOR SEVERANCE OF APPEALS." See Appendix F (Sample Cover Page). Parties are advised, however, that such a request must be clear and filed as soon as possible.

4.11 Withdrawing an Appeal

(a) *Procedure.* — An appealing party may, at any time prior to the entry of a decision by the Board, voluntarily withdraw his or her appeal, with or without the consent

of the opposing party. The withdrawal must be in writing and filed with the Board. The cover page to the withdrawal should be labeled "MOTION TO WITHDRAW APPEAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Board), Appendix F (Sample Cover Page).

(b) *Untimely withdrawal. —* If a withdrawal is not received by the Board prior to the Board's rendering of a decision, the withdrawal will not be recognized, and the Board's decision will become binding.

(c) *Effect of withdrawal. —* When an appeal is withdrawn, the decision of the Immigration Judge becomes immediately final and binding as if no appeal had ever been filed, and the alien is then subject to the Immigration Judge's original decision. See 8 C.F.R. § 1003.4. Thus, if the alien appeals an Immigration Judge's order of removal or deportation, and then withdraws the appeal, DHS may at that point remove or deport the alien. If the alien appeals an Immigration Judge's order in which the alien was granted voluntary departure, and then withdraws the appeal, the period of voluntary departure runs from the date of the Immigration Judge's decision, *not* the date of the appeal's withdrawal.

(d) *Distinction from motion to remand. —* Parties should not confuse a motion to withdraw appeal with a motion to remand. The two motions are distinct from one another and have very different consequences. While a motion to withdraw appeal is filed by a party who chooses to accept the decision of the Immigration Judge, a motion to remand is filed by a party who wants the case returned to the Immigration Judge for further consideration. See Chapter 5.8 (Motions to Remand).

(e) *Represented aliens. —* If a represented alien wishes to withdraw an appeal, the alien's representative should file the withdrawal. If a represented alien insists on filing the withdrawal himself or herself, the withdrawal should indicate whether it is being made with the advice and consent of the representative. The withdrawal should also be filed with Proof of Service on the alien's attorney. See Chapter 3.2(d) (Proof of Service), Appendix G (Sample Proof of Service).

4.12 Non-Opposition to Appeal

(a) *Failure to oppose. —* The failure of the opposing party to affirmatively oppose an appeal does not automatically result in the appeal being sustained. While the Board may consider the opposing party's silence in adjudicating the appeal, that silence does not dictate the disposition of the appeal.

(b) *Express non-opposition. —* The opposing party may affirmatively express non-opposition to an appeal at any time prior to the entry of a decision by the Board. Such non-opposition should be expressed either in the response to the appeal or in the form of a notice labeled "NON-OPPOSITION TO APPEAL" and should be properly served on the other party. See Chapter 3.2 (Service), Appendix F (Sample Cover Page). While the Board may weigh the opposing party's non-opposition in adjudicating the appeal, that non-opposition does not dictate the disposition of the appeal.

(c) *Withdrawal of opposition. —* The opposing party may withdraw opposition to an appeal at any time prior to the entry of a decision by the Board. Such non-opposition should be expressed in the form of a notice labeled "WITHDRAWAL OF OPPOSITION TO APPEAL" and be properly served on the other party. See Chapter 3.2 (Service), Appendix F (Sample Cover Page). While the Board may weigh the opposing party's withdrawal of opposition in adjudicating the appeal, that withdrawal does not dictate the disposition of the appeal.

4.13 Effect of Departure

(a) *Alien appeal. —* Departure from the United States can jeopardize an alien's right to appeal, even when the departure is authorized or compelled by the Department of Homeland Security. Departure from the United States prior to filing an appeal may be construed as a waiver of the right to appeal. Departure from the United States while an appeal is pending may be construed as a withdrawal of that appeal. See 8 C.F.R. §§ 1003.3(e), 1003.4.

(b) *DHS appeal. —* The alien's departure from the United States while a DHS appeal is pending does not constitute a withdrawal of the DHS appeal, nor does it render the DHS appeal moot.

4.14 Interlocutory Appeals

(a) *Nature of interlocutory appeals. —* Most appeals are filed *after* the Immigration Judge issues a final decision in the case. In contrast, an interlocutory appeal asks the Board to review a ruling by the Immigration Judge *before* the Immigration Judge issues a final decision.

(b) *Bond appeals. —* Bond appeals should not be confused with interlocutory appeals. There are separate rules for bond appeals. See Chapter 7 (Bond).

(c) *Scope of interlocutory appeals. —* The Board does not normally entertain interlocutory appeals and generally limits interlocutory appeals to instances involving either important jurisdictional questions regarding the administration of the immigration laws or recurring questions in the handling of cases by Immigration Judges. See *Matter of K-*, 20 I&N Dec. 418 (BIA 1991).

(d) *Filing an interlocutory appeal. —* Interlocutory appeals should be timely filed on a Notice of Appeal (Form EOIR-26). Next to the words "What decision are you appealing?" in box 5, type or write in the words "INTERLOCUTORY APPEAL." Do not check any of the three options in box 5. The appeal must indicate the date of the Immigration Judge's decision, the precise nature and disposition of that decision, and the precise issue being appealed. If the interlocutory appeal is based upon a written decision, a copy of that decision should be included with the appeal.

(e) *Briefing. —* The Board does not normally issue briefing schedules for interlocutory appeals. If an appealing party wishes to file a brief, the brief should accompany the Notice of Appeal or be promptly submitted after the Notice of Appeal is filed. If an opposing party wishes to file a brief, the brief should be filed as soon as possible after the appeal is filed. The Board will not, however, suspend or delay adjudication of an interlocutory appeal in anticipation of, or in response to, the filing of a brief.

4.15 Summary Affirmance

Under certain circumstances, the Board may affirm, without opinion, the decision of an Immigration Judge or DHS officer. The Board may affirm a decision if all of these conditions are met:

- the Immigration Judge or DHS decision reached the correct result
- any errors in the decision were harmless or nonmaterial
- either (a) the issues on appeal are squarely controlled by existing Board or federal court precedent and do not involve the application of a 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

See 8 C.F.R. § 1003.1(e)(4). By regulation, a summary affirmance order reads: "The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. 3.1(e)(4)." 8 C.F.R. § 1003.1(e)(4)(ii).

A summary affirmance order will not contain further explanation or reasoning. Such an order approves the *result* reached by the Immigration Judge or DHS. Summary affirmance does not mean that the Board approves of all the reasoning of that decision, but it does reflect that any errors in the decision were considered harmless or not material to the outcome of the case. See 8 C.F.R. § 1003.1(a)(7), (e)(4).

Note that any motion to reconsider or motion to reopen filed after a summary affirmance order should be filed with the Board. See Chapters 5.6 (Motions to Reopen) and 5.7 (Motions to Reconsider). However, by regulation, the Board cannot entertain a motion based solely on an argument that the case should not have been affirmed without opinion. See 8 C.F.R. § 1003.2(b)(3).

4.16 Summary Dismissal

(a) ***Nature of "summary" dismissal.* —** Under certain circumstances, the Board is authorized to dismiss an appeal without reaching its merits. See 8 C.F.R. § 1003.1(d)(2)(i).

(b) ***Failure to specify grounds for appeal.* —** When a party takes an appeal, the Notice of Appeal (Form EOIR-26) must identify the reasons for the appeal. A party should be specific and detailed in stating the grounds of the appeal, specifically identifying the findings of fact, the conclusions of law, or both, that are being challenged. 8 C.F.R. § 1003.3(b). An appeal, or any portion of an appeal, may be summarily dismissed if the Notice of Appeal (Form EOIR-26), and any brief or attachment, fails to adequately inform the Board of the specific reasons for the appeal. 8 C.F.R. § 1003.1(d)(2)(i)(A).

(c) ***Failure to file a brief.* —** An appeal may be summarily dismissed if the Notice of Appeal (Form EOIR-26) indicates that a brief or statement will be filed in support of the appeal, but no brief, statement, or explanation for not filing a brief is filed within the

briefing deadline. 8 C.F.R. § 1003.1(d)(2)(i)(E). See Chapter 4.7(e) (Decision not to file a brief).

(d) ***Other grounds for summary dismissal.*** — An appeal can also be summarily dismissed for the following reasons:

- the appeal is based on a finding of fact or conclusion of law that has already been conceded by the appealing party
- the appeal is from an order granting the relief requested
- the appeal is filed for an improper purpose
- the appeal does not fall within the Board's jurisdiction
- the appeal is untimely
- the appeal is barred by an affirmative waiver of the right of appeal
- the appeal fails to meet essential statutory or regulatory requirements
- the appeal is expressly prohibited by statute or regulation

See 8 C.F.R. § 1003.1(d)(2)(i).

(e) ***Sanctions.*** — Attorneys and accredited representatives are admonished that an appeal that is summarily dismissed may be deemed frivolous. 8 C.F.R. § 1003.1(d)(2)(iii). See Chapters 4.17 (Frivolous Appeals), 11 (Discipline of Practitioners).

4.17 Frivolous Appeals

If it appears to the Board, at any time, that an appeal is filed for an improper purpose or to cause unnecessary delay, the appeal may be dismissed. See 8 C.F.R. § 1003.1(d)(2)(i)(D). The filing of a frivolous appeal may be grounds for discipline against the attorney or accredited representative. See Chapter 11.4 (Conduct).

4.18 Certification by an Immigration Judge

An Immigration Judge may ask the Board to review his or her decision. 8 C.F.R. § 1003.7. To "certify" a case to the Board, an Immigration Court serves a notice of certification on the parties. That notice informs the parties that the case has been certified and sets a briefing schedule.

The right to appeal is separate and distinct from certification. To safeguard the opportunity to appeal and be heard by the Board, parties should file an appeal *even if* an Immigration Judge has certified the case. 8 C.F.R. § 1003.3(d).