

2 Appearances before the Board

2.1 Representation Generally

(a) Types of representatives. — The regulations specify who may represent parties before the Board. See 8 C.F.R. § 1292.1. As a practical matter, there are four categories of people who may present cases to the Board: unrepresented aliens (Chapter 2.2), attorneys (Chapter 2.3), accredited representatives (Chapter 2.4), and certain kinds of individuals who are expressly recognized by the Board (Chapters 2.5 and 2.9).

No one else is recognized to practice before the Board. Non-lawyer “immigration specialists,” “visa consultants,” “notarios,” and “asesorios” are *not* authorized to represent parties before the Board. See Chapter 2.7 (Immigration Specialists).

(b) Entering an appearance. — All representatives must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). Representatives should be sure to use the most current version of the form, which can be found on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. Note that this form is not the one used before the Immigration Court (Form EOIR-28) and that the Board will not recognize a representative using Form EOIR-28. Unrepresented persons (“pro se” aliens) should not file a Notice of Appearance. An original Notice of Appearance should always be filed in the following situations:

- the filing of an appeal
- the filing of a motion to reopen
- the filing of a motion to reconsider
- the first appearance of an attorney or representative
- any change of business address for the attorney or representative

(c) Notice to opposing party. — In all instances of representation, the other party must be served with a copy of the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). See Chapter 3.2 (Service).

(d) Filings and communications. — Whenever a party is represented, the party should submit all filings and communications to the Board through the representative. Filings should always be made by a party to the proceedings, or a party's representative, and not by a third party. See Chapters 4.3(d) (Persons not party to the appeal), 5.1(c) (Persons not party to the proceeding).

2.2 Unrepresented Aliens (“Pro se” Appearances)

(a) Competence. — An individual in proceedings may represent himself or herself before the Board.

Many individuals choose to be represented by an attorney or accredited representative. Due to the complexity of the immigration and nationality laws, the Board recommends that those who can obtain professional representation do so.

(b) Pro Bono Program. — The Board cannot give advice on when to obtain professional representation or whom to select. However, the Executive Office for Immigration Review (EOIR) provides general information for persons seeking free legal services on its website at www.usdoj.gov/eoir under the “Pro Bono Program” link. The website also includes information on the BIA Pro Bono Project, which matches attorney brief writers with indigent aliens who have cases on appeal.

(c) Address obligations. — Whether represented or not, all aliens in proceedings before the Board *must* notify the Board within 5 days of any change of address. See 8 C.F.R. § 1003.38(e). In all instances, the Board sends communications to the last properly provided address. If an alien fails to keep address information up to date, the Board may treat that failure as abandonment of the alien's appeal or motion.

(i) Form EOIR-33/BIA. — Changes of address *must* be made in writing and *only* on Form EOIR-33/BIA. Unless the alien is detained, *no other means of notification is acceptable*. Changes communicated through motion papers, correspondence, telephone calls, applications for relief, or other means will not be recognized, and the address information on record will not be changed. For information on obtaining or reproducing Form EOIR-33/BIA, see Chapter 12 (Forms) and Appendix E (Forms).

(ii) Appeals. — When an appeal is filed, the Board relies on the address for the alien that appears in the Notice of Appeal (Form EOIR-26) until such time as

a change of address is reported through the filing of a Change of Address Form (Form EOIR-33/BIA).

(iii) Motions. — The Board recommends that an alien file a Change of Address Form (Form EOIR-33/BIA) whenever filing a motion to reopen, a motion to reconsider, or a motion to recalendar. This will ensure that the Board has the alien's current address when it adjudicates the motion.

(d) Address obligations of detained aliens. — When an alien is detained, DHS is obligated by regulation to report to the Board any changes in the alien's location, including where the alien is detained and when the alien is released. See 8 C.F.R. § 1003.19(g).

(i) While detained. — In recognition of the unique address problems of detained persons and to help ensure that the Board's records remain current, the Board recommends that detained persons notify the Board of their transfer from one facility or institution to another. Whenever possible, a detained alien should report his or her transfer on the Change of Address Form (Form EOIR-33/BIA). See subsection (b), above.

(ii) When released. — DHS is responsible for notifying the Board when an alien is released from custody. 8 C.F.R. § 1003.19(g). Nonetheless, the alien should file a Change of Address Form (Form EOIR-33/BIA) with the Board to ensure that the Board's records are current.

2.3 Attorneys

(a) Right to Counsel. — An alien in immigration proceedings may be represented by an attorney of his or her own choosing, at no cost to the government. Unlike criminal proceedings, the government is *not* obligated to provide legal counsel. The Immigration Courts provide lists of attorneys who may represent aliens for little or no cost, and many of these attorneys handle cases on appeal as well. Bar associations and nonprofit agencies can also refer aliens to practicing attorneys.

(b) Qualifications. — An attorney may practice before the Board if he or she is a member in good standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise

restricting him or her in the practice of law. See 8 C.F.R. §§ 1001.1(f), 1292.1(a)(1). Any attorney practicing before the Board who is the subject of such disciplinary action in any jurisdiction must promptly notify the Board of that action. See Chapter 11.6 (Duty to Report).

(c) Appearances. — Attorneys must enter an appearance before the Board by filing a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). See 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(3). A Notice of Appearance should always be filed in the situations described in Chapter 2.1(b) (Entering an appearance). The Notice of Appearance must be served on the opposing party. See Chapter 3.2 (Service). If information is omitted from the Notice of Appearance or the form is not properly completed, the attorney's appearance may not be recognized, and the filing may be rejected.

(i) EOIR-27. — Practitioners *must* use the most current version of the form, which can be found on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. Practitioners should observe the distinction between the Board's Notice of Appearance (Form EOIR-27) and the Immigration Courts' version (Form EOIR-28). The Board will *not* recognize a practitioner based on an Immigration Court appearance form (Form EOIR-28), whether filed with the Immigration Court or the Board.

(ii) Attorney information. — The Notice of Appearance must bear an individual attorney's current address and the attorney's original signature in compliance with the requirements of Chapter 3.3(b) (Signatures). Note that Identification Numbers ("EOIR ID numbers") for attorneys and representatives are not currently being issued, and therefore that information does not need to be provided at this time.

(iii) Alien's signature. — When an attorney represents a United States citizen or a lawful permanent resident, the Notice of Appearance should be signed by the represented party as well. See 5 U.S.C. §§ 552, 552a(a)(2). When the alien is not a lawful permanent resident, the alien's signature is not required but is highly recommended.

(iv) Bar information. — When an attorney is a member of a state bar which has a state bar number or corresponding court number, the attorney *must* provide that number on the Notice of Appearance. If the attorney has been admitted to more than one state bar, *each and every* state bar to which the attorney has ever

been admitted – including states in which the attorney is no longer an active member or has been suspended, expelled, or disbarred – must be listed and the state bar number, if any, provided.

(v) Discipline information. – In every instance, one of the two check boxes regarding discipline action (under box 1 of the Notice of Appearance) must be checked. If the attorney is subject to discipline, then the attorney must provide information on the reverse of the form. (Attorneys may attach an explanatory supplement or other documentation to the form.) An attorney who fails to check one of the two boxes regarding discipline, or fails to provide discipline information, risks not being recognized by the Board and may be subject to disciplinary action.

(d) Limited appearances. — Once an attorney has made an appearance, he or she has an obligation to continue representation until such time as the alien terminates representation, another attorney enters an appearance, or a motion to withdraw as counsel has been granted by the Board. Therefore, outside the context of oral argument, the Board generally does not allow limited appearances. See subsections (e), (f), and (i), below. See also Chapter 8.6(b) (Multiple representation).

(e) Single representative. — An individual may have only one representative of record at any given time. In instances involving law offices or organizations, there must be an *individual* who serves as the named representative of record. Accordingly, in those instances in which a person in proceedings is represented by a law office, only the attorney whose signature appears on the Notice of Appearance (Form EOIR-27) is recorded. All submissions to the Board must thereafter bear the name of the representative of record and be signed by that attorney. See subsection (b), above. See also Chapter 3.3(b) (Signatures).

(i) Change in firm. — In the event that an attorney departs a law firm but wishes to continue as attorney of record, the attorney should promptly submit a new Notice of Appearance. The Notice of Appearance must reflect any change of address and should apprise the Board of his or her change in office affiliation. The attorney should check the “new address” box in the address block on the Notice of Appearance.

(ii) Change in attorney. — If the attorney of record leaves a law firm but the law firm wishes to retain the case, another attorney in the firm must file a Notice of Appearance (Form EOIR-27) and thereby become the attorney of record. Similarly, if a law firm wishes to reassign responsibility for a case from the attorney

of record to another attorney in the firm, the new attorney must file a Form EOIR-27. Until such time as another attorney files a Form EOIR-27 (or a motion to withdraw is granted by the Board), the original attorney of record remains the attorney of record and is responsible for the case. See subsection (j), below.

(f) Law firms. —

(i) Firm not the representative. — Only individuals, not firms or offices, may represent parties before the Board. In every instance of representation, a named attorney must enter an appearance to act as the attorney of record. Accordingly, the Board does not accept appeals, motions, briefs, or other filings submitted by a law firm, law office, or other entity if they do not include the name and signature of the attorney of record. See subsection (e), above. See also Chapter 3.3(b)(ii) (Law firms).

(ii) No filings “on behalf of.” — The Board only accepts filings *by* the attorney of record, not *on behalf of* the attorney of record. Thus, any filing from an attorney who is not the attorney of record *must* be accompanied by a completed Notice of Appearance (Form EOIR-27), whereupon that attorney will become the new attorney of record. See subsection (j), below. Limited appearances for purposes of filing an appeal, motion, brief, or other document are not recognized. See subsection (d), above.

(g) Service upon counsel. — Service of papers upon counsel of a represented party constitutes service on the represented party. 8 C.F.R. § 1292.5(a).

(h) Address obligations of counsel. — Attorneys who enter an appearance before the Board have an affirmative duty to keep the Board apprised of their current address and contact information. See 8 C.F.R. § 1003.38(e). Changes of address should be made by filing an updated Notice of Appearance (Form EOIR-27), *not* through the alien Change of Address Form (Form EOIR-33/BIA). An attorney filing a change of his or her address should check the “New Address” box in the address block on the Notice of Appearance.

(i) Compound changes of address. — Attorneys must submit a separate Notice of Appearance for each alien represented. An attorney may not submit a list of clients for whom his or her change of address should be entered.

(ii) Address obligations of represented aliens. — Even when an alien is represented, the alien is still responsible for keeping the Board apprised of his or her current address. Changes of address for the alien may not be made on the Notice of Appearance (Form EOIR-27) but must be made on the Change of Address Form (Form EOIR-33/BIA). See Chapter 2.2(c) (Address obligations).

(j) Change in representation. — A represented alien may substitute or release counsel at his or her discretion. A representative may withdraw from representation under certain conditions. Aliens and their representatives must keep the Board apprised of all changes in representation.

(i) Substitution of counsel. — A represented alien may substitute counsel at his or her discretion. Counsel is properly substituted through the filing by new counsel of a Notice of Appearance (Form EOIR-27). New counsel is expected to serve a copy of the executed Notice of Appearance on prior counsel and the opposing party. See Chapter 3.2 (Service).

Upon receipt of the new Notice of Appearance, the Board automatically recognizes new counsel, and prior counsel need not file a motion to withdraw. However, until such time as a new Notice of Appearance has been filed, prior counsel remains the attorney of record and is accountable as such.

Extension requests that are based on substitution of counsel are not favored. See Chapter 4.7(c) (Extensions).

(ii) Release of counsel. — A represented alien may, at his or her discretion, terminate representation at any time.

If a represented alien dismisses his or her attorney and does not retain a new attorney immediately, the represented alien should notify the Board through correspondence with a cover page labeled “NOTICE OF DISMISSAL OF ATTORNEY.” See Appendix F (Sample Cover Page). This “dismissal notice” should contain the full name, alien registration number (“A number”), and complete address of the alien, as well as the name of the attorney being dismissed. The dismissal notice should also contain Proof of Service indicating that both the attorney and DHS have been served. See Chapter 3.2 (Service). An updated Change of Address Form (Form EOIR-33 / BIA) should accompany the dismissal notice.

If a represented alien dismisses one attorney, but retains a new attorney who immediately files a Notice of Appearance (Form EOIR-27), the alien need not file a dismissal notice for the first attorney. See previous subsection.

If, after a dismissal notice has been filed, an alien retains a new attorney, the new attorney must file a Notice of Appearance (Form EOIR-27). See subsection (c), above.

(iii) *Withdrawal of counsel.* — Counsel seeking withdrawal should file a motion with a cover page labeled “MOTION TO WITHDRAW AS COUNSEL.” See Chapter 3.2 (Service), Appendix F (Sample Cover Page). The motion should contain the following information:

- the last known address of the represented alien
- evidence that the attorney has notified or attempted to notify the alien of the request to withdraw as counsel
- evidence that either (a) the alien is aware of pending deadlines, existing obligations, and the consequences for failing to comply with those deadlines and obligations, or (b) the attorney attempted to notify the alien of those deadlines and obligations

See *Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988). Withdrawal should be effected in a timely fashion to avoid compromising the interests of the represented alien.

(j) *Attorney misconduct.* —The Board has the authority to impose disciplinary sanctions upon attorneys and representatives who violate rules of professional conduct in practice before the Board, the Immigration Courts, and DHS. See Chapter 11 (Discipline of Practitioners). Where an attorney in a case has been suspended from practice before the Board and the alien has not retained new counsel, the Board will treat the alien as pro se. All mailings from the Board, including briefing schedules and orders, will be mailed directly to the alien. Any filings from an attorney who has been suspended from practice before the Board will be rejected.

2.4 Accredited Representatives

An accredited representative is a person who is approved by the Board to represent aliens before the Board, the Immigration Courts, and DHS. He or she must be a person of good moral character who works for a specific nonprofit religious, charitable, social service, or similar organization which has been recognized by the Board to represent aliens. Accreditation is valid for a period of up to three years and can be renewed. See 8 C.F.R. § 1292.1(a)(4), 1292.2(d). Accredited representatives must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) in order to represent an individual before the Board. See Chapter 2.3(c) (Appearances). Accredited Representatives should be careful to use the most current version of the Notice of Appearance (Form EOIR-27), which can be found on the Executive Office for Immigration Review website at www.usdoj.gov/eoir.

(a) Qualifying organizations. — The Board officially recognizes certain nonprofit religious, charitable, social service, and similar organizations as legal service providers. See 8 C.F.R. § 1292.2(a). To be recognized by the Board, an organization must affirmatively apply for that recognition. Such an organization must establish to the satisfaction of the Board that its fees are only nominal, that it does not assess excessive membership dues for persons given assistance, and that it has at its disposal adequate knowledge, information, and experience in immigration law and procedure. The qualifications and procedures for organizations seeking Board recognition are set forth in the regulations. See 8 C.F.R. § 1292.2(a), (b). Questions regarding recognition may be directed to the Office of General Counsel of the Executive Office for Immigration Review. See Appendix B (Directory).

(b) Qualifying representatives. — The Board accredits persons of good moral character as representatives of qualifying organizations. See 8 C.F.R. § 1292.2(d). Representatives of recognized organizations are not, however, automatically accredited by the Board. Rather, the recognized organization must affirmatively apply for accreditation on each representative's behalf. See 8 C.F.R. § 1292.2(d). No individual may apply on his or her own behalf.

Accreditation is not transferrable from one representative to another, and no individual retains accreditation upon his or her separation from the recognized organization.

(c) Immigration specialists. — Accredited representatives should not be confused with non-lawyer "immigration specialists," visa consultants, "notarios," and

“asesorios.” See Chapter 2.7 (Immigration Specialists). Accredited representatives must be expressly accredited by the Board and must be employed by a nonprofit institution specifically recognized by the Board.

(d) Verification. — To verify that an individual has been accredited by the Board, the public can either:

- consult the listing at www.usdoj.gov/eoir, or
- call the Office of General Counsel of the Executive Office for Immigration Review (see Appendix B (Directory))

(e) Applicability of attorney rules. — Except in those instances set forth in the regulations and this manual, accredited representatives are to observe the same rules and procedures as attorneys. See Chapter 2.3 (Attorneys).

(f) Signatures. — Only the accredited representative who is the representative of record may sign submissions to the Board. An accredited representative, even in the same organization, may not sign or file on another accredited representative’s behalf. See Chapter 3.3(b) (Signatures).

(g) Representative misconduct. — Accredited representatives must comply with certain standards of professional conduct. See 8 C.F.R. § 1003.101 et seq.

(h) Request to be removed from list of accredited representatives. — An accredited representative who no longer wishes to represent aliens should write to the Chairman of the Board of Immigration Appeals and request to be removed from the list. See Appendix A (Addresses).

2.5 Law Students and Law Graduates

(a) Generally. — Law students and law graduates (law school graduates who are not yet admitted to practice law) may appear before the Board if certain conditions are met. Recognition by the Board is not automatic and must be requested in writing. See 8 C.F.R. § 1292.1(a)(2).

(b) Law Students. —

(i) Notice of Appearance. — A law student must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). He or she should check box 3 on the Notice of Appearance and provide on the reverse side of the form both the name of the supervising attorney or accredited representative and that person's business address, if different from that of the law student.

(ii) Representation statement. — A law student wishing to appear before the Board must file a statement that he or she is participating in a legal aid program or clinic conducted by a law school or nonprofit organization and is under the direct supervision of a faculty member, licensed attorney, or accredited representative. The statement should also state that the law student is appearing without direct or indirect remuneration from the alien being represented. 8 C.F.R. § 1292.1(a)(2). Such statement should be filed with the Notice of Appearance (Form EOIR-27).

(c) Law Graduates. —

(i) Notice of Appearance. — A law graduate must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). The law graduate should be careful to use the most current version of the form, which can be found on the Executive Office for Immigration Review website. He or she should check box 3 on the Notice of Appearance and provide on the reverse side of the form both the name of the supervising attorney or accredited representative and that person's business address, if different from that of the law graduate.

(ii) Representation statement. — A law graduate wishing to appear before the Board must file a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative. That statement should also state that the law graduate is appearing without direct or indirect remuneration from the alien being represented. 8 C.F.R. § 1292.1(a)(2). Such statement should be filed with the Notice of Appearance (Form EOIR-27).

(d) Representative misconduct. — Law students and law graduates must comply with standards of professional conduct. See 8 C.F.R. § 1003.101 et seq.

2.6 Paralegals

Paralegals are professionals who assist attorneys in the practice of law. They are not themselves licensed to practice law and therefore may not represent parties before the Board. Paralegals who do not work for an attorney risk being charged with the unauthorized practice of law.

2.7 Immigration Specialists

Immigration specialists – which include visa consultants, “notarios,” and “asesorios” – are *not* authorized to practice law or appear before the Board. These individuals are generally violating the law by practicing law without a license. As such, they do not qualify either as accredited representatives or “reputable individuals” under the regulations. See Chapters 2.4 (Accredited Representatives), 2.9(a) (Reputable individuals).

2.8 Family Members

If a party is a child, then a parent or legal guardian may represent the child before the Board, provided the parent or legal guardian clearly informs the Board of their relationship. If a party is an adult, a family member may represent the party *only* when the family member has been authorized by the Board to do so. See Chapter 2.9(a) (Reputable individuals).

2.9 Others

(a) Reputable individuals. — In appropriate circumstances, the Board will allow a “reputable individual” to appear on behalf of an alien. See 8 C.F.R. § 1292.1(a)(3). To qualify as a reputable individual, an individual must meet all of the following criteria:

- be a person of good moral character
- appear on an individual basis, at the request of the alien
- receive no direct or indirect remuneration for his or her assistance

- file a declaration that he or she is not being remunerated for his or her assistance
- have a preexisting relationship with the alien (e.g., relative, neighbor, clergy), except in those situations where representation would otherwise not be available, and
- be officially recognized by the Board

Any individual who receives any sort of compensation or makes immigration appearances on a regular basis (such as a non-lawyer “immigration specialist,” visa consultant, “notario,” or “asesorio”) does not qualify as a “reputable individual” as defined in the regulations.

To appear before the Board, a reputable individual must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). He or she should check box 3 on the Notice of Appearance and write on the reverse side of the form the words “REPUTABLE INDIVIDUAL”. A person asking to be recognized as a reputable individual should file a statement attesting to each of the criteria set forth above. This statement should accompany the Notice of Appearance.

(b) Fellow inmates. — The regulations do not provide for representation by fellow inmates or other detained persons. Fellow inmates do not qualify under any of the categories of representatives enumerated in the regulations.

(c) Accredited officials of foreign governments. — An accredited official who is in the United States may appear before the Board, in his or her official capacity and with the alien’s consent. See 8 C.F.R. § 1292.1(a)(5). To appear before the Board, an accredited official of a foreign government must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). An accredited official should check box 3 on the Notice of Appearance and write on the reverse side of the form the words “ACCREDITED OFFICIAL OF [name of country]”.

(d) Former employees of the Department of Justice. — Former employees of the Department of Justice may be restricted in their ability to appear before the Board. See 8 C.F.R. § 1292.1(c).

(e) Foreign student advisors. — A foreign student advisor is not authorized to appear before the Board, unless the advisor is an accredited representative. See Chapter 2.4 (Accredited Representatives).

2.10 Amicus Curiae

The Board may grant permission to an amicus curiae to appear, on a case-by-case basis, if the public interest will be served thereby. 8 C.F.R. § 1292.1(d).

A person or organization wishing to make an appearance as an amicus curiae must file a written request with the Clerk's Office, preferably with a cover page labeled "REQUEST TO APPEAR AS AMICUS CURIAE." See Appendix B (Directory), Appendix F (Sample Cover Page). That request should specify the name and alien registration number ("A number") of the matter in which an amicus curiae wishes to appear and articulate why amicus curiae should be permitted to appear. The request should be served on all parties to the proceedings. See Chapter 3.2 (Service).

The Board generally limits the appearance of amici curiae to the filing of briefs. See Chapter 4.6(i) (Amicus curiae briefs). Amicus curiae may request an opportunity to present oral argument, but such requests are granted sparingly. See Chapter 8.7(d)(xiii) (Amicus curiae).