

9 Visa Petitions

9.1 Visa Petitions Generally

A visa petition is the first step toward obtaining lawful permanent residence for a foreign born individual or family. It is usually filed by a United States citizen, lawful permanent resident, or employer. Visa petitions are adjudicated by DHS and, once approved, may be revoked or revalidated by DHS under certain circumstances. If a visa petition is denied or revoked, or the revalidation of a visa petition is denied, an appeal may be taken to the Board in some instances.

For visa petition appeals within the Board's jurisdiction, DHS is initially responsible for management of the appeal, including the processing of briefs. The Board's role in the appeal process does not begin until the completed record is received from DHS.

9.2 Jurisdiction Generally

Visa petitions are adjudicated by the appropriate District Director or Service Center Director of the DHS office having jurisdiction over the petition. Upon adjudication of a visa petition, revocation of a visa petition approval, or revalidation of a visa petition approval, the District Director or Service Center Director will notify the petitioner in writing of the decision. An appeal may be taken to the Board where authorized by statute and regulation. See 8 C.F.R. §§ 1003.1(b)(5), 1205.2(d). See also Chapter 1.4 (Jurisdiction and Authority).

9.3 Visa Petition Denials

(a) Jurisdiction. — The Board has appellate jurisdiction over family-based immigrant petitions filed in accordance with section 204 of the Immigration and Nationality Act, with the exception of petitions on behalf of certain orphans. See 8 C.F.R. § 1003.1(b)(5). See generally Chapter 1.4 (Jurisdiction and Authority). The Board does not have jurisdiction over employment-based visa petitions. See 8 C.F.R. §§ 103.2, 103.3, 1205.2(d). See also Chapters 1.2(g) (Relationship to the Administrative Appeals Office (AAO)), 1.4 (Jurisdiction and Authority).

(b) Standing. — Only the petitioner, not the beneficiary or a third party, may appeal the denial of a visa petition. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). Self-petitioners — including battered spouses, battered children, and certain spouses of deceased citizens — also have standing to appeal. See Immigration and Nationality Act § 204(a)(1)(A)(ii), (iii), (iv) and 204(a)(1)(B)(ii), (iii); 8 C.F.R. § 204.2.

(c) Filing the appeal. —

(i) How to file. — Appeals of all visa petition decisions are made on the Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer (Form EOIR-29). 8 C.F.R. § 1003.3(a)(2). (This form is different from the Form EOIR-26 used in Immigration Court proceedings.) This form is also used for petition-based appeals from the decisions of Service Center Directors. The appeal form must be signed by the petitioner, not the beneficiary. The rare exceptions to that rule are those cases in which the alien “self-petitions,” such as battered spouses and children, certain widows and widowers, and applicants for temporary admission despite inadmissibility (section 212(d)(3) waiver).

(ii) Where to file. — Unlike appeals from the decisions of Immigration Judges, appeals of visa petition denials are filed directly with DHS, in accordance with the applicable regulations, any instructions that appear on the DHS decision, and any instructions that appear on the reverse of the Notice of Appeal (Form EOIR-29). See generally 8 C.F.R. § 1003.3(a)(2). The appeal must be filed with the DHS office having administrative control over the petition record.

(iii) When to file. — The deadline for the appeal is 30 calendar days from the date of service of the decision being appealed. If the decision is mailed, the Notice to Appear must be received by DHS within 30 days of the date the decision was placed in the mail.

(iv) Fee. — The filing fee for a petition-based appeal is \$110. See 8 C.F.R. §§ 1003.8(b), 1103.7. Unlike appeals of Immigration Judge decisions, the fee for a petition-based appeal is filed directly with DHS, in accordance with DHS instructions. The fee should be paid in the manner instructed by DHS.

(v) Representation. — A petitioner may be represented by an attorney or other authorized representative. See generally Chapter 2 (Appearances before the Board). If a petitioner is represented, the appeal should be accompanied by a

completed and executed Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR-27). See 8 C.F.R. § 1292.4(a).

(vi) Supporting briefs. — Briefs, if desired, are filed with DHS, at the same office as the Notice of Appeal (Form EOIR-29) and in accordance with any briefing schedule set by DHS. See 8 C.F.R. § 1003.3(c)(2). Requests to extend the time for filing a brief should be directed to DHS. The Board may, in its discretion, authorize briefs to be filed directly with the Board. 8 C.F.R. § 1003.3(c)(2).

Absent special instructions from DHS, briefs on visa petition appeals should generally follow the guidelines set forth in Chapters 3.3 (Documents) and 4.6 (Appeal Briefs).

(vii) Evidence. — The Board does not consider new evidence on appeal. If new evidence is submitted in the course of an appeal, the submission may be deemed a motion to remand the petition to DHS for consideration of that new evidence. If the petitioner wishes to submit new evidence, the petitioner should articulate the purpose of the new evidence and explain its prior unavailability. Any document submitted to the Board should comport with the guidelines set forth in Chapter 3.3 (Documents).

However, the Board will not consider evidence — or remand the petition — where the proffered evidence was expressly requested by DHS and the petitioner was given a reasonable opportunity to provide it before the petition was adjudicated by DHS. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(viii) Stipulations. — The Board encourages the parties, whenever possible, to stipulate to any facts or events that pertain to the adjudication of the visa petition.

(d) Processing. — Once an appeal has been properly filed with DHS and the petition record is complete, DHS forwards the petition record to the Board for adjudication of the appeal.

(i) Record on appeal.— The record on appeal consists of all decisions and documents in the petition record, including some or all of the following items: visa petition and supporting documentation, DHS notices, DHS decision, the Notice of Appeal, any briefs on appeal, the record of any prior DHS action, and the record of any prior Board action.

(ii) Briefing schedule.— Briefing schedules are issued by DHS and are to be completed prior to the forwarding of the petition record to the Board. Accordingly, the Board generally does not issue briefing schedules in visa petition cases. See Chapter 9.3(c)(vi) (Supporting briefs).

(iii) Status inquiries / DHS. — Until the petition record is received by the Board, all status inquiries must be directed to the DHS office where the appeal was filed. *The Board has no record of the appeal until the record is received by the Board.* Since the Board and DHS are distinct and separate entities, the Board cannot track or provide information on cases that remain within the possession of DHS.

iv) Status inquiries / Board. — Confirmation that the Board has received a petition record from DHS can be obtained from the Clerk's Office. See Appendix B (Directory). The Board tracks petition-based appeals by the beneficiary's name and alien registration number ("A number"). All status inquiries must contain this information. See generally Chapter 1.6(a) (All communications).

(v) Adjudication. — Upon the entry of a decision, the Board serves the decision upon the parties by regular mail. An order issued by the Board is final, unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. An order is deemed effective as of its issuance date, unless the order provides otherwise.

(e) Motions. — Motions filed during the pendency of an appeal should be filed where the visa petition record is located. Motions may not be filed with the Board until the petition and record have been received by the Board. See Chapter 9.3(d)(iv) (Status inquiries / Board).

All motions filed subsequent to the Board's adjudication of an appeal, including motions to reopen and motions to reconsider the Board's decision, are to be filed with the DHS office having administrative control over the petition record, not with the Board. 8 C.F.R. § 1003.2(g)(2)(ii).

(f) Withdrawal of appeal. — The petitioner may, at any time prior to the entry of a decision by the Board, voluntarily withdraw the appeal. To withdraw an appeal, the petitioner should file a written request, with a cover page labeled "WITHDRAWAL OF VISA PETITION APPEAL" with either DHS or the Board, whichever holds the file at the time the

withdrawal is submitted. See Chapter 4.11 (Withdrawing an Appeal), Appendix F (Sample Cover Page).

9.4 Visa Revocation Appeals

(a) Jurisdiction. — The Board has appellate jurisdiction over the discretionary revocation of visa petition approvals. 8 C.F.R. §§ 1003.1(b)(5), 1205.2(d). The Board does not have jurisdiction over automatic revocations of visa petitions. 8 C.F.R. § 1205.1. See *Matter of Zaidan*, 19 I&N Dec. 297 (BIA 1985).

(b) Standing. — Only the petitioner, not the beneficiary or a third party, may appeal the revocation of a visa petition approval. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). Self-petitioners — including battered spouses, battered children, and certain spouses of deceased citizens — also have standing to appeal. 8 C.F.R. § 1205.2(d).

(c) Filing the appeal. — Revocation appeals are filed according to the same rules as appeals of visa petition denials. See Chapter 9.3(c) (Filing the appeal). The only difference is that the petitioner or self-petitioner must file the appeal within 15 days after the service of notice of the revocation. 8 C.F.R. § 1205.2(d).

(d) Processing. — Revocation appeals are processed in the same manner as visa petition denials. See Chapter 9.3(d) (Processing).

(e) Motions. — Motions related to revocation appeals are handled in the same manner as motions for visa petition denials. See Chapter 9.3(e) (Motions).

(f) Withdrawal of appeal. — Withdrawals of revocation appeals are handled in the same manner as withdrawals of visa petition appeals. See Chapter 9.3(f) (Withdrawal of appeal).

9.5 Visa Revalidation Appeals

(a) Jurisdiction. — Certain immigrant petitions are valid for a limited period of time, after which they expire unless revalidated. See 8 C.F.R. § 214.2(k)(5). The Board has appellate jurisdiction over the revalidation of visa petitions that fall within the Board's jurisdiction. See Chapter 9.2 (Jurisdiction Generally). See also 8 C.F.R. § 1003.1(b)(5).

(b) Standing. — Only the petitioner, not the beneficiary or a third party, may appeal a visa petition revalidation decision. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985).

(c) Filing the appeal. — Appeals of visa revalidation decisions are filed in the same manner as appeals of visa petition denials. See Chapter 9.3(c) (Filing the appeal).

(d) Processing. — Revalidation appeals are processed in the same manner as visa petition denials. See Chapter 9.3(d) (Processing).

(e) Motions. — Motions related to revalidation appeals are handled in the same manner as motions for visa petition denials. See Chapter 9.3(e) (Motions).

(f) Withdrawal of appeal. — Withdrawals of revalidation appeals are handled in the same manner as withdrawals of visa petition appeals. See Chapter 9.3(f) (Withdrawal of appeal).