

### 3 Filing with the Board

#### 3.1 Delivery and Receipt

**(a) Filing.** — Most appeals and motions adjudicated by the Board are filed directly with the Board. Some appeals and motions, however, are filed with DHS. See Chapters 4.2(b) (Filing), 5.2 (Filing a Motion), 7.3(a) (Filing), 9.3(c)(ii) (Where to file), Appendix K (Where to File a Motion). No appeal, motion, correspondence, or other filing intended for the Board should ever be filed with an Immigration Court.

**(i) Receipt rule.** — For appeals and motions that must be filed with the Board, the appeal or motion is not deemed “filed” until it is *received* at the Board. The Board does not observe the “mailbox rule.” Accordingly, receipt by any other entity — be it the U.S. Postal Service, commercial courier, or detention facility — does *not* suffice. See Chapter 1.5(a) (Office location), Appendix A (Mailing Addresses).

**(ii) Postage problems.** — All required postage or shipping fees must be paid *by the sender* before an item will be accepted by the Board. The sender is responsible for paying the proper postage in all instances. When using a courier or similar service, the sender is responsible for properly completing the packing slip, including the label and the billing information. The Board therefore rejects mailings for which the required postage has not been paid or the courier billing information has not been properly completed. See Chapter 3.1(c)(i) (Meaning of “rejected”).

**(iii) Mail.** — The Board uses different addresses for different means of delivery. All mail sent through the U.S. Postal Service, except “Express Mail” (overnight delivery), should be sent to the Board’s Post Office (P.O.) Box. See Appendix A (Mailing Addresses). An “attention” line indicating the intended recipient, if the name or office is known, should appear at the bottom left of the envelope or at the appropriate location on the mailing label or form. Parties must use the correct postage on all items mailed to the Board. See subsection (ii), above. The Board will not pay postage due, and the U.S. Postal Service will return any item with insufficient postage to the sender.

**(iv) Hand delivery and overnight delivery.** — The Board uses different addresses for different means of delivery. Courier, overnight delivery, U.S. Postal

Service “Express Mail,” and hand-delivered items must be addressed to the appropriate street address in Appendix A (Mailing Addresses).

Given the importance of timely filing, the Board encourages parties to use courier and overnight delivery services, whenever appropriate, to ensure timely filing. However, the failure of a courier or overnight delivery service does not excuse parties from meeting filing deadlines. See Chapter 3.1(b)(iv) (Delays in delivery).

**(v) *Separate envelopes.*** — Unrelated cases should *not* be sent in one envelope. To avoid confusion, each case should either be sent separately *or*, if mailed as a package, in its own envelope within that package.

**(vi) *Faxes.*** —

**(A) *Sent directly to the Board.*** — The Board does not accept faxes or other electronic transmissions without prior authorization. Unauthorized transmissions are discarded without consideration of the document or notice to the sender. Facsimiles (“faxes”) transmitted directly to the Board will be accepted only when solicited *by the Board* in emergencies and other compelling circumstances. See generally Chapter 6 (Stays and Expedite Requests). Faxes must be sent to the attention of the person at the Board who authorized the fax.

**(B) *Sent through a third party.*** — Faxes that are sent to a third party, such as a local counsel or a local delivery agent, and then hand-delivered to the Board are acceptable under the following conditions:

- the original document must bear an original signature
- the original document must be available to the Board upon request
- the fax copy must be legible
- the filing must clearly reflect that the submission comes from the representative of record or the party to the proceeding, *not* the counsel receiving the fax or the agent who is delivering it

- fax header information will not be used to identify the filing party, the nature of the submission, or the timeliness of the submission
- the filing party is always responsible for the filing's legibility and timeliness

Signatures are discussed at Chapter 3.3(b) (Signatures).

**(vii) E-filing.** — The Board does not have electronic filing, or “e-filing,” at this time. Certain forms can, however, be filled in on-line, but must be printed for hard copy submission to the Board. See Chapter 12.2(b) (Obtaining forms).

**(b) Must be “timely.”** — The Board places a date stamp on all filings received by the Clerk’s Office. See Appendix A (Mailing Addresses). Absent persuasive evidence to the contrary, the Board’s date stamp is controlling in the computation of whether a filing is “timely.” Because filings are date-stamped upon arrival at the Board, the Board strongly recommends that parties file as far in advance of the deadline as possible and, whenever possible, use overnight delivery couriers (such as Federal Express, United Parcel Service, Airborne Express, DHL) to ensure timely receipt.

**(i) Construction of “day.”** — All due dates at the Board are calculated in calendar days. Thus, unless otherwise indicated, all references to “days” in this manual refer to calendar days, not business days.

**(ii) Computation of time.** — For purposes of computing appeal and motion deadlines, time is measured from the date of the decision (or the mailing date of the decision, if later) to the date that the appeal or motion is received by the Board.

When counting days, the day that the decision is made (or mailed) counts as “day 0.” The day after the date the decision is made (or mailed) counts as “day 1.” Because the Board uses calendar days to calculate deadlines, Saturdays, Sundays, and federal legal holidays *are* counted toward the computation of a deadline. If, however, a deadline date falls on a weekend or a legal holiday, the deadline is construed to fall on the next business day.

**(iii) Specific deadlines.** — Specific deadlines for specific types of filings are discussed elsewhere. See Appendix D (Deadlines).

**(iv) Delays in delivery.** — Postal or delivery delays do not affect existing deadlines, nor does the Board excuse untimeliness due to such delays, except in rare circumstances. Parties should anticipate all Post Office and courier delays, whether the filing is made through first class mail, priority mail, or any overnight or other guaranteed delivery service. Delays caused by incorrect postage or mailing error by the sending party do not affect existing deadlines. See Chapter 3.1(a)(ii) (Postage problems).

**(v) Natural or manmade disasters.** — Natural or manmade disasters may occur that create unavoidable filing delays. Parties wishing to file untimely documents after a disaster must file a motion asking the Board to accept the untimely filing. See Chapter 3.1(c)(iii). Parties must include documentary evidence to support their motion, including such evidence as affidavits and declarations under the penalty of perjury. The Board will consider each motion on a case-by-case basis.

**(vi) Effect of extension requests.** — All deadlines must be met. A pending extension request does not excuse a party from meeting a filing deadline. Unopposed requests are not automatically granted. Extensions must be affirmatively granted before a filing will be accepted past the original deadline. See Chapters 4.5 (Appeal Deadlines), 4.7(c) (Extensions).

**(c) Defective filings.** —

**(i) Meaning of “rejected.”** — When the Board “rejects” a filing, the filing is returned to the sender. The term “rejected” means that the filing is defective, and the Board cannot consider the filing. It is *not* an adjudication of the filing or a decision regarding its content.

**(ii) Improperly filed.** — If an appeal, motion, or brief is not properly filed, it is rejected by the Clerk’s Office and returned to the party with an explanation for the rejection. Parties wishing to correct the defect and refile after a rejection must do so by the original deadline, unless an extension is expressly granted by the Board. See Chapters 4.5(b) (Extensions), 4.7(c) (Extensions), 5.3 (Motion Limits). The most common reasons for rejecting an appeal or motion are (A) failure to pay a fee or submit a fee waiver application when a fee is required, and (B) failure to submit a proof of service on the opposing party, which is always required. See Chapters 3.2 (Service), 3.4 (Filing Fees), Appendix G (Sample Proof of Service).

**(iii) *Untimely.*** — If an appeal is untimely, the appeal is dismissed. See 8 C.F.R. §§ 1003.1(d)(2)(i)(G), 1003.38(b). If a motion is untimely, the motion is denied. See 8 C.F.R. § 1003.2(b)(2), (c)(2). If a brief is untimely, it is rejected and returned to the party with an explanation for the rejection. Parties wishing to refile an untimely filing must file a motion asking the Board to accept the untimely filing and attach the original submission. See, e.g., Chapter 4.7(d) (Untimely briefs). Parties must include documentary evidence to support their motion, including such evidence as affidavits and declarations under the penalty of perjury.

**(d) *Filing receipts.*** — The Board issues receipts for certain filings. Whether or not a receipt is issued, however, parties are encouraged to obtain and retain corroborative documentation of delivery, such as mail delivery receipts and courier tracking information. (As a precaution against loss, parties should also keep copies of all items sent to the Board.)

**(i) *Receipt issued.*** — The Board routinely issues receipts only for Notices of Appeal (Form EOIR-26), motions to reopen, and motions to reconsider. A receipt is *not* an adjudication of timeliness or a determination that a filing falls within the Board's jurisdiction, but merely an acknowledgment that a filing has been received by the Board.

If a filing receipt is not received within approximately two weeks, parties may call the Board's "800" number for current information on appeals or the Clerk's Office for current information on appeals or motions. See Appendix B (Directory).

**(ii) *Receipt not issued.*** — A receipt is not issued for filings other than Notices of Appeal, motions to reopen, and motions to reconsider. The Board does not provide written receipts for other motions, briefs, or memoranda. See Chapter 4.7(b) (Processing).

**(iii) *Conformed copies.*** — When a filing arrives at the Clerk's Office, a time-and-date stamp is placed on the filing. If a filing party desires a "conformed copy" (i.e., a copy of the filing bearing the Board's time-and-date stamp), the original must be accompanied by an accurate copy of the filing, prominently marked "CONFORMED COPY; RETURN TO SENDER." The filing must also contain a self-addressed stamped envelope or comparable return delivery packaging. The Board does not return conformed copies without a prepaid return envelope or packaging.

## 3.2 Service

**(a) Service requirement.** — For all filings before the Board, a party must:

- provide, or “serve,” a copy on the opposing party (or, if the party is represented, the party’s representative), *and*
- declare, in writing, that a copy has been served on the opposing party (or, if the party is represented, the party’s representative)

For an alien in proceedings, the opposing party is the Department of Homeland Security (DHS). In most instances, a DHS Chief Counsel or a specific Assistant Chief Counsel is the designated officer to receive service. The opposing party is *never* the Board or the Immigration Judge.

This written declaration is called a “Proof of Service,” which is also referred to as a “Certificate of Service.” See subsection (d), below, and Appendix G (Sample Proof of Service). See also 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(1), 1003.3(c).

**(b) Method of service.** — Service may be accomplished by hand or by mail. Service is complete upon hand delivery of papers to a responsible person at the address of the person being served or upon the mailing of the papers.

**(c) Timing of service.** — The Proof of Service must bear the actual date of transmission and accurately reflect the means of transmission (e.g., regular mail, hand delivery, overnight courier or delivery). In all instances, service must be calculated to allow the other party sufficient opportunity to act upon or respond to the served material.

**(d) Proof of Service.** — An appeal or motion, and all subsequent filings in support of an appeal or motion, must be accompanied by Proof of Service on the opposing party. See 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(1), 1003.3(c). See also Appendix G (Sample Proof of Service). Some forms, such as the Notice of Appeal (Form EOIR-26), contain a Certificate of Service, which functions as a Proof of Service. The Board rejects any submission that is filed without Proof of Service on the opposing party. See Chapter 3.1(c)(i) (Meaning of “rejected”). The only exception is a motion that is agreed upon by all parties and jointly filed (because both parties are presumed to have seen the motion they are filing together).

A Proof of Service must specify the following:

- the name or title of the party served
- the precise and complete address of the party served
- the date of service
- the means of service (e.g., 1st class mail, overnight delivery, hand-delivery)
- the document or documents being served
- the name of the person serving the document

Every Proof of Service must be signed by the person serving the document. Unlike the document being served, the Proof of Service need not be signed by the party but may be signed by someone designated by the party.

**(e) *Representatives and service.* —**

**(i) *Service upon a representative.* —** Service upon a representative constitutes service upon the person or entity represented. For example, if an alien is represented by an attorney, DHS must serve the attorney and need not serve the alien. See 8 C.F.R. § 1292.5(a).

**(ii) *Service by a represented alien.* —** The Board recommends that, whenever an alien is represented, the alien allow his or her representative to handle all filings with the Board. See Chapter 2.1(d) (Filings and communications). If, however, a represented alien wishes to file a document without the assistance of his or her representative, the alien should serve copies of that document on both DHS and the representative, with a separate Proof of Service for each. See subsection (d), above.

**(f) *Proof of Service and the Notice of Appearance.* —** All filings with the Board must include a Proof of Service that identifies the item being filed. See subsection (d), above. Thus, the completed Proof of Service on counsel's Notice of Appearance (Form EOIR-27) by itself is *not* considered sufficient proof of service of documents accompanying the Notice of Appearance.

### 3.3 Documents

**(a) Language.** — All Notices of Appeal (Form EOIR-26) must be submitted in the English language or be accompanied by a certified English translation. 8 C.F.R. § 1003.3(a)(3).

All motions and documentation filed in support of an appeal or motion must either be in the English language or be accompanied by an English language translation and a certification signed by the translator, printed or typed, in accordance with the regulations. See 8 C.F.R. § 1003.2(g)(1). Such certification must include a statement that the translator is competent to translate the language of the document and that the translation is true and accurate to the best of the translator's abilities. See 8 C.F.R. § 1003.33. See also Appendix H (Sample Certificate of Translation).

**(b) Signatures.** — No appeal, motion, brief, or request for Board action is properly filed without a signature from either the alien, the alien's representative, or a representative of DHS. A Proof of Service also requires a signature, but may be signed by someone designated by the filing party. See Chapter 3.2(d) (Proof of Service).

A signature represents a certification by the signer that: he or she has read the document; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is grounded in fact; the document is submitted in good faith; and the document has not been filed for any improper purpose. See 8 C.F.R. § 1003.102(j)(1). A signature represents the signer's authorization, attestation, and accountability.

Every signature must be accompanied by a typed or printed version of the name.

**(i) Simulated signatures.** — Signature stamps and computer-generated signatures are *not* acceptable for documents filed with the Board. These signatures do not convey the signer's personal authorization, attestation, and accountability for the filing. Reproductions of signatures *are* acceptable when contained in a photocopy or fax of an original document as long as the original is available to the Board upon request. See subsection (d), below. See also Chapter 3.1(a) (Filing).



**(ii) Law firms.** — Only the attorney of record — not a law firm, law office, or other attorney — may sign a submission to the Board. See Chapters 2.3(c) (Appearances), 2.3(e) (Single representative), 2.3(f) (Law firms).

**(iii) Accredited representatives.** — Accredited representatives must sign their own submissions. See Chapter 2.4(f) (Signatures).

**(iv) Paralegals and other staff.** — Paralegals and other staff are not authorized to practice before the Board and may not sign a submission to the Board. See Chapter 2.6 (Paralegals). However, paralegals may sign a Proof of Service when authorized by the filing party. See Chapter 3.2(d) (Proof of Service).

**(v) Other representatives.** — Only those individuals who have been authorized by the Board to represent a party and have submitted a Notice of Appearance (Form EOIR-27) may sign submissions to the Board. See Chapters 2.5 (Law Students and Law Graduates), 2.9 (Others). Immigration specialists, such as notarios and visa consultants, are not authorized to represent a party. See Chapter 2.7 (Immigration Specialists).

**(vi) Family members.** — A family member may sign submissions on behalf of a party only under certain circumstances. See Chapter 2.8 (Family Members).

**(c) Format.** — The Board prefers all filings and (where appropriate) supporting documents to be typed or printed, but will accept handwritten filings. The filing party should make sure that items submitted to the Board are legible.

**(i) Order of documents.** — Filings should be assembled as follows. All forms should be filled out completely.

**(A) Appeals.** — An appeal package should comply with the instructions on the Notice of Appeal (Form EOIR-26). The appeal package should contain (in order):

1. filing fee (if applicable, stapled to the Notice of Appeal)
2. Notice of Appeal (Form EOIR-26) (with its Certificate of Service completed)
3. Appeal Fee Waiver Request (Form EOIR-26A, if unable to pay the filing fee)

4. Notice of Appearance (Form EOIR-27, if the person appealing is represented)
5. supporting documentation (if any)

See Chapters 2.1(b) (Entering an appearance), 3.2(d) (Proof of Service), 3.4 (Filing Fees), 4.4 (Filing an Appeal).

**(B) Motions.** — A motion package should contain (in order):

1. filing fee (if applicable, stapled to the cover page of the motion)
2. motion (with appropriate cover page)
3. supporting documentation (if any)
4. Appeal Fee Waiver Request (Form EOIR-26A, if unable to pay the filing fee)
5. Notice of Appearance (Form EOIR-27, if the moving party is represented)
6. Change of Address (Form EOIR-33/BIA, which is recommended even if the alien's address has not changed)
7. Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(d) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.4 (Filing Fees), 5.1(b) (Representatives), 5.2 (Filing a Motion).

**(C) Supplementary filings.** — The Board accepts supplementary filings only in limited situations. See, e.g., Chapter 4.6(g) (Supplemental briefs). A supplementary filing should contain (in order):

1. supplementary filing (with cover page and caption)
2. supporting documentation, if being offered
3. Notice of Appearance (Form EOIR-27, if represented and a new appearance is being made)
4. Proof of Service

See also Chapters 2.1(b) (Entering an appearance), 3.2(d) (Proof of Service), 3.3(c)(vi) (Cover page and caption).

**(ii) Number of copies.** — Only the *original* of each appeal or motion need be filed with the Board. Similarly, only one set of supporting documents need be filed with the Board. Multiple copies of any appeal, motion, or supporting document should *not* be filed, unless otherwise instructed. Where there is a consolidated proceeding, only one copy need be filed for the entire group. See Chapters 4.6(e) (Consolidated briefs), 4.10(a) (Consolidated appeals).

**(iii) Number of pages.** — Briefs and other submissions should *always* be paginated. There are no limits or expectations on the number of pages in an appeal or motion filing. However, parties are encouraged to limit the body of their briefs or motions to 25 pages, provided that such length can adequately dispose of the issues in the case.

**(iv) Paper size and quality.** — All documents should be submitted on standard 8½" x 11" paper, in order to fit into the record of proceedings. See 8 C.F.R. § 1003.32(b). Use of legal size paper (8½" x 14") is discouraged, as is paper of other sizes. See subsection (x), below.

Paper should be of standard stock — white, opaque, and unglazed. Given its fragility and its tendency to fade, photo-sensitive facsimile paper should never be used. Ink should be dark, preferably black.

Briefs and motions should be one-sided. Supporting documentation should also be one-sided.

**(v) Tabs.** — Parties are strongly encouraged to use indexing tabs to separate the distinct portions of an appeal or motion package. Because Immigration Courts generally refer to court exhibits by number, the Board prefers that parties use alphabetic tabs to avoid confusion.

**(vi) Cover page and caption.** — All motions, briefs, and supplemental filings should include a cover page. The cover page should include a caption and contain the following information:

- the name and address of the filing party
- the title of the filing (such as "RESPONDENT'S MOTION TO REOPEN" or "DHS BRIEF ON APPEAL")

- the full name for each alien covered by the filing (as it appears on the charging document)
- the alien registration number (“A number”) for each alien covered by the filing
- the type of proceeding involved (such as removal, deportation, exclusion, bond, visa petition)

See Appendix F (Sample Cover Page). If the filing involves special circumstances, that information should appear prominently on the cover page, preferably in the top right corner and highlighted (e.g., “DETAINED,” “EXPEDITE REQUEST,” “JOINT MOTION”).

**(vii) Fonts and spacing.** — Font and type size must be easily readable. “Times Roman 12 point” font is preferred. Double-spaced text and single-spaced footnotes are also preferred. Both proportionally spaced and monospaced fonts are acceptable.

**(viii) Binding.** — The Immigration Courts and the Board use a two-hole punch system to maintain files. The Board appreciates receiving briefs and materials pre-punched with two holes along the top (centered and 2¾” apart). Submissions should neither be bound on the side nor commercially bound, as such items must be disassembled to fit into the record of proceedings and might be inadvertently damaged in the process. Submissions may be stapled in the top left corner. The use of removable binder clips is acceptable. The use of ACCO-type fasteners is discouraged.

**(ix) Forms.** — Forms should be completed in full and must comply with certain requirements. See Chapter 12 (Forms). See also Appendix E (Forms).

**(x) Photographs and odd-sized documents.** — The Board recommends that parties not submit original photographs or other original documents unless instructed to do so. See subsection (d), below. If a party nonetheless wishes to submit a photograph, the party should: print identifying information on the back of the photograph, including the alien’s name and alien registration number (“A number”); mount the photograph on an 8½” x 11” sheet of paper; and print the same identifying information on the sheet of paper as well.

The Board also discourages the submission of other odd-sized materials, such as official certificates, and strongly advises that parties submit photocopies. See Chapter 3.3(d)(iv) (Supporting documents). If a party nonetheless wishes to submit an odd-sized document, the document should be prepared in the same way as a photograph.

**(d) Originals and reproductions. —**

**(i) Notices of Appeal. —** The original Notice of Appeal (Form EOIR-26) must always bear the original signature of the person filing the appeal or that person's representative. See Chapter 3.3(b) (Signatures). A copy of a signed original is acceptable, provided that the signed original is available to the Board upon request. See Chapter 3.1(a) (Filing).

**(ii) Motions. —** The original of a motion must always bear an original signature. See Chapter 3.3(b) (Signatures). A copy of a signed original is acceptable, provided that the signed original is available to the Board upon request. However, a Notice of Appeal (Form EOIR-26) may *not* be used to file a motion.

**(iii) Forms. —** The original of a form must always bear an original signature. See Chapter 3.3(b) (Signatures), 12.3 (Submitting Completed Forms).

**(iv) Supporting documents. —** The Board strongly recommends that parties submit copies of supporting documents, not originals, unless instructed otherwise. Parties should retain original documents in the event that an Immigration Judge or the Board requests them at a later date. The Board does not as a practice return original documents, nor can the Board ensure the return of any original documents submitted to it.

All reproductions should be clear, legible, and made on standard-sized paper. See Chapter 3.3(c)(iv) (Paper size and quality). Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. The Board prefers that all documents, unless voluminous, be one-sided.

Parties wishing to submit original photographs, certificates, or other odd-sized documents should consult Chapter 3.3(c)(x) (Photographs and odd-sized documents).

**(e) Source materials.** — When a party relies on a source of law that is not readily available, a copy of that source of law must be provided to the Board and the other party. When a party relies upon any supporting document, a copy of that document must be provided to the Board and the other party.

**(i) Source of law.** — When a party relies on a source of law that is not readily available, that source of law should be reproduced in or attached to the brief. Similarly, if citation is made to governmental memoranda, legal opinions, advisory opinions, communiques, or other ancillary legal authority or source, copies of such items should be provided by the citing party, along with the brief.

**(ii) Source of factual information.** — Photocopied secondary source material filed in support of an appeal or motion must be clearly marked and have identifying information, including the precise title, date, and page of the material being provided. The Board strongly encourages the submission of title pages containing identifying information for the published matter (e.g., author, year of publication). Identifying information should appear on the document itself and not just in a list of exhibits or table of contents. Any copy of the State Department Country Reports on Human Rights Practices must indicate the year of that particular report.

Regarding the propriety of submitting evidence, see Chapter 4.8 (Evidence on Appeal).

**(iii) Highlighting.** — When a party submits voluminous secondary source material, that party should highlight or otherwise indicate the pertinent passages of that secondary source material.

**(f) Circuit court or district court orders.** — When a federal court orders further action in a case before the Board, the parties are asked to provide a copy of the federal court order to the Board.

**(g) Criminal conviction documents.** — Documents regarding criminal convictions must comport with the requirements set forth in 8 C.F.R. § 1003.41.

### 3.4 Filing Fees

**(a) When required.** — A filing fee must be submitted together with an appeal or motion in the following instances:

- any appeal filed with the Board (except an appeal of a custody bond determination)
- a motion to reopen (except a motion that is based exclusively on an application or claim for asylum)
- a motion to reconsider (except a motion that is based on an underlying application or claim for asylum)

See 8 C.F.R. §§ 1003.2(g)(2)(i), 1003.3, 1003.8, 1103.7. For purposes of determining filing fee requirements, the term “asylum” here includes withholding of removal, withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

If the filing party is unable to pay the fee, he or she should request that the fee be waived. See subsection (c), below.

*Filing fees* should not be confused with *application fees*. See subsection (i), below.

**(b) When not required.** — A filing fee is not required in the following instances:

- a custody bond appeal
- a motion to reopen that is based exclusively on an application or claim for asylum
- a motion to reconsider that is based on an underlying application or claim for asylum
- a motion filed while an appeal, a motion to reopen, or a motion to reconsider is already pending before the Board
- a motion requesting only a stay of removal, deportation, or exclusion

- a motion to recalendar
- any appeal or motion filed by DHS
- a motion that is agreed upon by all parties and is jointly filed (a “joint motion”)
- an appeal or motion filed under a law, regulation, or directive that does not require a filing fee

See 8 C.F.R. §§ 1003.2(g)(2)(i), 1003.3, 1003.8, 1103.7. For purposes of determining filing fee requirements, the term “asylum” here includes withholding of removal, withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

**(c) When waived.** — When an appeal or motion normally requires a filing fee, the Board has the discretion to waive that fee upon a showing of economic hardship or incapacity.

Fee waivers are *not* automatic but must be requested through the filing of a Fee Waiver Request (Form EOIR-26A). The Fee Waiver Request form must be filed along with the Notice of Appeal (Form EOIR-26) or the motion. The form requests information about monthly income and expenses and requires the applicant to declare, under penalty of perjury, that he or she is unable to pay the fee due to personal economic hardship.

Fees are not reimbursed merely because the appeal is sustained or the motion is granted.

**(d) Amount of payment.** — The filing fee, in all cases in which a fee is required, is \$110 and must be paid in the *precise* amount. If a fee is required, but is paid in any amount other than \$110, the filing will be rejected. See Chapter 3.1(c)(i) (Meaning of “rejected”).

**(e) Number of payments for a consolidated proceeding.** — Only one fee should be paid in a consolidated proceeding. See Chapter 4.10(a) (Consolidated appeals). For example, if family members appeared in a consolidated proceeding before an Immigration Judge, they need file only one appeal and pay only one filing fee on appeal.



If the proceedings were not consolidated below, a separate filing fee is required for each family member. For example, if spouses filed separate claims for relief and those claims were ruled upon separately by an Immigration Judge, their appeals would have to be filed separately, with a separate fee for each.

**(f) Form of payment.** — When a filing fee is required for an appeal or motion, the fee must be paid by check or money order in U.S. dollars and be drawn from a bank or institution that is located within the United States. 8 C.F.R. § 1003.8(a). Checks and money orders are to be made payable to the “United States Department of Justice.”

Fee payment should *always* bear the full name and alien registration number (“A number”) of the alien or, in the case of a consolidated proceeding, the lead alien. Fee payments in fine cases should bear the assigned case number.

The Board does not accept cash, credit cards, or any form of electronic payment.

**(g) Defective or missing payment.** — If a filing fee is required for an appeal or motion but is not submitted, the filing will be rejected. See Chapter 3.1(c)(i) (Meaning of “rejected”). If a fee payment is not in the correct amount of \$110, the filing will be rejected. If a fee payment is uncollectible (for example, a check “bounces”), the appeal or motion will be dismissed or denied as improperly filed.

**(h) Attaching the fee.** — For appeals, any filing fee payment should be stapled to the Notice of Appeal (Form EOIR-26) as indicated on the form. For motions, any fee payment should be stapled to the cover sheet.

**(i) Application fees.** — The Board collects filing fees for appeals and motions *only*. The Board does not collect fees for underlying applications for relief (e.g., adjustment of status, cancellation of removal). Application fees should be paid to DHS or other agency in accordance with the instructions on the application form. The fee structure for applications for relief and other immigration benefits is set forth in the regulations at 8 C.F.R. § 1103.7.

When a motion before the Board is based upon newly available eligibility for relief, payment of the fee for the underlying application is not a prerequisite to filing the motion. Jurisdiction over an application for new relief lies with the Immigration Courts, and thus the application fee need not be paid unless and until the application comes before an Immigration Judge.

### **3.5 Briefs**

The requirements for briefs are discussed elsewhere in this manual. See Chapters 4.6 (Appeal Briefs), 5.4 (Motion Briefs).

### **3.6 Expedite Requests**

Parties seeking urgent Board action should follow the procedures set forth in Chapter 6 (Stays and Expedite Requests).