

# QUESTIONS AND ANSWERS REGARDING ORAL ARGUMENT BEFORE THE BOARD



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Following is a list of frequently-asked questions regarding oral argument before the Board of Immigration Appeals and answers to those questions. These questions and answers are designed for persons who are considering requesting or have been granted oral argument before the Board. Please note that the term “representative” as used here includes attorneys, accredited representatives, and others permitted by the Board to present oral argument.

After oral argument has been granted in a case, all communications and submissions regarding the case should be made through the Oral Argument Coordinator.

If, after a careful reading of this document, you still have questions, contact the Oral Argument Coordinator.

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*Contact information for the Oral Argument Coordinator appears in the attached Directory.*

## I. BEFORE ORAL ARGUMENT

### 1. *How does a person request oral argument?*

Oral argument, if desired, must be requested on the Notice of Appeal (Form EOIR-26), or it may be deemed waived. In either the Notice of Appeal or a brief, the party should explain the reason for requesting oral argument and articulate how oral argument would supplement any written submissions.

### 2. *What are the criteria for granting oral argument?*

A case may be selected for oral argument at the discretion of the Board because it presents an issue of first impression, concerns changes in or clarification of existing law, or involves conflicting authorities, or for other reasons.

### 3. *Who can argue before the Board?*

Only parties, their representatives, or amicus curiae invited by the Board may present oral argument before the Board. A representative may present oral argument to the Board only if he or she has filed a Notice of Appearance (Form EOIR-27) prior to the time of oral argument. *See generally* 8 C.F.R. part 292.

Only one representative at a time is recognized by the Board. The Board will recognize the representative who filed a Notice of Appearance (Form EOIR-27) as the representative of record. When the final decision is rendered by the Board, the Board will mail the decision to the representative of record.

If a party wishes to have another representative or a co-representative present oral argument, in place of or in addition to the representative of record, the party should notify the Oral Argument Coordinator at least 15 calendar days in advance of the oral argument date. The co-representative presenting oral argument should file a Notice of Appearance (Form EOIR-27), indicating that he or she is making an appearance only at oral argument. He or she should do this by checking Box #3 on the Notice of Appearance (Form EOIR-27), indicating the name of the representative of record, and also writing in large letters in Box #4 "ORAL ARGUMENT ONLY." The co-representative should send the completed Notice of Appearance (Form EOIR-27) to the Oral Argument Coordinator, and certify that a copy was sent to the Service.

**4. *Where are oral arguments held?***

Oral arguments are generally held in the Oral Argument Room at the Board of Immigration Appeals, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia. The Board occasionally hears oral argument at other locations in the United States, at its discretion.

**5. *Can I request a particular location for my oral argument?***

You may make a request in your brief, setting forth the rationale for conducting oral argument at the proposed location. You should also state whether you would be willing to attend oral argument in Falls Church, Virginia, if your request for off-site argument is not granted.

**6. *What if I am unable to attend my oral argument on the date assigned?***

Generally, oral argument is not rescheduled. You may request a continuance and a change of oral argument date by contacting the Oral Argument Coordinator in advance of the oral argument date. Only in extraordinary circumstances will the Board postpone or reschedule oral argument.

**7. *What if I am going to be late on the day of my oral argument?***

If an emergency arises on the day of your scheduled oral argument, contact the Oral Argument Coordinator immediately. If your oral argument is being held in Falls Church, Virginia, and the Oral Argument Coordinator is not available, call the Clerk's Office of the Board and explain your situation and ask to be connected to the central Board Secretary. If your oral argument is not being held in Falls Church, Virginia, and the Oral Argument Coordinator is not available, follow the instructions on your selection notice letter.

In the event either representative fails to appear for oral argument, the Board may hear the argument of the side that does appear, in which case the argument will be entered into the record and will be considered by the Board in rendering its decision.

The Board considers an unexplained failure to appear to be a serious discourtesy to both the Board and the opposing party and will sanction truant representatives accordingly. The party whose representative fails to appear will not be penalized for that failure, except insofar as that party will be deprived of the benefit of oral argument in his or her case.

**8. *May I withdraw as representative prior to the date of oral argument?***

Motions to withdraw will be granted only where good cause is shown.

If there will be a substitution of representatives, you need not file a motion to withdraw. To substitute a representative, the new representative should complete a Notice of Appearance before the Board (Form EOIR-27) and should serve a copy of the Notice of Appearance on the INS, the alien, and the alien's prior representative.

**9. *May I review the official record of proceedings (case file)?***

You may review the official record of proceedings (case file) pertaining to your case. In order to arrange a time to review the record of proceedings in your case, contact the Oral Argument Coordinator. Absent special arrangements made in advance, the record of proceedings will not be available for review in the 2 hours immediately prior to oral argument.

**10. *Will the oral argument be open to the public?***

Oral argument is open to the public unless the case involves exclusion, asylum, withholding, the U.N. Convention Against Torture, or a battered spouse or child. *See* 8 C.F.R. §§ 3.27, 208.6, 208.16 *et seq.*, 240.10(b), 240.32. *See also* 8 C.F.R. § 240.11(c)(3)(i).

**11. *May I request that an oral argument be opened to the public?***

Yes. If your oral argument is of the type which is routinely treated as a closed hearing (exclusion, asylum or withholding, a claim under the U. N. Convention Against Torture, or a battered spouse or child), you may nevertheless request that it be made open to the public. This should be done at least 15 days in advance. To do so, you should prepare a signed and dated Waiver of Closed Hearing, listing the name and "A Number" of each alien you will be representing at oral argument. Your request should be worded as follows:

"I hereby request and consent that oral argument in the matter of [name of party] be open to the public and further, I hereby consent that information contained within the record of proceedings may be released to the public. I acknowledge that this waiver of confidentiality may not be withdrawn after oral argument has begun."

Please note the following:

- " If your oral argument is open to the public, you may not request the exclusion of specific individuals. Your oral argument will be open to all.
- " The record will also be open.
- " You cannot request that oral argument be closed, i.e., withdraw your waiver of confidentiality, after oral argument has begun.

***12. What if I want the oral argument to be closed to the public?***

Oral arguments are usually open to the public. Under certain circumstances, a party may request that the case be closed to the public. *See* 8 C.F.R. §§ 3.27, 240.11(c)(3)(i). To do this, file your request in writing with the Oral Argument Coordinator at least 15 calendar days in advance of the oral argument date.

***13. Who may attend oral argument?***

If an oral argument is open, anyone may attend, subject to space availability. If an oral argument is closed, only the representative(s), the alien, and any other persons authorized in advance of the oral argument by the Board (including employees of the Department of Justice) may attend.

Even though others may attend, only the representative(s) may address the Board.

The alien and others attending oral argument should be instructed not to talk or engage in other distracting or disruptive conduct during the oral argument. No person should leave or enter the oral argument room after the Board Members have been seated. Disruptive conduct by any person present in the oral argument room will not be tolerated.

***14. May the alien attend oral argument?***

If the alien is not detained, he or she may attend oral argument. However, a represented alien may not directly address the Board. Only representatives are allowed to present arguments and answer Board Member questions. The alien may not sit at the representative's table but is given priority seating in the gallery.

***15. May witnesses from prior proceedings attend oral argument?***

Since the Board does not hear testimony, witnesses from prior proceedings are considered to be part of the general public and are therefore subject to the same rules as the public. They are seated in the gallery. They are not permitted to be questioned or to directly address the Board. Only representatives are allowed to make arguments, present statements, or answer Board Member questions.

***16. How many people may attend oral argument?***

The number of persons granted permission to attend an oral argument depends on the space available in the room in which the oral argument is held. A party may request up to 5 gallery seats at least 15 calendar days prior to the scheduled oral argument date by contacting the Oral Argument Coordinator.

***17. May the press attend oral argument?***

If oral argument is open, the press may attend. Members of the press should contact the EOIR Office of Public Affairs.

***18. May recording equipment be used at oral argument?***

No. Audio or video recording devices, photographic equipment, or other electronic recording devices may not be used in the oral argument room by the public, including the press, the parties, and the representatives. Only the Board may record oral argument.

## **II. AT ORAL ARGUMENT**

### **19. How should I dress for my oral argument?**

Wear business attire.

### **20. Where should I sit?**

Tables in the front of the oral argument room will be provided for each party. Generally only two legal staff will be allowed to sit at the oral argument table for each party. If you wish to have more than two representatives or other legal staff attend, you should contact the Oral Argument Coordinator in advance of oral argument.

A represented party who attends oral argument may not sit at the oral argument table but will be provided priority seating in the gallery.

### **21. Should I stand during oral argument?**

Rise when the Board Members enter the oral argument room. You should stand at the podium when making your oral argument. If no podium is provided, you should stand at your table when addressing the Board Members. You may sit while listening to the arguments of the other party.

### **22. How should I address the Board Members?**

When you begin your oral argument, you should first introduce yourself. Refer to individual Board Members as “Board Member \_\_\_\_\_,” “Your Honor,” “Chairman\_\_\_\_\_,” or “Vice-Chairman\_\_\_\_\_.” Refer to the panel of Board Members as “the Board” or “Your Honors.”

Be sure to speak clearly and at a speed that is comprehensible.

**23. *How much time will I have?***

You will be allotted 30 minutes to make your arguments. If you desire more than 30 minutes for your argument, submit a written request to the Board at least 15 calendar days prior to the oral argument date. You should assume that you will have only 30 minutes unless you are specifically notified that a longer time limit has been granted.

You may reserve part of your 30 minutes for rebuttal. If you are the appellant and you desire rebuttal time, you should make your request before starting your argument and state how much time you wish to reserve.

Board Members may interject questions at any time. Board Member questions do not extend the period of time for your presentation.

The Board will keep track of your time, but it is recommended that you keep track also. You will be informed when you have 5 minutes remaining and again when your time has expired. Please end your argument promptly when your time expires.

If you complete all of your arguments prior to expiration of your allotted time, you may simply summarize and sit down. You need not use up all of your time.

**24. *Will I be asked questions during oral argument?***

Yes. Be prepared to clarify the facts and answer questions regarding applicable law, including statutory, regulatory, circuit, and Board authority. You should also be thoroughly familiar with the record.

Your answers should be as precise as possible. If you do not know the answer to a question, say so.

**25. *What should I address in oral argument?***

You should approach oral argument as an opportunity to expand upon your brief. Restating all of the facts or reading at length from your brief is not helpful. If facts are in dispute, you should focus on the disputed elements. If the case turns on a point of law, you should focus on clarifying that point. Restating general rules of law is not helpful. You should assume that each Board Member has read your brief and is familiar with the record and applicable law.



Opening statements are encouraged. Your opening statement should include a brief introduction of the case, the core issue or issues to be decided, and a brief synopsis of your arguments regarding their resolution. You should then proceed to the body of your argument, in which you fully explain your reasoning.

**26. *May I offer a supplemental brief or additional legal authority at my oral argument?***

A supplemental brief or additional legal authority must be filed with the Clerk's Office of the Board not less than 15 calendar days before the scheduled date of the oral argument, with proof of service on the opposing party in as expeditious a manner as was used to file the brief at the Board. Parties wishing to reply to supplemental briefs must do so no less than 7 days prior to the oral argument date, with proof of service on the opposing party in as expeditious a manner as was used to file the reply at the Board. You should attach photocopies of any case decision you cite in your brief which is not readily available or which is very recent (e.g., slip opinions or decisions available only on electronic media).

If there are significant new developments in the law, you should promptly bring them to the attention of the Board, with proof of service on the opposing party, in advance of oral argument. You should submit a statement regarding the significance, or lack thereof, of the new authority to the matter being argued. The Board will thereafter determine what action, if any, will be taken in light of the new authority.

**27. *May I offer supplementary evidence at my oral argument?***

No.

**28. *How should I refer to evidence contained in the record?***

You should refer to documents by their exhibit number, title, and page number. If you are referring to testimony contained in the transcript of the hearing before the Immigration Judge, you should refer to the transcript page number.

**29. Will the alien or others be asked questions during oral argument?**

No. The Board does not hear testimony.

**III. AFTER ORAL ARGUMENT**

**30. May I submit a brief after oral argument has been heard?**

The Board expects all issues to be fully briefed and argued by the completion of oral argument. Therefore, unless the Board expressly solicits further briefing, you may not submit an additional brief.

**31. When will I receive my decision after completion of the oral argument?**

A written decision in your case will be mailed to you at a later date, after deliberations by the Board Members. You will *not* receive an oral decision or a written decision on the date of your oral argument.

You may inquire by telephone regarding the status of your case in unusual or emergent circumstances. You may contact the Clerk's Office of the Board in such circumstances.

The regulations require that the Board be informed of any change in the alien's address by the filing of a completed Form EOIR-33/BIA, "Change of Address Form," on pink paper. If a representative moves his or her office, he or she is required to promptly inform the Clerk's Office of his or her change of address, in writing, preferably on a clearly marked Form EOIR-27, on yellow paper. It should state "CHANGE OF ATTORNEY ADDRESS" at block #4, in large letters. An attorney is required to file a separate Form EOIR-27 for each case (name and "A Number") he or she is representing before the Board. *See* 8 C.F.R. § 3.38(e).