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Questions and Answers: Appeals and Motions

The below information helps clarify the options available to an applicant or petitioner when a case has been denied.

Q. Can I do anything about an unfavorable decision issued by USCIS?

A. Yes, you may file an appeal on some unfavorable decisions to the USCIS Administrative Appeals Office (AAO) or the Board of Immigration Appeals (BIA), an office within the Department of Justice. Your denial notice will provide information about whether the decision may be appealed and where to file your appeal.

With certain exceptions, you may file a motion to reopen or motion to reconsider if you received an unfavorable decision in your case. You may file a motion with USCIS even if you do not have any appeal rights. You may also file a motion regarding a decision made on an appeal.

Q. I am the beneficiary of a visa petition. Can I file an appeal or motion?

A. Only the visa petitioner can file an appeal or motion in a visa petition case. Thus, if you are the beneficiary, you cannot file an appeal or motion, unless you are both the petitioner and the beneficiary (for example, you are a VAWA self-petitioner, the widow(er) of a citizen, or otherwise authorized to file a visa petition for yourself).

Appeals

Q. What is an appeal?

A. An appeal is a request to a higher authority to review a decision.

Q. What happens when I file an appeal?

A. When an applicant or petitioner appeals a decision to the AAO, the officer who made the original decision will first review the record. A review of the record will determine whether the evidence or argument submitted in the appeal warrants reopening or reconsidering the decision. If the adjudicating officer determines that reopening or reconsidering the decision is not warranted, the officer will forward the case for further review to the AAO or the BIA.

Note: Filing an appeal does not suspend the execution of any decision made in your case or extend a previously set departure date.

Q. How will I know if my decision may be appealed?

A. Your denial notice will include information about your appeal rights.

Q. How do I file an appeal?

A. Most appeals are filed on Form I-290B, Notice of Appeal or Motion, but there are some exceptions. Appeals of decisions on an N-400, Application for Naturalization, are made on Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings. Appeals of decisions on an I-130, Petition for Alien Relative, or other decisions that are appealed to the BIA, are filed on Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer, with the office that made the decision on the petition. When you are notified of an unfavorable decision that may be appealed, you will also receive information about which form you should use to appeal the decision.

Q. When do I file an appeal?

A. Generally, an appeal should be filed within 30 days from the date of the decision (not the date the decision was received). A shorter appeal period may apply to some cases. Your decision will tell you when the appeal period ends. There is no extension to this deadline. Only a brief to support a filed appeal may be submitted after the deadline.

• Direct Filing Addresses for Form I-290B, Notice of Appeal or Motion

Q. Where do I file an appeal?

A. Your denial notice will include information about which form to use to file your appeal. Information about where to file your appeal can be found at the link to the right. If you mail your appeal, make sure you allow enough time for the document to reach the office by the deadline.

Q. Do I need to submit a brief with an appeal?

A. You are not required to submit a brief with an appeal, but you may submit one if you choose. You must, however, provide a sufficient explanation as to why you think the earlier decision was in error. If you do not provide an explanation of why you think the earlier decision was in error, and you do not file a brief, your appeal may be denied.

The brief and/or supporting evidence does not need to be filed concurrently with the appeal – you may provide that documentation either with the appeal or after it has been filed.

Q. When should I expect to receive a decision on an appeal?

A. Although some cases may take longer, the AAO attempts to resolve appeals within six months of receipt.

Q. May I request a waiver of the filing fee for my appeal?

A. Generally, USCIS may not waive filing fees. But DHS regulations, at 8 CFR 103.7(c), specify some cases in which USCIS can waive a filing fee. If USCIS can waive the filing fee for the underlying petition or application, USCIS can also waive the filing fee for the appeal.

Motions to Reopen or Reconsider**Q. What is a motion to reopen?**

A. A motion to reopen is a request to the original decision maker to review a decision. The motion must be based on factual grounds, such as the discovery of new evidence or changed circumstances, and “state the new facts to be provided in the reopened proceedings and be supported by affidavits or other documentary evidence.” See 8 CFR 103.5(a)(2).

If the underlying application or petition was denied due to abandonment (e.g. failure to respond timely to a request for evidence or a notice of intent to deny), a motion to reopen may be filed if it can be shown that:

- The requested evidence was not material,
- The required initial evidence was submitted with the application or petition,
- The request for appearance or additional evidence was complied with during the allotted period, or
- The request for evidence or appearance was not sent to the address of record.

Q. What is a motion to reconsider?

A. A motion to reconsider is a request to the original decision maker to review a decision based on new or additional legal arguments. The motion must establish that the decision was incorrect based on the evidence of record at the time of that decision, and it must state the reasons for reconsideration. A motion to reconsider must be supported by “any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [USCIS] policy.” See 8 CFR 103.5(a)(3). Unlike a motion to reopen, new evidence or changed circumstances cannot support the filing of a motion to reconsider.

Q. How do I file a motion?

A. Most motions are filed on Form I-290B, Notice of Appeal or Motion, with the appropriate fee. If your motion needs to be filed on a different form, your denial notice will include the appropriate form information.

Please note that a written letter submitted to USCIS is not considered a motion. Motions must be filed on the appropriate form and submitted with the required fee (unless a request for a fee waiver was approved).

Motions regarding an asylum decision do not require a Form I-290B, Notice of Appeal or Motion (or any other DHS form). A filing fee is also not required for motions regarding an asylum decision. You or your representative of record must submit any motion within 30 days of the decision and indicate if the motion seeks to reopen or reconsider. However, failure to file a motion to reopen before this period expires may be excused in the discretion of the Asylum Office Director if you demonstrate that the delay was reasonable and beyond your control. Either the principal applicant or a dependent may file a motion to reopen or reconsider. More detailed information regarding motions to reopen or reconsider USCIS Asylum Office decisions is located in Section III.M. of the Affirmative Asylum Procedures Manual, which can be found on the USCIS website by typing “Affirmative Asylum” in the search box.

Q. When do I file a motion?

A. Generally, motions should be filed within 30 days from the date of the decision (not from the date it was received). The time for you to file your motion to reopen can only be extended at the discretion of USCIS if you demonstrate that the delay was reasonable and beyond your control.

Q. Where do I file a motion?

A. Your denial notice will include information about which form to use to file your motion. Information about where to file your motion can be found at the link to the right. If you mail your motion, make sure you allow enough time for the document to reach the office by the deadline.

Q. Do I need to submit a brief with a motion?

A. No, you are not required to submit a brief with your motion, but you may submit one if you choose. You must, however, provide a sufficient explanation of why you think the earlier decision was in error. If you do not provide an explanation of why you think the earlier decision was in error, and you do not file a brief, your motion may be dismissed.

Note: While an applicant or petitioner may be granted additional time to submit a brief and/or supporting evidence after an appeal has been filed, no such provision applies to motions. Any briefs or additional evidence must be submitted concurrently with the motion. See 8 CFR 103.5(a)(2).

Q. What happens when I file a motion?

A. You will receive a decision on any properly filed motion. Filing a motion, however, does not suspend the execution of any decision made in your case or extend a previously set departure date.

Q. When should I expect to receive a decision on a motion?

A. Although some cases may take longer, USCIS tries to adjudicate motions within 90 days. If you do not receive a decision on your motion within that time, you may contact the National Customer Service Center at 1-800-375-5283 and ask for a "service request."

Q. May I request a waiver of the filing fee for my motion?

A. Generally, USCIS may not waive filing fees. But DHS regulations, at 8 CFR 103.7(c), specify some cases in which USCIS can waive a filing fee. If USCIS can waive the filing fee for the underlying petition or application itself, USCIS can also waive the filing fee for the motion.

Q. What can I do if my motion is denied or dismissed?

A. A decision on a motion may be appealed to the AAO only if the original decision was appealable to the AAO. See 8 CFR 103.5(a)(6).

If an Asylum Office denies or dismisses your motion arising from a case that received a Final Denial, you may submit a new Form I-589. You will be subject to the same prohibitions on filing as any other newly filed asylum application. You should file the application directly with the Asylum Office having jurisdiction over your place of residence since Service Centers are not able to accept new asylum applications on cases that have previously been denied. You should include a letter with your application stating that you previously applied for asylum and were denied.

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TOPICS

Adoption
 Avoid Scams
 Citizenship
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 Green Card
 History and Genealogy

VERIFICATION

E-Verify
 I-9 Central
 Self Check
 SAVE



National Customer Service Center
 1-800-375-5283
 TDD for the Hearing Impaired
 1-800-767-1833

POLICIES

USCIS Freedom of Information Act and Privacy Act
 Privacy and Legal Disclaimers
 No FEAR Act
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 Social Media Policy

GOVERNMENT

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